

## PROBLEM QUESTION ANSWERS (5): CITING PRECEDENTS

SL: Hi, welcome back. I'm Sabrina and this is the Quick Guide to Legal Writing. Last time we looked at how to state a rule when answering a legal problem question. We saw that rules are usually supported by authorities, including legislation and precedents from case law. Today, we'll look at how you can provide authority by citing precedent cases.

SL: You'll learn three different ways to do that, namely: 1) a locative reference, using the preposition 'in'; 2) a parenthetical reference, where the case reference is placed in brackets or parentheses; 3) a marked reference, which uses adjectives to comment on the case.

SL: Let's start with the locative reference. This is when the legal case is introduced by the preposition 'in' followed by a description of the facts. Here's an example from our sample problem question, the case of Susan and the flame-throwing hair dryer:

EN: In *Page v Smith*, Mr Page was involved in a car accident. Although he was physically unhurt, the collision resulted in the recurrence of a psychiatric illness which had previously been in remission. The House of Lords held that both psychiatric and physical injuries were part of the broader genus of personal injury.

SL: As you can see, using a locative reference requires you to follow the general pattern of 'in + Case name + Facts of Case'. This kind of reference is especially useful if you want to argue that the facts of the precedent are similar to the facts in the problem question.

SL: Next, let's look at the parenthetical reference. Here's an example:

EN: A manufacturer must take due care in the manufacture of products, and has a duty to do what is reasonable (*Donoghue v Stevenson, Grant v Australian Knitting Mills*).

SL: In this example, the statement of law is given first, followed by the case name in brackets or parentheses. This is useful if you don't need to draw attention to factual details of the precedent.

SL: Last but not least, marked references. Usually, you use a marked reference if you want to comment on the case somehow. Let's see an example:

EN: The test, as laid down in the seminal case of *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (Wagon Mound (No 1))*, is whether the Plaintiff's injury was of a foreseeable kind.

SL: Here, the case is highlighted by the adjective 'seminal'.

SL: You can also use other words like 'leading', 'landmark' and 'recent' to comment on the case. Using a marked reference allows you to indicate how important the case is.

SL: So, let's review. In this episode, we've looked at three different ways to cite a case precedent. They are: 1) a locative reference, using the preposition 'in', like 'In *Page v Smith...*'; 2) a parenthetical reference, where the case reference is placed in brackets or parentheses, like '*Donoghue v Stevenson*'; 3) a marked reference, which uses adjectives like 'seminal', 'leading', 'landmark', 'recent' to comment on the case.

SL: I hope you found this helpful. In the next episode, we'll look at how to introduce another common source of law – legislation. Stay tuned!