A note on citing sources in legal writing

Benjamin Joshua Ong, Assistant Professor of Law, Singapore Management University[1]

Introduction

1. In doing research – both in academic work and in preparing submissions to courts – referring to others' work is not only virtually inevitable, but also desirable: ideas and observations are meant to be shared, refined, tested, critiqued, or built upon by others. That is not only how human knowledge develops; it is (on a slightly more prosaic note) how the law works.

2. In drawing on others' work, one must take care to cite that work properly. This is not merely a matter of formality, such as using an established citation style (although one *should* be used); nor is it a matter of dropping names or titles; nor is it a matter of paraphrasing words (sometimes accompanied by the unnecessary use of a thesaurus). Rather, it must be remembered that proper citation is a means to the following ends:

    a. avoiding dishonestly giving the misleading impression that others' work is one's own;

    b. duly recognising the efforts of those who have created original content; and

    c. usefully allowing the reader to learn more about the work that is being drawn on.

3. In order to achieve these ends, whenever one draws on another person's work, it is necessary to state with particularity:

    a. the person whose work is being drawn on;

    b. what ideas or words are being drawn on; and

    c. where one may find those words or ideas.

4. The following example might illustrate the value of these steps. One might, at some point, come across an idea in a book, which cites a journal article, which relies on case A, which follows case B, which purportedly follows case C. Suppose one seeks to argue that the idea mentioned in the book is incorrect because case C was wrongly decided. One could only make this argument thanks to the 'chain' of sufficiently detailed citations in the sources, in the absence of which one would not have been able to identify case C as the ultimate source of the error and thus the proper target of criticism.

[1] I am grateful to my colleagues, Associate Professor Eugene K B Tan and Assistant Professor Nicholas Liu, for their comments on an earlier draft of this note.

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5. By contrast, consider the following case study involving bad citations, as narrated (and commented on) by Steven Chong J in *TTJ Design and Engineering Pte Ltd v Chip Eng Seng Contractors (1988) Pte Ltd* [2011] 2 SLR 877 (HC):

> 20 The defendant's counsel also cited *Wharf Properties Ltd v Eric Cumine Associates*… and reproduced a quote purportedly made by Lord Oliver of Aylmerton that: […]
>
> No page reference was provided for the above quote. In attempting to locate the page reference, I discovered that this statement was nowhere to be found in *Wharf Properties*. […]
>
> 21 The defendant also cited *Petromec Inc v Petroleo Brasileiro SA Petrobras*…
>
> 22 My own research has revealed that the defendant's submission with respect to *Wharf Properties*… was taken verbatim from an online article… without any acknowledgment of its source. The defendant's 'analysis' on *Petromec*… was likewise lifted from another online article… It is not good practice for counsel to copy verbatim summaries of case law with quotes purportedly from the judgment without conducting appropriate checks on the accuracy of the source. Where it is proper and apt to quote extracts from any article, counsel should acknowledge the source. There is no 'shortcut' to proper research. I should add that such 'cut and paste' jobs are not helpful and in fact render the submissions disjointed without sufficient co-relation to the facts of the case.
>
> 23 In my judgment, both *Petromec* and *Wharf Properties* do not assist the defendant's case…

6. What follows are some notes on how to cite sources with the above principles in mind. The aim is not to provide an exhaustive guide to how to cite sources, but rather to highlight some common pitfalls and to explain why and how to avoid them.

Identifying the person(s) whose work is being cited

7. Let us begin with identifying the person whose work is being drawn on. This is generally straightforward. However, one must be careful in cases in which there are multiple persons who ought to be credited. For example, it is common for a book to be named after one person (A), edited by others (B and C), and contributed to by yet others (D, E, and F). For example, the 33rd edition of *Chitty on Contracts* is named after Joseph Chitty Jr; its editor is Hugh Beale; and each of its chapters is written by a different person. It is important to recognise this in one's citations, and most (if not all) citation style guides allow for this. If, for instance, one wished to cite paragraph 11-002 of this book, the citation might appear something like this:

> C G J Morse, 'Political Immunity and Incapacity', ch 11 in H G Beale (gen ed), *Chitty on Contracts* (Sweet & Maxwell, 33rd ed, 2018) at [11-002].

8. This citation shows that the work represents an intellectual effort begun by Chitty (as is reflected in the book's title), and that Beale did work in bringing the book into its present form. On the other hand, it avoids giving the impression that Beale or Chitty wrote paragraph 11-002. To give such an impression would be to fail to give due credit to Morse.

