PRIMARY SOURCES: CASES

Decisions of the courts are the other main primary source of law. It is the decision of the court itself which holds the authority—not the headnote or the publisher’s summary of the case. So while databases like *Briefcase* (via WestlawNZ) are a very useful way of locating cases, the full decisions must be examined before the case is relied upon.

Decisions are published in different formats (but the content of the decision will ordinarily be the same). The earliest version obtainable will be the *unreported version* issued by the court. The decision may subsequently be published in one or several law report series.

In New Zealand the official, authorised case reports are the New Zealand Law Reports (NZLR), published by Lexis. Always cite this version if it exists.

Examples of other, specialist law reports are:

- *Human Rights Reports of New Zealand* (Thomson Reuters /WestlawNZ)
- *New Zealand Conveyancing Cases* (Wolters Kluwer / CCH)
- *Procedure Reports of New Zealand* (Thomson Reuters /WestlawNZ)
- *New Zealand Administrative Reports* (LexisNexis)

Law reports and unreported judgments are mostly available in print and / or online via subscription databases such as Westlaw, Lexis and CCH, or can be found freely online in their unreported condition via NZLII or the court’s website.

Subscription databases provide value-added linking and analysis to legislation and secondary sources. The free versions do not.

The Library provides access to these and more, and can be easily access via the Law Subject Guide—your portal to legal research [https://otago.libguides.com/law](https://otago.libguides.com/law)

From Law Subject Guide, choose a NZ-based legal database to begin your search.

You should always search across all the databases—they get updated at different rates, and may link out to different sources.

Read on to learn about finding and using case law from three key databases: WestlawNZ, Lexis Advance, and CCH.

A NOTE ON PUBLISHERS

Legal publishers are rather insular, and would rather not share their content. This means you have to learn who publishes what, so that you can target the right databases when searching for reported (published) cases. The Library Catalogue, Library search | Ketu (LSK) will provide information about who publishes what in their bibliographic data.
FIND NEW ZEALAND CASES

Your starting point when looking for case law will vary, so your strategy will vary too.

<table>
<thead>
<tr>
<th>If your starting point is to find:</th>
<th>Your strategy might be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a specific case</td>
<td>citation search across a variety of databases</td>
</tr>
<tr>
<td>2. cases citing legislation</td>
<td>find the statute first, and link to cases citing</td>
</tr>
<tr>
<td>3. cases citing earlier cases</td>
<td>use CaseBase or CiteCase to link to earlier cases</td>
</tr>
<tr>
<td>4. cases which consider particular legal definitions, or cases on a specific topic.</td>
<td>keyword or phrase search across a variety of databases or browse sources focused on that subject or keyword search</td>
</tr>
<tr>
<td>5. cases from other jurisdictions</td>
<td>Try a variety of databases and learn who has what</td>
</tr>
</tbody>
</table>

Legal databases provide a very effective method of locating cases from all starting points — provided they are used efficiently. Remember not all cases are online!! You may have to find hardcopy versions.

If you have the correct citation or reference to a case, it is fairly easy to find on most platforms.

A full case citation is comprised of several parts: the names of the parties, plus a systematic and unique series of numbers and letters.

Think of it as an address.

For example, **Thompson v Vincent [2001] 3 NZLR 355**, (2001) 7 NZBLC 103,389

It is common for a decision to be reported — i.e. published in more than one law report.

In this example, Thompson v Vincent is reported in the

| NZLR — New Zealand Law Reports (the official report series), and the |
| NZBLC— New Zealand Business Law Cases (a specialist law report published by CCH). |

You usually only need this part of the citation, to find the case within:

| [2001] 3 NZLR 355 |

But if that fails, try the party names.

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1. See NZLSG Rule 3 for details about citing cases, and the different forms of citation. For more information, read Penk and Russell, *New Zealand Legal Method Handbook* 2014, Ch 18.

2. Not sure what ‘NZLR’ or ‘NZBLC’ means? Look them up in the Cardiff Index of Legal Abbreviations.
1. FIND A SPECIFIC CASE

1A. QUICK FIND—WESTLAWNZ

Find a known case by citation by using the quick citation search on the homepage.

