

Chapter 16

WHEN DO I CITE?

We have often found that in teaching our students the intricacies of legal citation rules, we need to stop and focus on the most important citation rule: The rule that tells us when we must cite! Knowing when to cite can be tricky until you have some experience in writing legal memoranda, court documents, or a scholarly paper. You probably have brought some citation placement experience with you from your undergraduate or graduate work. For better or worse, legal writing requires very precise and usually frequent citation of the propositions in our legal writing — probably more precision and frequency than writing in other fields.

The general rule of thumb for legal memoranda and court documents is that you need a citation for every fact, thought, or opinion that comes from another source (not you or your facts). You need a citation even if you are not quoting. The purpose of your citation is to enable your reader to go to a specific page of a specific source and find support for the sentence preceding the citation. If you are detailing the facts of a case or the holding of a case, then you need a citation to that case, whether you are quoting or paraphrasing. If you are quoting or paraphrasing a statute or regulation, then you need a citation. If you are making a proposition about the state of the law generally, then you need a citation to a source that supports that proposition. If you are providing your reader with a rule that you have synthesized from several sources, then you need cites to those sources. Here are some examples of the types of sentences you will write in a legal memorandum or a court document that would need citations:

In our jurisdiction, courts look to numerous factors when determining whether an individual can establish ownership by adverse possession. *Belotti v. Bickhardt*, 127 N.E. 239 (N.Y. 1920).

The Court of Appeals of New York held that the defendant's possession must be hostile and under a claim of right; the possession must be actual; the possession must be "open and notorious"; the possession must be exclusive; and the possession must be continuous for a period of twenty years. *Belotti v. Bickhardt*, 127 N.E. 239, 241 (N.Y. 1920).

The defendant used and rented all portions of a building, a portion of which was built on property owned by the plaintiff. *Belotti v. Bickhardt*, 127 N.E. 239, 240 (N.Y. 1920).

However, you do not need a citation when detailing your own facts or even applying a previously cited rule to your facts. If in doubt, ask yourself: "If my reader turns to this page of this source, would the reader find support for this

statement?” Here are some examples to illustrate:

Tina Trespasser, our client, should be able to show that she meets all five of the requirements to prove adverse possession.

Tina, like the defendant in *Belotti*, has continuously occupied the land in question and earned income from it.

Notice that some of the examples in this chapter cite to the first page of the case only, while others pinpoint the location of specific material cited. When authority is used to represent a rule of law (*e.g.*, a landmark decision like *Roe v. Wade* for the right to privacy), then the citation does not necessarily require a pinpoint. However, when your citation follows facts or reasoning from the case, a pinpoint citation is needed to help your reader find the information cited.

Now that you know how to cite and when to cite, you're all set!

Exercise 16 WHEN DO I CITE?

For this exercise, you will use a set of facts about a fictitious client and two actual cases. You will be given sentences taken in order from a hypothetical discussion section in a legal memorandum. You will need to decide whether each sentence requires a citation to one of the given cases. If you determine that the sentence does not require a citation, then simply leave the space after the sentence blank. (If you are doing this exercise on the website, type “no citation” in plain type in the solution box and click “submit.”) If you determine that the sentence does require a citation, then simply type either “Randall’s” or “Safeway” in plain type, as applicable.

Facts: Your client is Mary Ratchet, a psychiatric nurse. She is employed by Charter Canyon Psychiatric Hospital. On June 14, 2000, the head psychiatrist, Dr. Sam Wright, called her into the staff break room. He then accused her of alcohol abuse and refused to let her leave the locked unit until he was finished talking with her. After the end of the meeting, she left the hospital and has since filed a suit for false imprisonment against Dr. Wright.

Cases: *Randall’s Food Mkts., Inc. v. Davis*, 891 S.W.2d 640 (Tex. 1995). This is the most recent Texas Supreme Court opinion that states the three elements of false imprisonment. This case does not focus on the element of “detention without authority of law.” The facts appear on page 640, and the rule and holding appear on page 642.

Safeway Stores, Inc. v. Amburn, 388 S.W.2d 443 (Tex. App. — Fort Worth 1965, no writ). This case focuses on the element of “detention without authority of law.” The court specifies what types of employer-employee meetings are lawful. The facts appear on page 443, and the rule and holding appear on page 444.

1. In Texas, the plaintiff in a successful cause of action for false imprisonment must prove three elements: (1) the detention was willful; (2) the detention was without consent; and (3) the detention was without authority of law.

2. In our case, the parties do not dispute that the detention was without Ms. Ratchet’s consent or that the detention was willful; however, the parties do disagree about whether the detention was without authority of law.

- 3. To prove that an employee has been detained without authority of law, we will have to show that the employer was acting outside of the employment relationship by detaining an employee in an inappropriate confrontation unrelated to her duties.

- 4. Dr. Wright clearly detained Ms. Ratchet without authority of law.

- 5. In Texas, an employer may require a discussion with an employee regarding that employee's duties, but that discussion must take place at a logical, proper location and must be conducted in a logical, proper manner.

- 6. In *Safeway Stores, Inc. v. Amburn*, the Court of Appeals held that an employer was acting within his authority when questioning plaintiff Kenneth Amburn, a cashier, about a possible cash register theft.

- 7. The court held that discussions regarding employee loyalty are proper, as are discussions held in the only available private space of a business, in this case, the back room of a grocery store.

- 8. The events of June 14 are very different from the events discussed in *Safeway Stores*.

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9. Although both Dr. Wright and Ms. Ratchet have offices, Dr. Wright chose to detain her in the employee break room.

10. In addition, Dr. Wright wanted to speak with her concerning possible alcohol abuse not directly related to her work performance.

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