

# LEARNING PLAGIARISM: LAW STUDENTS REALLY MUST BE SPECIAL

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## ABSTRACT

In an earlier volume of this journal I expressed distaste for the growing prevalence of legal educators using rules of citation style to assist in determining whether and when a law student has plagiarised. More particularly, I framed this discussion in terms of a negative view of the over-use of style guides such as the AGLC, warning of the dangers of promoting citation style over an appreciation of academic integrity and good referencing. Rather, I opined the benefit of promoting a desire in law students to see themselves as part of a discipline of law and the motivation to see their work as contributing to the growth of that discipline. Here, in this second piece, I will begin from where the first article left off. I will explore the construction of the ‘discipline of law’ as it pertains to legal referencing and citation. I note inconsistencies in legal citation rules and identify that there is no such construct as a ‘discipline of law’ when it comes to legal referencing and citation (indeed we, as legal educators, are often remiss in not passing this fact on to our law students). I consequently argue that overemphasis on citation style by legal educators undermines our desire to produce well-rounded and ‘practice ready’ law graduates.

## I INTRODUCTION

Scholarship across many disciplines supports the view that neither good referencing nor avoiding plagiarism is an exact science.<sup>1</sup> Indeed, inconsistent application of plagiarism policy and procedure across and within Australian universities has been confirmed by individual academic<sup>2</sup> and government-funded studies.<sup>3</sup> Most relevantly for this article, these findings apply to the study of law.<sup>4</sup>

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1 See Ian Freckleton, ‘Plagiarism in Law and Medicine: Challenges for Scholarship, Academia, Publishers and regulators’ (2010) 17 *Journal of Law and Medicine* 645, n 6; David Kaposi and Pippa Dell, ‘Discourses of plagiarism: moralist, proceduralist, developmental and inter-textual’ 33 (6) (2012) *British Journal of Sociology of Education* 813, 828 (stating that a finding of plagiarism is not ‘a straightforward empirical matter’).

2 Craig Zimitat, ‘Plagiarism across the academic disciplines’ (Paper presented at 35<sup>th</sup> HERDSA Annual International Conference, Hobart, 2-5 July 2012) <[http://www.herdsa.org.au/wp-content/uploads/conference/2012/HERDSA\\_2012\\_Zimitat.pdf](http://www.herdsa.org.au/wp-content/uploads/conference/2012/HERDSA_2012_Zimitat.pdf)>.

3 The Australian Universities Quality Agency audit in 2010 found within a single university inconsistent practice in the application of academic honesty information and testing across faculties as well as potentially inconsistent application of penalties: Australian Universities Quality Agency, *Report of an Audit of La Trobe University* 2.6.5; see also Tracey Bretag, Saadia Mahmud, Margaret Wallace, Ruth Walker, Colin James, Margaret Green, Julianne East, Ursula McGowan and Lee Partridge, ‘Core elements of exemplary academic integrity policy in Australian higher education’ (2011) 7(2) *International Journal for Educational Integrity* 3.

At first glance the assertion that a finding of plagiarism is neither straightforward nor inevitable appears both strange and unfair. Strange, since in the discipline of law, style guides such as the widely used *Australian Guide to Legal Citation (AGLC)* tell us how to reference, and rules concerning plagiarism tell us when to reference. Unfair, since if plagiarism is uncertain in definition and inconsistent in application, it follows that harsh penalties for plagiarism such as course exclusion and refusal to admission to practise law<sup>5</sup> may be applied unjustly and inequitably.

However, perhaps we<sup>6</sup> should not be unduly alarmed. We can draw some comfort from the observation of Spender that '[P]lagiarism is not a legal issue, it is a pedagogical issue. It is the creation of academics'<sup>7</sup> and the wider view that the current emphasis of tertiary institutions upon importance of plagiarism lies less in 'empirical fact and more in political/ideological conviction.'<sup>8</sup> In other words, certainty and consistency of approach to plagiarism may well be found within the discipline of law due to a shared pedagogical background and universal values as to what constitutes a good education.