For example, [2001] 3 NZLR 355 is the citation element needed to find Thompson v Vincent.

The citation elements required are just the numbers and letters of the full reference.

NB use Citation Radio Button

The citation is unique to that case, so should result in one answer. WestlawNZ does this function well. Note, the two references are not active links, because only the rival companies have reported this case.

If the citation search does not work (perhaps it is incorrect), then try the search by party names.

NB Name Suppression orders will make searching by party names a bit tricky!!

This search may not be as precise. Be ready to scan several results.

NB the use of ‘and’ instead of ‘v’ .... It yields a better result this way. More on this later.

INTERPRET RESULT

No hot citation links. Why? Because both citations are links to other publishers’ law reports

Briefcase and CiteCase provide analysis;
Judgment Text is the original decision from the Court of Appeal.
1B QUICK FIND—LEXIS ADVANCE

Lexis Advance has a “quick Find” pod for searching and finding specific cases or statutes. The good thing is that it is quick and accurate, BUT it will not easily link you out to support material such as cases citing, and secondary sources.

As you type in the Quick Find pod, it will also populate the Big Red Box, so you can see how the search is structured.

Type in the citation like this. If it is correct, no other data is necessary.

Or, try searching by party names. The result may not be as precise.

NB the use of ‘and’ instead of ‘v’ … It yields a better result this way. More on this later.

INTERPRET RESULT

Note first of all, using the citation method produces one result. A citation is like an address, so it very precise.

Six Records, with four hot links.

CaseBase provides analysis.

LinxPlus is the unreported judgment, coming from the Law Society’s collection.

[2001] 3 NZLR 355 is the link to the official reported version of the decision. Use this version whenever possible.
Access CCH via the quick links on the Law Subject Guide. It provides full text access only to those cases they have published (reported) in their own law reports.

Therefore, to find the case *Thompson v Vincent* [2001] 3 NZLR 355, (2001) 7 NZBLC 103,389 you will need to search using the CCH citation: (2001) 7 NZBLC 103,389, or the party names, for a successful but less precise result.

How do you recognise which citation is a CCH one? See publisher tips on page one. A CCH citation always ends in “C”. “C” for cases; “CCH” for CCH. E.g NZBLC

NB Searching for the case using the NZLR citation will bring up other cases and commentary that have cited this case, but not the case itself.

For interests sake, here’s what a search result using the NZLR citation looks like.
2 FIND CASES CITING LEGISLATION

2A ADVANCED SEARCH— CASES—WESTLAW NZ

The best way to do this search, is to use the Westlaw NZ Advanced Search Template. The template lets you be in control of the search.

However, you do need to use the fields provided and get the ‘right’ data into those fields.

Compare this strategy to the one you used to primarily find the statute, and was able to link to cases. This time we will start with the cases template, search for the statute (cited within cases).

Advanced Search Templates are on the homepage, top left. Click on Cases—because you want your results to be cases.

Two ways to find cases citing the statute:

Freetext search the statutory words (for this, you need to be prepared for a lot of ‘false positives’

OR

Type in the title of the Act (and the section) in the:

Legislation Cited (Title) and Legislation Cited (Provision) fields respectively.

Only 16 results!

EVALUATE! Why are there only 16, when this section of the Act is such a popular reason to go to court.

Remember, this Act is an amalgamation of four contracts Acts from the 1970s, where the purpose—and even the words have not been altered.

So, all the other cases are still attached to the old Act—and some of those cases might still be the substantive ones.

See Statutes guide page 6 for tips to find repealed Acts.
2B ADVANCED SEARCH—CASES — LEXIS ADVANCE

The best way to do this search, is to use the Lexis Advance Advanced Search Template. The template lets you be in control of the search.

However, you do need to use the fields provided and get the ‘right’ data into those fields.

Compare this strategy to the one you used to primarily find the statute, and was able to link to cases. This time we will start with the cases template, search for the statute (cited within cases).

Advanced Search Templates are on the homepage, top right of the search box. Click on NZ Cases—because you want your results to be cases.

As you fill in the template, the big red Search box is populated—giving you a big clue as to how the search is being performed.

Note the use of connectors.

