

The art and craft of the headnote

One of the defining features of a law report is its headnote. However well written a judgment may be, a well-constructed headnote can only enhance the reader's ability quickly to grasp the decided point of law or *ratio decidendi* of the case.

Most modern headnotes will consist of two parts: the first sets out the essential facts and issues of the case; the second explains as briefly as possible the legal conclusion(s). Alternatively, a headnote may simply set out a bald proposition of law or practice ruling, with or without an explanation of the circumstances in which it arises. In either case, the purpose is to provide the reader with a quick and convenient overview of a judgment in order to assess its applicability and significance.

However, a student or practitioner should always read and cite the judgment itself for any proposition of law contained in it. The headnote is not intended to be a substitute for reading the judgment.

The reporter's craft

Writing a headnote is the highest form of the reporter's craft and requires skill and experience. The headnote is also the part of the report which, if wrong, is most likely to mislead practitioners and therefore is always most carefully considered by the sub-editors and the editor.

The first thing a reporter must learn is that a headnote is not a precis of the judgment. Nor is it a summary of the entire story of the litigation.

The biggest fault of an inferior headnote will tend to be the inclusion of redundant

matter, which is distracting and wastes the reader's time.

While a headnote should be well written, its most important attribute is not literary style but accuracy. Subject to that, it must be as concise as possible. Most headnotes are a few hundred words; some, by reason of their complexity, may be longer.

But, as noted above, the headnote is not the source of authority. The authority lies in the judgment itself. The headnote is merely the reader's guide to the content of the case as a whole, identifying the key facts and issues, and where the court's conclusions may be found. Nowadays, this is done by listing the relevant page or paragraph numbers.

Where earlier cases have been taken into account in reaching those conclusions, they may be listed beneath the headnote, stating whether they were followed or applied, or merely considered, or perhaps distinguished (on their different circumstances), or even overruled.

History of the headnote

While some aspects of the modern law report have been introduced more recently, the headnote has been part of ICLR's reports since it began publishing them in 1865. Earlier reports, such as those published in the Year Books or the Nominate Reports, may have contained a sidenote or subject matter heading, but it was not until the 18th century that anything resembling the modern form of headnote appeared.

Sir James Burrow, who reported case in the Court of King's Bench in the time

of Lord Mansfield, is said to have been the father of the modern headnote. The development reflected a growing recognition of the doctrine of stare decisis – the binding force of judicial precedent – in the latter half of the 18th century.

Once that happened, the reporting of cases became not merely a luxury but a necessity.

One of the reasons ICLR was established in the mid-19th century was the widespread dissatisfaction of the legal professions with the coverage of the nominate reporters of the day.

In 1863 WTS Daniel QC wrote to the Solicitor-General, Sir Roundell Palmer, complaining of the 'enormous expense, prolixity, delay and irregularity in publication' of the existing reports and of their 'imperfection as a record, for want of continuity'.

It was in response to this that the Council of Law Reporting, which eventually became ICLR, was formed.

ICLR's mission is to support the legal profession and the administration of justice by providing the official law reporting service in a convenient form and at a moderate price. An important aspect of this is the selection of cases that genuinely matter. But its standing as the official publisher of The Law Reports depends entirely on its reputation for accuracy, and in particular the accuracy of its headnotes.

Paul Magrath is Head of Product Development and Online Content at ICLR, the Incorporated Council of Law Reporting for England and Wales: iclr.co.uk




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