Identifying the ideas or words being cited

9. It is common for a source (X) to cite another source (Y). In such a situation, a writer may be tempted to cite only source Y, thinking that source X has done no more than merely to

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reproduce source Y. But this might not be enough, because source X may contain original work besides a mere reference to source Y. To see why, it is necessary for us to examine what exactly 'work' consists of.

10. Work by an author (let us call him "A") may take various forms. For example:

a. A may come up with an original idea expressed in an original manner.

b. A may come up with an original means of expressing an idea from B, such as an original manner of phrasing.

c. A may perform research that brings together ideas from C and D.

11. In situation (a), one simply needs to cite the source of the idea, namely, A's work. In situations (b) and (c), it is not enough to cite B, C, or D; one must also cite A's work. This is because, in situations (b) and (c), A has provided intellectual input. Citing only B, C, or D, in cases where B, C, and D are not widely-known sources (such as well-known cases), would:

a. ignore A's role in leading one to these sources in the first place; and

b. give the misleading impression that one has read B and/or C and/or D, which in truth one might not have.

Citing sources for the ideas they introduce

12. Suppose one has read the following extract (which is a modification of Benjamin Joshua Ong, 'Standing Up for Your Rights: A Review of the Law of Standing in Judicial Review in Singapore' [2019] SJLS 316, 343):

> The problems identified above are what prompted the Court of Appeal to take a confusing approach in *Vellama d/o Marie Muthu v Attorney-General*.[1] […] Jhaveri's analysis of *Vellama* prompts one to consider questions such as the following: Is the right to representation engaged (a) when an applicant is not represented by an MP, or (b) only when there is some specific issue (such as personal financial need) on which the applicant seeks assistance?[2] Had the Court of Appeal not been bogged down in distinguishing between 'private' and 'public' rights, it may well have had the occasion to answer such questions as part of its task of pinning down precisely what rights were at stake. This case study demonstrates why the 'private right'/'public right' distinction ought to be abolished.
>
> [1] [2012] 2 SLR 1033 (HC); [2013] 4 SLR 1 (CA).
>
> [2] Swati Jhaveri, "Advancing Constitutional Justice in Singapore: Enhancing Access and standing in Judicial Review Cases" (2017) Sing JLS 53 at page 68.

13. Now suppose, having read this extract, one wishes to write the following in an essay:

> The courts are to be blamed for failing to make clear precisely *when* the right to representation in Parliament is engaged, instead focusing on the 'private right'-'public right' distinction – a distinction which, it has been argued, ought to be abolished.

14. It would not be enough to cite *Vellama* for this point. This point does not come directly from *Vellama*; it comes from Jhaveri's work and Ong's work. Therefore, to cite only *Vellama* would not give due credit to their contributions, which are their analyses of *Vellama*.

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15. It would also not be enough to cite Jhaveri's work. While Jhaveri analysed the *Vellama* case, it was Ong who added the point that the case shows that the distinction between a "private right" and a "public right" ought to be abolished. But it would also not suffice to cite Ong's work, because Ong's work has (as he has explicitly recognised) built on Jhaveri's work.

16. Instead, an appropriate footnote might read as follows:

> Benjamin Joshua Ong, 'Standing Up for Your Rights: A Review of the Law of Standing in Judicial Review in Singapore' [2019] SJLS 316, 343, citing Swati Jhaveri, 'Advancing Constitutional Justice in Singapore: Enhancing Access and standing in Judicial Review Cases' [2017] SJLS 53, 68. Ong, following Jhaveri, traces this problem to *Vellama d/o Marie Muthu v AG* [2012] 2 SLR 1033 (HC); [2013] 4 SLR 1 (CA).

17. This footnote duly credits Jhaveri for her idea; Ong for his elaboration on her idea; and both Jhaveri and Ong for their using *Vellama* to support the idea.

Citing a source for the phrasing it uses

18. Similarly, it is necessary to recognise situations in which what A has contributed is a particular manner in which to phrase an idea. This should be done by putting A's words in quotation marks. Consider the following example from Kenny Chng, 'The Theoretical Foundations of Judicial Review in Singapore' [2019] SJLS 294, 312:

> … Chan Sek Keong CJ (as he then was) in an extrajudicial capacity suggested that Article 93 could justify the courts' approach to ouster clauses—Article 93 vests judicial power in the courts, and ouster clauses which seek to oust the supervisory jurisdiction of the courts are accordingly ineffective.[121] This suggestion has received judicial approval—the Court of Appeal in *Nagaenthran (CA)* suggested, albeit in *obiter*, that legislative ouster clauses are potentially unconstitutional contraventions of Article 93.[122] This argument, while not explicitly about the theoretical foundation of judicial review, does implicitly suggest that it is Article 93 that is the concrete constitutional linchpin for judicial review in Singapore.