- Statute as phrase “ “
- Connector w/s = within the same sentence
- Boolean OR = either result is good

WHEN THE CLUES LOOK ODD, CHANGE YOUR TACTICS AND SEARCH ANOTHER WAY
2B ADVANCED SEARCH—CASES — LEXIS ADVANCE cont....

EXPLORE RESULTS (GATHER CLUES)

Below is the Cases search result for the statute and section. The result defaults to cases because you were in the Cases Search Template. Analysis and evaluate the results. Not all these cases are citing the statute and section of interest.

Search terms are colour-coded within the text, and in the graphics bar: more colours or wider colours gives clue to relevance of result, and how each term or phrase relates to each other. False positives are easy to spot. And yet, only 20 results.

EXPLORE RESULTS (GATHER CLUES) - EVALUATE

The cases showing are strictly related to two phrases, “Contract and Commercial Law Act 2017”, plus the phrase “s43 or 43” within the same “sentence”, which could be a section of any Act if data entry punctuation is poor. Expect false positives

Why are there only 20 results when this section of the Act is such a popular reason to go to court?

Remember, this Act is an amalgamation of four contracts Acts from the 1970s, where the purpose—and even the words have not been altered. So, all the other cases are still attached to the old Act—and some of those cases might still be the substantive ones.

See Statutes guide page 11 for tips to find repealed Acts.

WHEN THE CLUES LOOK ODD, CHANGE YOUR TACTICS AND SEARCH ANOTHER WAY
WHEN THE CLUES LOOK ODD, CHANGE YOUR TACTICS AND SEARCH ANOTHER WAY

FIND CASES CITING LEGISLATION — QUICK FIND POD — LEXIS ADVANCE

The previous search method drew a number of false positives, and 9 cases citing the new statute.

Another way to search is using the Quick find Pod to find the exact Statute and section, and use the analytics (Legislation Citator) to link to cases citing.

Select Legislation Tab.
Type in the name of the statute and let the auto complete find it. See how it populates the big red search box too.
Type the number of the section—no “s” is required.

The first result is usually the right one. Click on the link.

Click on View Legislation Citator for analytics, including cases.

EXPLORE RESULTS (GATHER CLUES)

Seven results using this method, so some not found. There could be several reasons: all you really need to know is that relying on one search method is usually not enough.

Note, this list is also simply a date-order list, with no further evaluation.

Note, this method of searching is a great way to find secondary sources that have cited the statute. More on this in the Secondary Sources guide.
FIND CASES CITING REPEALED LEGISLATION — — LEXIS ADVANCE

Lexis Advance does not automatically link you from a new statute to an old version. Use WestlawNZ for that ability.

Gather clues from earlier searches, or go back to the problem question to get details of the 1979 Act, and repeat the search.

Phrase search the name of the statute with “ ”, and use connectors.

E.g. “Contractual Remedies Act 1979” w/s 9 or 9

The Big Red search box is looking for your search terms everywhere, so if a case mentions this Act and s9, this search will find it.

Tab over to Cases— fear not, many of these results will be false positives.

Find further ways to narrow this result.

E.g. Re-sort the list from Relevance to Newest

E.g. Use the filters on the left, such as the court, or date-range or topic.

E.g. add more search-terms to this set of results.

Note The quick Find Pod does not offer this functionality for Repealed Acts.

EXPLORE RESULTS (GATHER CLUES)

Take a closer look at Thompson v Vincent. CaseBase is the link to the analytics, such as cases citing...

Note the colour-coding of terms too.

Explore these links.

Note there is no link to the legislation being cited. That is because said legislation is repealed, and has been removed from the ‘active’ databases within Lexis Advance. Use WestlawNZ instead.
CCH is a boutique database with a focus on commercial law, business, tax, torts, and wills & trusts.

The search functionality is not quite as sophisticated as the other two products.

If you want to find cases citing a specific statute and section, search for the Act first, then use the internal linking and analysis to find the cases that have cited the statute.

---

**Search tips:**

- Put double speech marks around the statute title to ensure a whole phrase search.
- Search s 9 (not s9)

**Results are relevance-ranked.**

- Drill down by Document Type to find Cases.
- Watch out for ‘false positives’.
  - The Act and the section are from different documents!