But the point of this article is to show that this is small comfort. The discipline of law lacks both certainty and consistency in its approach to plagiarism. This point may be evidenced to varying degrees by factors such as: an absence of uniformity in the understanding of plagiarism among legal academics;<sup>9</sup> ambiguous and even conflicting use of rules surrounding citation; and by differential standards within the legal profession.

So, why does this matter? In an earlier article published in this journal<sup>10</sup> I argued that the current approach to plagiarism in the legal academy is not sufficient to prevent plagiarism, observing that '[t]he old way of doing things does not seem to be working'.<sup>11</sup> The suggestion made in that article, that law schools should promote an appreciation of academic integrity and good referencing in law students over and above emphasis upon citation style, has traction.<sup>12</sup> However, to stop at this point masks, or perhaps obscures, the necessity for us, as legal educators, to confess to our law students the confusion and the conflict within the discipline surrounding rules and norms of legal citation.

Failure to draw out the nuances, complexities and contradictions in legal referencing undermines the larger goal of a legal education — to enable law students to actively participate and value the discipline of law, whether or not they practice within it. It is here that I wish to begin and finish this article, by discussing in Part II selected inconsistencies in legal citation, and in Part III conflicting messages about citation given by the legal profession and legal educators. I do this not to undermine the importance of excellent referencing and perfect style — after all, we all love to mark assessment pieces with such attributes. Rather, my point is that we will be more likely to receive such quality law student assessments when we impart to our students a view of plagiarism as a social construct which fits within the social practice of academic writing. By choosing to study law, students become part of the discipline of law. I suggest we have a responsibility to reveal to our students the nuanced, complex and at times conflicting nature of legal referencing. My hope, in in doing so, is that we will transcend the

4 Colin G James, 'Copy and be Damned – The Anxieties of Academic Integrity' (January 18, 2013) SSRN: <http://ssrn.com/abstract=2497917>.

5 Mary Wyburn, 'Disclosure of prior student academic misconduct in admission to legal practice: Lessons for universities and the courts' (2008) 8(2) *Queensland University of Technology Law Journal* 314; Colin James and Saadia Mahmud, 'Promoting academic integrity in legal education: "Unanswered questions" on disclosure' (2014) 10(2) *International Journal for Educational Integrity* 3.

6 I use this term interchangeably with 'legal educators' throughout this piece — and even sometimes in the same sentence for emphasis.

7 Dale Spender, 'Plagiarism and Plausibility' (Speech delivered at the UTS Academic Board; thinking about plagiarism, UTS Sydney, 21 April 2004). <<http://www.gsu.uts.edu.au/academicboard/forums/plagiarism/documents/spender.pdf>> 15; see also 'Just Plain Bad Manners' (2007) *Sydney Morning Herald* October 29.

8 Kaposi, above n 1, 814.

9 James, in a study reporting on interviews with 12 legal academics and professional staff revealed staff to be 'unclear about the handling of disclosure of breaches': James, above n 4; Vera Bermingham, Susan Watson and Martin Jones, 'Plagiarism in UK Law Schools: is there a postcode lottery?' (2010) 35(1) *Assessment and Evaluation in Higher Education* 1.

10 Anita Stuhmcke, 'Teaching Plagiarism: Law Students Really Are That Special' (2011) 1 *Journal of the Australasian Law Teachers Association* 137.

11 Ibid 138.

stifling restrictions of a perfect citation style guide and achieve the wider aims of a university education which is to ‘serve both an educating and a socializing function’.<sup>13</sup>

## II INCONSISTENCIES IN LEGAL CITATION WITHIN THE ACADEMY

This Part harps on a point close to my heart, as there is no utility in a uniform citation style guide such as the AGLC if the rules it contains undermine the concept of good referencing. That is the focus of this Part. It identifies a few select citation offences which we encourage our students unwittingly to participate in, and then points out some of the unnecessary rules prescribed by the AGLC. The aim is to show the ‘nuances of citation are complicated, even though we summarize them by saying, “Give credit.”’<sup>14</sup>

### A Case Citation: the Mysterious Absence of the Full Citation

It is a quirky matter of accepted practice in legal citation that students are expected to give only the case citation in their work, regardless of where and even how the case cited was found.