19. Here, Chng has cited Chan's article and the *Nagaenthran* case, and drawn from them the conclusion that Article 93 of the Constitution is the "constitutional linchpin for judicial review in Singapore". Chng's intellectual contribution consists not only of this idea, but the phrase with which he has summarised this idea. So it would *not* be enough for one to write:

> Article 93 of the Constitution is arguably the concrete constitutional linchpin for judicial review in Singapore.[1]
>
> [1] Kenny Chng, 'The Theoretical Foundations of Judicial Review in Singapore' [2019] SJLS 294, 312, citing Chan Sek Keong, "Judicial Review – From Angst to Empathy" (2010) 22 SAcLJ 469, [19] and *Nagaenthran a/l Dharmalingam v PP* [2019] SGCA 37, [74].

20. The problem with this is that, while it duly credits Chng, Chan, and the Court of Appeal in *Nagaenthran* for their *ideas*, it fails to credit Chng for his *phrasing*. This is plagiarism because it suggests that the neat phrase "concrete constitutional linchpin for judicial review" is the writer's own invention, when in truth it is not. Instead, one should quotation marks to indicate that the words cited are Chng's words:

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> Article 93 of the Constitution is arguably the "concrete constitutional linchpin for judicial review in Singapore".[1]
>
> [1] Kenny Chng, 'The Theoretical Foundations of Judicial Review in Singapore' [2019] SJLS 294, 312, citing Chan Sek Keong, "Judicial Review – From Angst to Empathy" (2010) 22 SAcLJ 469, [19] and *Nagaenthran a/l Dharmalingam v PP* [2019] SGCA 37, [74].

21. In the case of a quotation that is more than a few lines long, it is permissible to format the quotation as a separate block of text instead of using quotation marks. The effect of doing so is the same as that of using quotations marks, namely, to indicate which words one has taken directly from another source.

A note on paraphrasing

22. One might ask: instead of using quotation marks, would it suffice to paraphrase Chng's words? For example, could one write "Article 93 of the Constitution is arguably the tangible vital constitutional principle behind judicial review in Singapore", instead of quoting Chng's exact words?

23. One *could*, but this would risk coming across as clumsy, and would have the potential to misrepresent the work being cited. For example, the word "tangible" would not accurately represent what Chng meant by "concrete", notwithstanding that "tangible" is in *some* circumstances a synonym for "concrete". One should consider whether it is worth going through the trouble of attempting to paraphrase an author's words, thereby running the risk of misrepresenting that author's point, when there is nothing wrong with simply quoting that author's exact words using quotation marks.

24. This is not to say that there is no value in paraphrasing a source, particularly when that source is unclear. (Indeed, using the example above, the reason why Chng invented the phrase "concrete constitutional linchpin for judicial review" rather than using words taken directly from Chan's speech and the judgment in *Nagaenthran* is that Chng's phrasing is a succinct summary of what those two sources said.) Even then, however, consider whether it would be good to accompany the paraphrase with a direct quotation so as to make clear why a paraphrase is useful. For example:

> In *Wednesbury*, Lord Greene MR said that a decision to fire a teacher because she had red hair[1] would be "unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith…"[2] One might ask: what exactly does the vague phrase "one sense" mean? The following few paragraphs aim to show that the "one sense" must refer to the possibility that the respondent's decision is unlawful, not because of the *process* by which it was made, but rather because of its *substance*.
>
> [1] This hypothetical example was drawn from *Short v Poole Corporation* [1926] Ch 66, 90-91.
>
> [2] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

25. But when the source one is citing is perfectly clear, or makes use of an especially elegant, succinct, or easy-to-understand phrase, it may well make more sense simply to quote that phrase directly rather than attempting to paraphrase it.

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26. At the risk of belabouring the point, even when expressing an idea in different *words* than those used in (say) an article, it is still necessary to cite the article in a footnote as the source of the *idea*.

Identifying the particular part of the work being cited

27. A useful citation tells us not only *who* came up with a particular idea, but also *where* one may read more about that idea. It follows that, when citing a source, it is not enough merely to name the author. It might also not be enough merely to name the source when one is drawing on only *part* of the source: it would be unreasonable to expect the reader to go through an entire article or book looking for the relevant part. Consider the following example, which aims to illustrate what helpful citations might look like: note how the footnotes state the particular paragraphs, pages, or statutory provisions being cited, as well as URLs where online sources may be found.

