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Civil Justice System

- The substantive law, machinery and procedures for vindicating and defending civil claims
- **Civil procedure** is the body of law that sets out the rules and standards that courts follow when adjudicating **civil** lawsuits.

Litigation is decreasing (despite what media says):

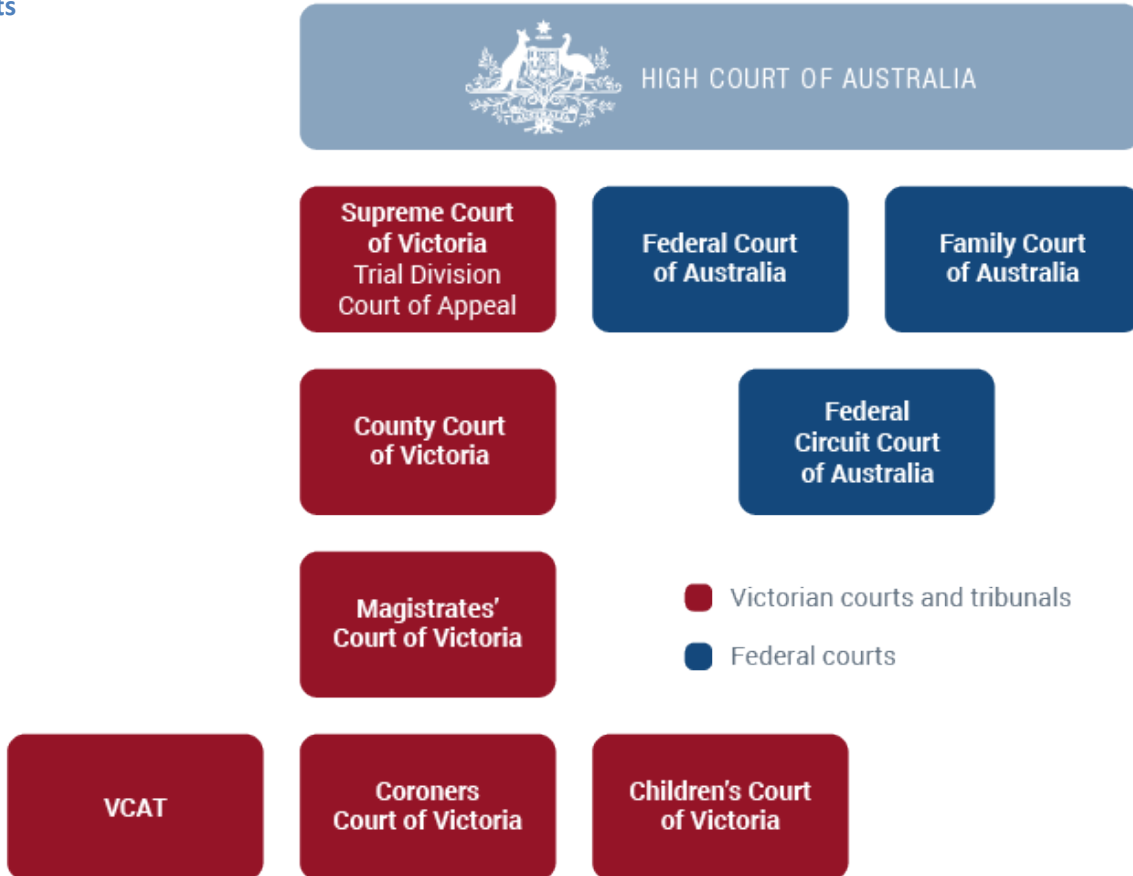
“So rather than a litigation explosion, the data instead reveals declining litigation numbers and litigation rates in recent years.” TB p20:

- Relationship b/w litigation rates and economic conditions prevalent over the last decade
- The expense and delay involved in civil litigation is now discouraging litigants from commencing proceedings
- Declining lodgements in traditional courts with the rise of other dispute resolution bodies, like tribunals and ombudsman schemes

Adversarial = parties decide what the issues are, parties decide the evident to support the issues...the substantive issues of the case are driven by the parties.

Inquisitorial system = they parties say here is our dispute and the judge says this is how we will resolve it. Judge gives issues and requests evidence on specific points.

Courts



Aspects of a good legal system:

- Accessible to people
- Logical
- Good use of resources
- Fair & just
- Reasonable/cost effective
- Representation/advice – on equal footing
- Application of the law
- Consistency of a process
- Timely & quick
- Transparent process/decisions
- Easy to assert rights
- Impartiality
- Accountable (appeals, legislature)
- Equal understanding to access advice
- Flexible
- Independent

Problems:

- Cost (& hidden) → lack of certainty
- Lack of awareness of legal rights
- Lack of certainty of quality of legal advice
- Too slow
- Not enough information (repeat users 'get better deal' as understand system)
- Impacts middle/low socioeconomic
- Power imbalance
- Geographic issues
- Court fees

Civil Litigation:

Advantages	Limitations
• Legitimacy & authority of mainstream judiciary • Courts may provide more satisfaction or people who seek vindication on a matter of principle • Formal structures provided for less powerful parties (rules of court 'evens playing field') • Courts are transparent (records public) • Establish precedent • Court process is known, can prepare	• Very expensive • Arduous & protracted process • Limited to proving liability - victims can only tell part of story so may not feel 'healed' • Bipartisan character of syst. does not always account for complex relationships • Narrow scope for participants (restricted to indiv. pltf) • Dichotomous nature of sys. creates 'winners & losers' • Theory of justice unable to provide adequate remedies for all harms (i.e intangible harms)

Alternative Dispute Resolution

- Dispute resolution processes which operate outside the usual court-based litigation model.
- Aim of ADR is to encourage the settlement of a dispute between parties, usually (but not always) with the assistance of a neutral person.
- Mediation, arbitration, facilitation, conciliation, neutral evaluation, case appraisal, negotiation
- Advisory function
- 3 Stems (*operate in a hybrid capacity*)
 1. Determinative
 2. Facilitative
 3. Advisory
- Confidentiality essential, otherwise a futile process

Advantages	Disadvantages
- Non-legal remedies - Non legal issues - Private - Control of parties → control what is discussed, what is decided - Lower stress and trauma - Opportunity to be heard → can have a healing effect	- Private (could also be an advantage) - Insufficient protection for weaker - Parties have to pay themselves (although in Canadian case, the gvt/church paid) A party can also offer to pay if they really want ADR - Sacrifice 'justice' and 'truth' → have to reach a compromise, not everything will be spoken about. Don't need to find the truth or what would be just, just need to agree - No public accountability - No Precedent - Less law being developed - No public accountability

AWA v Daniels:

- You can't 'sterilize' information by making admissions at mediation and therefore making it inadmissible...this would be 'absurd'
- Can follow a line of inquiry learned at mediation and later seek to prove that matter.
- No exclusion from leading the evidence, merely because it first came to attention at mediation.