By way of explanation, in the discipline of law, with rare exception, the preferred style of citation is to refer to sources in footnotes. The use of footnotes over and above the use of in-text referencing systems such as Harvard is often justified by saying authors need to cite primary legal resources in legal writing, these sources being cases and statutes. The general rule in legal referencing is that the footnote should lead us to the source the writer has used — the exact source. Of course footnotes can serve a variety of other functions.<sup>15</sup>

Footnotes are used in academic legal writing for four main purposes:

- To acknowledge the words and work of other authors — this is essential to avoid plagiarism
- To provide authority for assertions of fact and law
- To provide support for arguments or points in your discussion
- To provide additional information or references which may be of interest to the reader but which are not central to your discussion

A single footnote can serve more than one of these purposes.

Central to these functions is the assumption that the author has examined the sources quoted, or at least if they have not, that the fact is communicated to the reader through the use of words such as ‘as cited by’ or ‘as referred to in’.

An exception to this assumption is the citation of case law. While we expect students to cite the full case citation, they are generally not required to also cite where the case reference was found. We may even have no expectation that they actually access or read the version of the case they cite.

Let’s pause here, as what I have just described may seem inappropriate and wrong. I agree. Indeed, when a student cites *Donoghue v Stevenson* [1932] UKHL 100, we may take that at face value and expect them to have read the case.<sup>16</sup> However, if the same student refers to the case as:

- *Donoghue v Stevenson* [1932] AC 562 see Pam Stewart and Anita Stuhmcke, *Australian Principles of Tort Law* (3<sup>rd</sup> ed, Federation Press) 1; or

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12 Michelle Evans, ‘Plagiarism and Academic Misconduct by Law Students: The Importance of Prevention over Detection’ (2012) 17(2) *International Journal of Law & Education* 99.

13 Gail Tom and Norm Borin, ‘Cheating in Academe’ (2010) 63(4) *Journal of Education for Business* 153, 157.

14 Susan Blum, ‘Academic Integrity and Student Plagiarism: A Question of Education, Not Ethics’, *The Chronicle of Higher Education* (online), February 20, 2009 <<http://chronicle.com/article/Academic-IntegrityStud/32323/>>.

15 University of Melbourne, ‘Functions of footnotes in Legal Academic Writing’, <<http://www.law.unimelb.edu.au/LAWresources/documents/footnotes-function.pdf>>.

16 As a colleague reminded me here, what alerts her to a student not having read a case is the lack of pinpoint references and/or a broad statement or summary of the law without reference to the passage that was extrapolated from. She notes that this renders her much more suspicious in this circumstance than in the two examples given below.

- *Donoghue v Stevenson* [1932] AC 562 <<http://www.bailii.org/uk/cases/UKHL/1932/100.html>>.

both of the above citations would be incorrect. This is the case even though each is arguably the more correct form of legal referencing. *More* correct, as each citation states exactly where the student sourced the case from. This follows the general rule of legal referencing: that the footnote should lead us to the source the writer has used — the exact source.

So why then are these two examples incorrect legal referencing? The first example, which makes clear that the student has accessed the case from a textbook, is ‘incorrect’ precisely because it reveals that the student has not gone to the primary source — the case law. We, as legal educators, have an expectation that if a student is using a case, they should have read it. Unfortunately for the student, this expectation applies irrespective of the fact that the student is correctly adhering to the rules of academic integrity in their referencing. The student has honestly stated, using correct citation style, where they sourced the case from.

In the first example, this referencing ‘error’ by the student is not plagiarism. However, it is poor academic method. It will most likely be viewed as lazy or sloppy work, not as academic misconduct. No doubt the ‘penalty’ applied for this type of reference will increase as the student travels through their degree. Indeed, by the time a student is in final year law we would expect them to know that it is best to just omit the textbook citation from the reference even if they have not seen the actual case. *An educational outcome that really is so much better.*<sup>17</sup>

The second example is incorrect for two reasons. First, the correct citation of the case is just *Donoghue v Stevenson* [1932] AC 562 without the URL; second, if the student has gone to an electronic source such as BAILII to access the case, the correct citation would be the medium-neutral citation, which is [1931] UKHL 3. However, and even more confusingly, when you land on the BAILII webpage for the case it tells you to cite the case as:

[1931] UKHL 3, 1932 SC (HL) 31, [1932] UKHL 100, [1932] AC 562

even though our student would presumably not access all of these versions. Nor would we require them to. The second example is again not plagiarism, yet may be penalised as poor academic method as it does not conform to the AGLC.