**3 cases results searching with the new Act.**

- Note the Supreme Court decision, with a reference to a CCH law report (NZConvC).
- All SC decisions get reported in the NZLRs—the official law reports series for NZ, so you should go and find that version instead.

**Or, drill down by Document Type to find Acts, find the section, then look for the “related Documents” link**
3 FIND CASES CITING EARLIER CASES

3A WESTLAW NZ

This is all about understanding how the legal arguments have matured, developed, or even completely changed over time.

Legal databases specialise in this kind of linking, and it is where their value lies.

There are two ways to approach this: either find the newer case, and link to the older ones; or find the older cases and link to the newer ones.

Find Thompson v Vincent [2001] 3 NZLR 355

The tabs all provide different pieces of the puzzle. Note, the Judgment Text is the original court decision.

The first two tabs provide case citation data back and forwards in time.

Briefcase is a brief about the case. It will list the cases cited in Thompson v Vincent—that is, the cases they used to support and develop their own arguments.

Note: the Summary is handy overview of the case to help you decide if it is important. The summary is NOT the judgment, so do not use or quote it.

CiteCase shows you subsequent cases that have relied on Thompson v Vincent for their arguments. That is, the more recent cases, that might develop the body of law in this area.

CiteCase also includes other sources that cited Thompson v Vincent, e.g. journals articles

Explore these tabs too—for lots of other useful linked data.
This is all about understanding how the legal arguments have matured, developed, or even completely changed over time.

Legal databases specialise in this kind of linking—and it is where their value lies.

There are two ways to approach this: either find the newer case, and link to the older ones; or find the older cases and link to the newer ones.

Find **Thompson v Vincent [2001] 3 NZLR 355**

In this example, both fields are filled in.

*In reality just one will usually do.*

The Case Citation is the most targeted option, so try that first.

Note also how your search terms are populating the Big Red Search Box, when you use Quick Find.

Click on **CaseBase** to see the cases referring to this case (more recent cases), and Cases considered by this case (older cases).

**CaseBase Signals**

CaseBase Signals indicate whether the case decision has received positive, negative, cautionary or neutral treatment in subsequent judgments. The signals are based on case annotations prepared by the CaseBase editors. They are derived from both the procedural history of a case and the subsequent judicial consideration of it.

**Note:** Not every case has a CaseBase Signal.

<table>
<thead>
<tr>
<th>Signal</th>
<th>Summary</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative</td>
<td>Treatment indicated. A negative (red) signal is given to decisions which have been subsequently reversed, disapproved or overruled.</td>
<td></td>
</tr>
<tr>
<td>Cautionary</td>
<td>Treatment indicated. A cautionary (yellow) signal is given to decisions which have been subsequently distinguished, explained, not followed, questioned or varied.</td>
<td></td>
</tr>
<tr>
<td>Positive</td>
<td>Treatment indicated. A positive (green) signal is given to decisions which have been subsequently applied, approved, followed or affirmed.</td>
<td></td>
</tr>
<tr>
<td>Neutral</td>
<td>Treatment indicated. A neutral signal is given to decisions which have been either considered or cited (also referred to or discussed).</td>
<td></td>
</tr>
<tr>
<td>Citation</td>
<td>Link to CaseBase entry. A citation information signal is given to decisions for which there is only citation information available.</td>
<td></td>
</tr>
</tbody>
</table>
3C CCH INTELLICONNECT

This is all about understanding how the legal arguments have matured, developed, or even completely changed over time. Legal databases specialise in this kind of linking—and it is where their value lies.

CCH is rather limited in this function, compared to WestlawNZ and Lexis Advance, due to its narrower subject focus. However, sometimes this database will reveal content not found in the other databases—for the same reason!


There’s a trick: you can search by party names as a phrase, e.g. “Thompson v Vincent”, or you can search by the reference, e.g. [2001] 3 NZLR 355, or you can search by the references to the other reported version, e.g., (2001) 7 NZBLC 103,389

Try all three—you might get different results.

Now narrow your results by Document Type—Cases.

EVALUATE

Only four results, and only Supreme Court Results.

