

3. Case Study – select a famous Australian Legal Case. Outline the main events and characters in this case. Give a clear account of why the judge and jury came to their decision.

The Mabo Case

The Mabo case commenced in the late 70's about an Aborigine Eddie Mabo who fought for his land on Murray Island, part of the Torres Strait. The issue that started the court case was when Mr Mabo appealed for a permit from the Queensland Government to visit the island. His proposal was declined so he was unable to return home to visit his homeland.

In 1981, in James Cook University where Eddie Mabo was working at the time, the students called a discussion on land rights in Australia. It was decided at the conference that the issue of a land claim by the Murray Islanders to traditional title would be taken to the High Court. With major local party support, including legal experts with significant experience in land rights legislation they set off to claim that Mabo had the right to visit his homeland.. The aim of the case was to make the law decide that the Islanders owned the land not the Europeans



The case was motioned to the High Court at first, however they had to take it to their State Court the Supreme Court of Queensland first. The Queensland Government acted in response and they passed an unexpected piece of legislation through the House without any debate - the Torres Strait Islands Coastal Islands Bill. The Act quoted: 'Any rights that Torres Strait Islanders had to land after the claim of sovereignty in 1879 is hereby extinguished without compensation'.

This was how the Mabo case started with an honourable aim. The main aim of the case was to prove that the Queensland Government breached the Bill breached the Racial Discrimination Act of 1975. It was also a case to make the Commonwealth government aware that Native Australians had the right to the so called "*terra nullius*", the name given to Australia when the Europeans first arrived meaning empty land. The case went back to the Supreme Court of Queensland where Justice Moynihan gave a presentation of the facts of the case. In June 1992 years after Eddie Mabo's death, the High Court declared that Eddie Mabo had the rights to the land. A landmark victory with a six to one majority in the High Court all agreeing to the appeal brought forward by Eddie Mabo in the 80's.

If the case had concerned itself solely with the Murray Islands and Eddie Mabo's claim then it would certainly have been important - a matter of great legal interest, but no more. The Court could have just said that Murray Island was a unique case and that no one else could say that the Court's verdict had any relevance for other parts of Australia. But the High Court took the opposite view. It decided that here was a chance, never yet presented to the High Court of Australia, to deal with the fundamental issue of land rights. So they quite deliberately took on the basic principles of Australian land law. That is why the case has been so significant.