Perhaps we can explain and even justify this quirky aspect of legal citation by reference to the materials being primary legal materials. Again, this argument upholds the significance of cases and statutes as primary legal materials. The expectation is that law students will always access the actual source, as this is the law. It follows that any reference which disavows the primacy of these materials is incorrect, as is the case in the above two examples.

Then again, perhaps we cannot explain or justify it at all. For example, we often prescribe leading Cases and Commentary Materials as law texts for our students. Or we may provide students with our own cut-and-pasted, though always correctly copyrighted and attributed, materials. These texts and materials will extract the most relevant sections of cases and other materials — perhaps of journal articles and books as well. They will then provide commentary on the extracted materials. It is here that the purity of the argument of reviewing the source primary material falls away. Indeed, it is commonly accepted that students using prescribed Cases and Commentary text books will not examine the actual case extracted in the text unless they are asked to. After all, that is the point of such a text. We prescribe them because we assume they correctly extract the law — or at least that someone, somewhere, has checked that this has been done.<sup>18</sup> It therefore stands to reason that the citation of a case found in such a text will not refer to that text. That is assumed. So, for example, a student referring to a case they may have found in *Laying Down the Law*<sup>19</sup> (let us say the case of *Re Wakim: Ex parte McNally* (1999) 198 CLR 511 on page 262 of the 10<sup>th</sup> edition) is neither expected to locate, read and

17 I would colour this sentence lavender if I could — irony has been characterised as the colour lavender: Lester Haines, ‘The color of irony’ (1 February 2001) *The Register* <[http://www.theregister.co.uk/2001/02/01/the\\_color\\_of\\_irony/](http://www.theregister.co.uk/2001/02/01/the_color_of_irony/)>.

18 Here I ‘Googled’, ‘How do we know that materials extracted in legal cases and commentary texts are correct?’ and the search removed my question mark. Apparently there is no question that legal cases and commentary texts are correct.

19 Catriona Cook et al, *Laying Down the Law* (9<sup>th</sup> ed, 2015).

reference that case nor to cite the text the student found it in. Rather, it is sufficient to cite the case without such extra exertion. Oddly enough, this would be unacceptable for the citation of a book or article or non-primary source in that same text.

### B *Statute Citation: the Mysterious Absence of the Full Citation*

See above.

#### (1) *Odd citation style rules*

It does not help our law students that we ignore the fact that some citation style rules are largely inexplicable and out of step with practice. As I observed in the first article,<sup>20</sup> our focus as legal academics is ‘upon “the rules” and the identification of “correct” and “incorrect” behaviour. It follows that, as guardians of the legal tradition, we are inclined to fervently embrace both rules of citation and penalties for plagiarism.’ I should have added to that statement that in so doing we fail in our duty to critique referencing rules and thus leave law students with the impression that stupid citation rules are part of good legal writing.<sup>21</sup>

From the plethora of citation rules I could choose, let me select one. The AGLC says, ‘[a] source should only be cited [as Internet Material] if it does not exist in a published form’.<sup>22</sup> This means material located on the Internet cannot be cited as such if it exists in an inert form elsewhere. So for example in relation to journal articles the AGLC prescribes that ‘[I]f an article appears in a printed journal, even where a similar version is available online, the printed journal should be cited instead’.<sup>23</sup> There is no requirement stated in the AGLC that both citations (electronic and inert) must be included in the citation, nor is it clear which version must be physically looked at. This is despite good legal referencing practice being that any version cited is the one that has been used by the author. Perhaps this rule addresses the problem identified above: that a student will not have to show that they have obtained a statute, case or journal article from the internet if it is accessible in another form — but if this is the intent, it is not clear.