Re-run your search on another platform.... This time!
4 FIND CASES WHICH CONSIDER LEGAL DEFINITIONS, OR ARE ON A SPECIFIC TOPIC

KEYWORD SEARCH TIPS AND TECHNIQUES

Remember your search strategy for synonyms, and a break down of the separate ideas you need to cover.

Most database search engines use these search ‘rules’ (although sometimes the rules are slightly different). Use the database Help for more, well, help.

**Phrase search** e.g. “grant relief”. When two or more words must be in a specific order, place double quotation marks around them

**AND** e.g. cancellation and court. When you use AND between words, you are saying both terms must be present, anywhere is the document.

**Words, just words.** A string of words will be relevancy ranked. That is, the database will first try and find instance of both or all of the words, or just single words

**Truncation** e.g. cancels! An exclamation mark at the end of the root of the word will search all the different endings, e.g. cancels, cancelled, cancelling, cancellation.

**Proximity Operators / Connectors** e.g. cancellation w/10 court. This means, find records where cancellation is within 10 words of court. This a powerful search tip that really only appears in legal databases. It allows you to force a relationship between your words. That is, the closer the words are to each other, the more likely they are related to each other. You can also search within a sentence (w/s) or a paragraph (w/p) or pick a different number (w/25).

Mix it up a bit!

Try a search like this “grant relief” and contract and cancels!

4A WESTLAW NZ

Get search tips to construct search

Select cases as your first filter

Your filter choices will depend on your needs, e.g. NZ jurisdiction, Court of Appeal, or for a particular practice area.

Note: Australian results will also come up initially, so your first filter should always be jurisdiction—New Zealand.

After that you can filter by Court, e.g. the Supreme Court.

These hotlinks are **Classification** clusters of similarly described cases, going from broad to narrower descriptions.

Note: a person is creating these topic pathways, with their own interpretations...
EXPLORE RESULTS AND GATHER CLUES

One way to evaluate results is whether the judgment has been reported (aka published), as it is a signal from the profession that the case is worthy. If a case has been reported in the NZLR (New Zealand Law Reports), the official report series for New Zealand, it is good and proper practice to find and use and cite that version.

However, unreported cases might be useful for research. Sometimes it takes time for the judgment to become important to a body of law. The symbols or letter beside the party names provide a rough clue about how the case has been used.

Scan the BriefCase description, look at the legislation followed and the cases cited to help you decide its usefulness. Then read the full case!

BriefCase and CiteCase provide unique and detailed analysis of the case, such as legislation cited, cases used in this case, and cases that have subsequently cited this case.

A note on style. This is a media neutral citation created by the Supreme Court as a unique identifier. See New Zealand Law Style Guide (NZLSG) Rule 3.

This case has also been published (reported) in several Law Reports, but no hot links to them. These are rival publishers! See Tips and Tricks below.

There is a PDF link to the NZSC unreported judgment, which you can use, although ideally, you would find and use the official reported version of this case—the NZLR version, from Lexis Advance.

The Status flags and symbols provide clues on the outcome of the case. Hover over the symbols to learn their meaning. Use the symbols as a signal to help evaluate the usefulness of the case.
Try a search like this “grant relief” and contract and cancel!

Lexis Advance allows you to take control of your search if you want to, or, “Let Advance decide”!!

See how the search is working with the coloured clusters. The closer the colours, the higher the relevancy.

The results are relevance-ranked. However, if you are looking for legal definitions, you may want to narrow the results to the higher courts (Appeal or Supreme).

Also look at the CaseBase records for further search terms to add to your search strategy and narrow your search.

Also, use your own knowledge!

Do some of these cases look familiar to you?

Try this search again, without the “ ” phrase marks, e.g. grant relief and contract and cancel! Is it better? Different?
Remember your search strategy for synonyms, and a break down of the separate ideas you need to cover.

Most database search engines use these search ‘rules’ (although sometimes the rules are slightly different.... Use the database Help for more, well, help.

Try a search like this “grant relief” and contract and cancel!

Filter the results by Document Type—Cases.

Note, Australian cases are here too, so filter by Jurisdiction!

Also consider filtering by Topic.

Are the powers of the court to grant relief in tax law relevant?
5 FIND CASES FROM OTHER JURISDICTIONS

5A WESTLAW

*Westlaw (International)* is mainly a US-focused database, but it does include a lot of content from other countries too.