> However, as Tan points out, it would be wrong to think that the green-light approach entails the courts allowing the executive to get away with acting unlawfully.[1] Tan discusses the case of *Tan Seet Eng v AG*, according to which the courts' role is "pronouncing on the legality of government actions".[2] Tan highlights not only the Court of Appeal's examining "whether there were deficiencies in the grounds stated in the detention order",[3] but also the executive's subsequently issuing a new detention order that complied with the Court of Appeal's decision.[4]
>
> This, it is submitted, highlights an important aspect of the green-light model that should not be overlooked: the green-light model is a model that describes not only the courts' role, but also the role of the executive. Tan himself implicitly recognises this: while he begins by purporting to provide an account of the role of the *judiciary* (only),[5] he ultimately ends up discussing the "relations between the Judiciary and the political branches of government".[6]
>
> One therefore wonders whether the courts ought, even under the green-light model, to take a less deferential approach toward judicial review in the event that the executive proves unwilling to do its part by complying with the law. Could that be justified on the ground that the executive has failed to hold up *its* end of the bargain under the 'green-light' model. Consider the following hypothetical: suppose, following *Tan Seet Eng*, the Ministry of Home Affairs had simply ignored the Court of Appeal's judgment. Should the Court of Appeal have responded by, on its own motion, commencing proceedings against the Minister for contempt of court?[7] If the courts' job is to see to it that the law is not transgressed, then the answer may well be yes; and a refusal to do so, in the name of the 'green-light' model, would simply be an abdication of the judicial role.
>
> Of course, this hypothetical situation would be quite unthinkable. But the reason why it is unthinkable is that Singapore's constitutional order is based on the 'green-light' model *properly understood* as described above, and not on the *caricature* of the 'green-light' model which this paper has aimed to argue against.
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> [1] Eugene Tan, 'Curial Deference in Singapore Public Law: Autochthonous Evolution to Buttress Good Governance and the Rule of Law' (2017) 29 SAcLJ 800 at [16].
>
> [2] *Tan Seet Eng v AG* [2016] 1 SLR 779 at [90], quoted in Tan, *supra* n 1 at [16].
>
> [3] Tan, *supra* n 1 at [17].

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[4] Tan, *supra* n 1 at [19], citing Ministry of Home Affairs, "MHA Statement on Detention of Dan Tan Seet Eng", 5 December 2015, now at <https://www.mha.gov.sg/newsroom/press-release/news/mha-statement-on-detention-of-dan-tan-seet-eng> accessed 26 December 2019. (Note that this page has moved from the URL originally provided in Tan's citation in fn 26 of his article.)

[5] Tan, *supra* n 1 at [2] and [13].

[6] Tan, *supra* n 1 at [19].

[7] At common law, the High Court and the Court of Appeal have the inherent power to commence contempt proceedings; this is affirmed in the Administration of Justice (Protection) Act 2016 (Act 19 of 2016), s 9(a). As to whether such proceedings may lie against a Minister, see *In re M* [1994] 1 AC 377 (UKHL) at 395G-H (Lord Templeman): "the argument that there is no power to enforce the law by injunction or contempt proceedings against a minister in his official capacity would, if upheld, establish the proposition that the executive obey the law as a matter of grace and not as a matter of necessity…"

Conclusion

28. Once one bears in mind the points mentioned above, one will realise that the question of choosing a citation style and following its niceties to the letter (e.g. fretting over whether to write "ed" versus "edn" versus "edition"; "SLR(R)" versus "Sing. L.R. (R.)"; "p" versus "p." versus "pages"; "Oxford University Press, 2011" versus "2011: OUP") appear relatively minor indeed. And they should. Authors often do not manage to follow citation styles perfectly, and this is very much excusable (although the more one writes, the more it becomes second nature for one to follow established citation styles precisely). What is not excusable is failing to adhere to the *spirit* of these citation styles by providing the *minimum* information that these citation styles require – namely as stated at the beginning of this note, information about other sources that is sufficient to:

a. avoid dishonestly giving the misleading impression that others' work is one's own;

b. duly recognise the efforts of those who have created original content; and

c. usefully allow the reader to learn more about the work that is being drawn on.

29. One practical tip is to not leave citations of sources to the very end of the writing process. Rather, one could insert citation notes *as* one writes – not necessarily in full form, but with enough information to allow one to know what full citations to add later. For example, *immediately* after writing something that references or quotes from a journal article, one could insert a footnote[2] and type a brief note like "Chng p 3" or "UKSC Privacy Intl para 34" or "Craig CLP article page 135 discussing Wednesbury" or "SLE Slow and Steady fn 26 and case it cites". By making this a habit, one will never forget which parts of what one wrote were one's own work and which were others', or exactly what ideas and sources one drew on.

[2] When using Microsoft Word on Windows, the keyboard shortcut for inserting a footnote is Ctrl + Alt + F. When using Microsoft Word on macOS, the keyboard shortcut is Command + Option + F.

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