#### (2) *Very<sup>24</sup> odd and inconvenient citation style rules*

We must remember that citation style is neither set nor ordained. Legal citation rules are in constant evolution and necessarily subject to ongoing amendment and revision. Style guides are created by organisations and, at least in Australia, are a relatively recent innovation.<sup>25</sup> By way of example, in 1997 the NSW Law Society supported the medium-neutral universal citation system for judgments;<sup>26</sup> today, this is an essential part of judgment citation. Legal style guides must move with the times and provide up-to-date rules for citation of Facebook, You Tube, Twitter — all of which may be cited in court and in academic work.

Pointing out quirky or even undesirable legal citation rules allows academics to communicate this point to students. We can use this as a way to help our students not to think of the discipline as ‘all knowing’ and something outside themselves but rather as a discipline of which they are a part. In turn this facilitates a view of themselves as in control and having something to offer, as the discipline is neither innately correct nor uniform. It is capable of improvement. We can use a constructive appreciation of very odd and inconvenient AGLC style rules to illustrate that nought is perfect. To highlight that, as members of the discipline, we and our students may both

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20 Stuhmcke, above n 10.

21 The reader might consider the term ‘stupid’ in this sentence ill-advised, but it is there to make the point that some citation rules really are stupid.

22 Melbourne University Law Review Association, *Australian Guide to Legal Citation* (3rd ed, 2010) 116.

23 Ibid 87.

24 The clever reader may have noticed that here I am actually sneaking in two examples of stupid citation rules. In my defence, there are so many to choose from it is hard to resist.

25 Stuhmcke, above n 10.

26 Law Society Journal, NSW, ‘Society asked to support standardised citation system for judgments’ (1997) 35(7) *Law Society Journal*, 80.

applaud the prevailing AGLC style guide as well as criticise, and thus not become a slave to its rhythm.<sup>27</sup>

This will help to break down barriers to encouraging legal referencing. One such barrier is that the overwhelming majority of Australian law students probably dislike referencing.<sup>28</sup> The reasons are apparent — it is time consuming, difficult and requires patience and accuracy. Therefore, critiquing very odd and inconvenient rules of citation which make referencing even harder and much more time consuming should be pointed out to students, critiqued and revised. One excellent example of a time consuming and unnecessary AGLC rule is that which prescribes reversal of first and last author name order in footnotes as opposed to bibliographies. In a footnote, the AGLC states that authors names must be first and surnames last — in a bibliography it is the reverse.<sup>29</sup> While this rule is not difficult and even handy when one is glancing through a bibliography, the practical effect is a ridiculous amount of additional work for students and academics alike. It eradicates efficiencies of copying, cutting and pasting a bibliography from footnotes. Instead it requires — depending upon the size of your bibliography — a vast amount of additional name reordering, which could easily be eradicated by having last names first in footnotes.

### III MIXED CITATION MESSAGES: THE PROFESSION AND THE ACADEMY

Yarbrough, writing in the United States context, has identified the ‘mixed messages’ academics and other members of the legal profession pass on to law students, arguing that the ‘issue of plagiarism serves as one example of the growing, and often unexplained, chasm between the values of law professors and those of the legal profession.’<sup>30</sup> Yarbrough goes on to give examples, such as that the ‘circulation and reuse of documents and the use of forms is an acknowledged and accepted practice within the legal community.’<sup>31</sup> And suggests that ‘we need to clean up our own house’.<sup>32</sup> Such difference has also been observed in the Australian context.<sup>33</sup> This Part provides two examples of mixed messages that Australian law students may receive from academics and the profession.

#### A *To Footnote or Not to Footnote ...*

This is an obvious mixed message. It is also one over which students may be less likely to suffer confusion; after all, we in the academy are very clear about our preference. Put simply, ‘although in-text citations are fairly common in legal memos and factums, footnotes are the preferred method of citation used at law school.’<sup>34</sup>

#### B *Differing Standards*

It is stated that an ideal law school plagiarism policy would address the complications created by ‘the lower plagiarism standards of legal practice’.<sup>35</sup> Conversely, it is noted that ‘[O]ne of the

27 Michael Jackson, ‘Slave to the Rhythm’ *Xscape* (5<sup>th</sup> song, 2014) (note the citation style is improvised by me as the AGLC is not illuminative on this source).