Note: Australian content is held in WestlawNZ; UK content is held in ICLR Online.

From the Law subject guide, scroll down the quick links to the Foreign Law section, and select *Westlaw*.

For non-US content, click on International Materials. Drill down to the specific jurisdiction or content type. Note, the search box at the top becomes more and more contextualised.

At the most granular level, you get an Advanced Search template, plus instructions to connect your search terms.

For more help, go to the Law Subject Guide > Research Strategies > Database Guides.
Lexis Advance US is mainly a US-focused database, but it does include a lot of content from other countries too.

Note: UK content is held in ICLR Online.

From the Law subject guide, scroll down the quick links to the Foreign Law section, and select Lexis Advance US. You may be asked to login.

This is the clearest signal to differentiate between the NZ and US platforms.

Start typing, and select the case as it appears.

To find non-US cases, select the jurisdiction from the International Tab and follow your nose.

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**Roe v. Wade, 410 U.S. 113**

Supreme Court of the United States

December 13, 1971, Argued January 22, 1973, Decided

No. 70-18

Reporter

410 U.S. 113 * | 93 S. Ct. 705 ** | 35 L Ed. 2d 147 *** | 1973 U.S. LEXIS 159 ****

ROE ET AL. v. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY

Subsequent History: [****1], Reargued Oct. 11, 1972.


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**All Australia Cases**

Search for:

Australian Case: Mabo

AU Cases (983)

1. Mabo v Queensland (No 2) (The Mabo Case)
**5C ICLR ONLINE**

*ICLR Online* is a large database of cases (and statutes) from the United Kingdom. The Incorporated Council of Law Reporting (ICLR) holds the publishing rights for the official UK law report series, e.g. AC, PC, HL, QB...

From the Law subject guide, scroll down the quick links to the Foreign Law section, and select *ICLR Online*.

Search by party names, or citation, or keywords.

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*Versloot Dredging BV v HDI Gerling Industrie Versicherung*

14 Jun 2013 [2013] EWHC 1666 (Comm); [2013] 2 All ER (Comm) 465; [2013] 2 Lloyds 157;
16 Mar 2015

20 Jul 2016 [2016] UKSC 45; [2017] AC 1; (2016) 3 WLR 543; (2016) 4 All ER 1907; [2016] 4 D 403; Case details, SC(E)

INSURANCE — Marine — Claim
INSURANCE — Marine — Fraudulent device
(2016) 3 WLR 543 was incapacitated by an ingress of water which flooded the engin

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*Rylands v Fletcher*

14 May 1866 LR 1 Exch 265, Exchequer Chamber

17 Jul 1868 LR 3 HL 330, HL

TRESPASS — Duty of owner of land — Negligence
Mine — Negligence — Use of own Property
LR 1 Exch 265 FLETCHER ... RYLANDS AND ANOTHER ...

LR 3 HL 330 JOHN RYLANDS AND JEHU HORROCKS ... THOMAS FLETCH

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The Law Reports (House of Lords, English and Irish Appeals)

LR 3 HL 330

[JUDGES OF LORDS]

JOHN RYLANDS AND JEHU HORROCKS PLAINTIFFS IN ERROR; AND THOMAS FLETCHER DEFENDANT IN ERROR.

1868 July 6, 7, 17.

THE LORD CHANCELLOR (Lord Cairns), LORD CRAWTHORPE.

Mine — Negligence — Use of own Property — Water.

Where the owner of land, without wilfulness or negligence, uses his land in the ordinary manner of its use, though injurious should thereby be occasioned to his neighbour, he will not be liable in damages.
Although the commercial databases provide a richer research experience, there are occasions where you might need to use freely available websites instead. When you go out to practice law, you may find yourself working in a place or a company that cannot afford the commercial products.

This is where the Legal Information Institute comes in. The local New Zealand (free) database is called NZLII. The Australian one is AUSTLII, the British one is BAILII. I’m sure you get the picture. The Law Subject guide links to many free sources.

All of the results are unreported judgments, direct from the courts. If the case has been published (i.e. reported) in a law report, best practice says to source that published version.