

I MEMO OF ADVICE

RE: Mr. William Guy

II INTRODUCTION

This is a memo of advice written as an activity to show some typical examples of mistakes that are often made by students when they begin legal writing. You should *not* consider any of the text written here as accurate legal information, rather you are looking at the way the document is structured and how legal documents are referred to, as well the standard style of English used in the *Australian Guide to Legal Citation* ('Guide'). As you read, mark the mistakes and later you can check them against the correct version. The header of the page will tell you which document you are looking at. This document refers to matters discussed with Mr. Guy on the 15th August 2014.

III ARE THE PRECEDENT CASES BINDING ON THIS MATTER?

You will write some statements about whether previous cases contain facts that are sufficiently similar and thus provide precedent for your current legal issue. To do this you will be referring to cases. For instance *Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 208 CLR 516 ('Roxborough') and a similar case is binding on the present case and so the issues raised in these cases must be addressed.¹

The doctrine of *stare decisis* binds inferior courts to decisions made by courts higher in the same hierarchy. The *ratio decidendi*, meaning reasons for a decision, bind inferior courts.² The current issue is to be heard in the district court. Given that the decisions made in *Roxborough* are heard in the Queensland Court of Appeal and the high court, the issues at hand here will be binding here if the facts are materially similar. Relying on the statement given by the Appellant that 'the home was declared to be flood-proof', it isn't likely that the court will distinguish *Alati* to be different. As analyzed by justice Kirby:

'It would be necessary to be on guard that such a commission did not become a further vehicle for judicial orthodoxy; each generation replicating itself in mirror image of its own esteemed qualities.'³

¹ *Alati v Kruger* (1955) 94 CLR 216 ('Alati').

² *Wirth v Wirth* (1956) 98 CLR 228.

³ Kirby, Michael, *Modes of appointment and training of Judges – a common law perspective*, Speech given at the ICJ/CIJL and CAJ Seminar, Belfast, 8 June 1999.