28 This is based upon the United Kingdom: see Colin Neville, *The Complete Guide to Referencing and Avoiding Plagiarism* (2<sup>nd</sup> ed, McGraw Hill, 2010) 5.

29 Melbourne University Law Review Association, above n 21, Part 1.

30 Marilyn V Yarbrough, ‘Do as I say, Not as I do: Mixed Messages for Law Students’ (1996) 100 (3) *Dickinson Law Review* 677, 678.

31 *Ibid.*

32 *Ibid* 683.

33 Mary Wyburn, ‘The Confusion in Defining Plagiarism in Legal Education and Legal Practice in Australia’ (2009) 7(1) *Journal of Commonwealth Law and Legal Education* 37. Again I thank my generous colleague for the point that this may be an unfair comparison, as academic writing and writing for legal practice have different purposes.

34 uOttawa, *Legal Citations – Citing Legal Sources: Footnotes* (10 September 2014) <[http://web5.uottawa.ca/www2/r1-lr/eng/legal-citations/1\\_4-citing\\_footnotes.html](http://web5.uottawa.ca/www2/r1-lr/eng/legal-citations/1_4-citing_footnotes.html)>.

35 Administration (2000) 8(3) *Legal Education Digest*, 2 reviewing ‘T Le Clerq, ‘Failure to teach: due process and law school plagiarism’ (1999) 49 *Journal of Legal Education* 236.

most significant complaints among practicing attorneys is that newly admitted lawyers are not effective writers.<sup>36</sup> These apparently contradictory observations confirm that different norms apply across the different contexts of the discipline of law.

This is legitimate. A judgment fulfils a very different purpose from an essay at a university, which serves a different purpose from a letter of advice to a client. It is therefore appropriate that the rules and standards of citation differ. For example, a judge is not expected to produce original scholarship.<sup>37</sup> His Honour Stephen Gageler recently commented on the proliferation of footnotes in judgments, observing that the first footnotes appeared in a High Court judgment in 1990 and revealing his own attitude to footnotes to be:<sup>38</sup>

If footnotes were a rational form of communication, Darwinian selection would have resulted in the eyes being set vertically rather than on [a] horizontal plane.

The problem is not that such difference exists but that we, in our efforts to take the moral high ground on plagiarism and correct attribution of sources, fail to point out to our students the ambiguity and inconsistency across our discipline. It is almost as if any admission of weakness makes us personally and professionally unfit. Instead of this approach I would urge us, as legal educators, to come clean. To say we are unsure when we are unsure, to note to students that what they are doing has a specific social context within the university system that they may never have to utilise again — that the AGLC, upon graduation, may be exiled to the annals of a one-time shared and forgotten history, unless one becomes a legal academic.<sup>39</sup>

Difference should also not be overstated. The essence of legal referencing is integrity and honesty. As Thomas observes when examining the values of the academy and the courts, the<sup>40</sup>

nomothetic values espoused by each institution, while not wholly co-extensive, nonetheless overlap in the context of involving an obligation of honesty (albeit instantiated under different norms) and a requirement of adherence to institutional practices and values. The failure of students to abide by the norms of the university not surprisingly raises suspicions that they might be disinclined to adhere fully to the norms of legal practice.

As is similarly stated in *Re OG (A Lawyer)*, in order to practise law, ‘the need for honesty has never been in doubt’.<sup>41</sup> There have been reports of courts in the United States ‘losing patience with attorneys and their poor writing skills’ to the extent that ‘a bankruptcy attorney in Minnesota was reprimanded for unprofessional conduct and ordered to pay court costs after repeatedly filing documents the court considered “unintelligible” because they contained numerous spelling and typographical errors.’<sup>42</sup> AGLC aside, perhaps then we are more similar than we think.

#### IV CONCLUSION

My initial title for this article was ‘Hyperbole, Hysteria, Hype and Hypocrisy: Plagiarism and the Legal Academy’. While rejecting the title as too over-stimulating for the reader, my purpose remains the same, one of identifying the inconsistencies, ambiguities and contradictions of referencing and citation standards within the discipline of law. The argument I made in the

36 Megan E Boyd and Adam Lamparello, ‘Legal Writing for the “Real World”: A Practical Guide to Success’ (2013) 46 *John Marshall Law Review* 487.

37 Carol M Bast and Linda B Samuels, ‘Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need for Intellectual Honesty’ (2008) 57 *Catholic University Law Review* 777 at 800 citing Richard Posner, *The Little Book of Plagiarism* (Pantheon Books, 2007).

38 The Honourable Stephen Gageler, ‘Information Technology and the Common Law’ (2014) <<http://www.acla.com.au/documents/item/1262>> at n 17, citing Albert Mikva, ‘Goodbye to Footnotes’ (1985) 56 *University of Colorado Law Review* 647 at 648; see also Stephen Gageler, ‘What is Information Technology Doing to the Common Law?’ (2014) 39 *Australian Bar Review* 146, 158.

39 Again thanks to my colleague for the point that one may have to acquaint oneself with the AGLC to read academic writing in order to formulate arguments or understand the law, and that further study in law and being able to read and understand a citation in practice may also extend the joy of using strict citation rules.

40 Mark Thomas, ‘Admission as a Lawyer: The Fearful Spectre of Academic Misconduct’ (2013) 13 *Queensland University of Technology Law Review* 73, 97.

41 [2007] VSC 520 [123].

42 Christ Hall Benson, ‘The Consequences of Bad Legal Writing’ *Paralegal Today* (online), March/April 2007.

first article titled 'Teaching Plagiarism' has now been more pithily put by Vardi as '[P]lacing the correct use of referencing conventions within the same moral framework as cheating is akin to placing the correct use of grammar and punctuation conventions within such a moral framework'.<sup>43</sup> In this second article, the title 'Learning Plagiarism' reflects what I see as a gap in legal education: we expect students to learn how to avoid plagiarism without acknowledging (and perhaps even hiding) first, the inadequacies of existing rules of citation and style requirements and second, the differences in standards in the wider profession. I think that to implicitly understand such nuances and complexities, law students really must be special.

I believe that acknowledgment of flaws in legal referencing and citation style will assist our students to reference more carefully and with more enjoyment. Law has a perhaps unwarranted reputation for being dense, boring and difficult. If, as Charles Dickens writes in *Oliver Twist*,

'If the law supposes that,' said Mr. Bumble, 'the law is an ass, a idiot.'<sup>44</sup>

students must feel that there is little hope in attaining the inherent possibilities of law in terms of law reform, access to justice and notions of social equity and the enhancement of aspects such as the rule of law. We can use critique of legal citation style and referencing to take the inherent assumptions students have — that law 'is an ass', that as a discipline the law itself is 'all knowing' as well as being boring and something to be fearful of — and to replace those beliefs with a feeling that they as individuals are in control, that the law is a tool which is constructed by society and which they have the power to engage with and to deconstruct. We can do this by starting with critical thought about rules and principles of legal citation. By so doing we can instil in our students a belief that they are part of a nuanced and complex discipline to which they now belong. It may even help them to see that they are the ones who have the choice to either make the law an 'ass or an idiot' or to use it as positive tool for social justice and reform. We could start with the question as to whether there is any need for citation rules at all — as we presuppose there is — and whether the AGLC achieves optimal results — as we seem to think it does. And herein lies the challenge — how to encourage students to engage with the very reason they should use footnotes, and to question the citation rules they are learning. My hope is that such a shift in approach will make legal referencing very interesting indeed.

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43 Iris Vardi, 'Developing students' referencing skills: a matter of plagiarism, punishment and morality of learning to write critically?' (2012) 31(6) *Higher Education Research & Development* 921, 929.

44 Charles Dickens, *Oliver Twist* (Penguin Books, 1970) 498.