

CIVIL PROCEDURE

Process, Open Justice and Fairness; Adversarial System of Civil Litigation

Civil justice is how citizens can uphold their substantive civil rights against other citizens.

Civil law maps out boundaries of social and economic behaviour while civil courts resolve disputes and publicly reaffirm norms and behavioural standards for society.

In criminal justice, there is a consistent, limited range of processes and decision making bodies that leads to a prosecution involving the state (prosecutor) and an individual (D). Civil cases on the other hand involve a wide range of claimants and a defendant with many different party configurations.

Substantive vs Procedural Law

Substantive	Procedural
<ul style="list-style-type: none">• Defines legal rights, duties and liabilities.• Law of the place where wrongful act was committed applies.	<ul style="list-style-type: none">• Governs conduct of court proceedings (that enforce substantive rights/claims).• Does not impact substantive law.• “adjectival” law.• Purpose: facilitate DR, provide procedural fairness and due process, reduce cost and delay, promote access to justice and legitimacy of system.• Sources: UCPR05 (NSW), CPA05(NSW), S/D/L Court rules, Practice notes, inherent regulatory powers of courts.

NSW Court System

Court	Jurisdiction	Case Management
Local	Local Court Rules 2009 <ul style="list-style-type: none">• Small claims division: up to \$10,000• General division: \$10,000 - \$100,000 - limit of \$60,000 for personal injury/death claims.• Conduct criminal summary prosecutions, committal hearings, matters concerning mental health, family law, children’s criminal proceedings, licensing issues, coronial matters, etc.	
District	District Court Rules 1973 <ul style="list-style-type: none">• Hears civil and criminal matters, limited to \$750,000• Unlimited for claims of personal injuries from motor vehicles or at work.	<ul style="list-style-type: none">• Cases intended to be completed within 12 months.• P can’t commence proceedings until preparation for trial is well advanced.• Deals with general, commercial, construction, defamation lists, etc.
Supreme	Supreme Court Rules 1970	<ul style="list-style-type: none">• CL Division: general, professional negligence,

	<ul style="list-style-type: none"> Hears all matters not under the federal court's exclusive jurisdiction including most serious criminal cases. Unlimited civil jurisdiction. CL division: \$750,000 + in civil cases, hears criminal and admin law matters. Equity division: commercial, corporate law, equity, trusts, probate, family provisions cases, etc. Appellate division: COA, COCA. 	<p>possession, defamation, administrative, criminal law lists, etc.</p> <ul style="list-style-type: none"> Equity division: commercial, corporate, arbitration, revenue, technology, construction lists, etc.
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Adversarial System

Characteristics:

- Party controlled dispute
- Use precedent, procedural rules and rules of evidence
- Distinction between pre-trial and trial
- Impartial judge (umpire)
- Reliance on oral testimony with witnesses' subject to cross examination
- Open justice – public; judge provides reasons for decisions and are subject to limitations
 - Rinehart v Rinehart [2014]** – principle of open justice is one of the most fundamental aspects of the system of justice and should only be departed from where its observance would obstruct administration of justice of another public interest.
- Right to a fair trial – **Dietrich v R 1992**

Case Management

- Required under **CPA s57** & **UCPR Part 2-3**.
 - Dennis v ABC [2008]**
- Reasons for CM: reduce costs (can't be used as weapon, promote access to justice; danger of increases costs at front of litigation), reduce delays (justice delayed is justice denied; avoid issues with witnesses and evidence, reduce backlog).
- Judge role in CM: control case (directions and timetables), priority management.
- QLD v JL Holdings (1997)** – Although case management is endorsed, individual justice takes priority over it as justice is highest object of the courts.
- AON Risk services v ANU (2009)** – parties used to have to prepare for trial and seek court assistance as required but now judge/courts push for discussion between parties, encouraging ADR (legal system is a choice). Courts concerned with doing justice for all litigants – just resolution is paramount purpose. Speed and efficiency (min. delay and expense) are essential.
- Lists provided to determine where your claim may fall.
- Expense Reduction Analysts v Armstrong [2013]** – re-emphasises s56 CPA. Emphasises importance of dictates of justice (s58 CPA).
- Essential requirements for efficient administration of justice*: courts monitor caseload, judicial leadership and commitment, clearly established procedures, rules and written practices; intensity of case management proportionate to complexity, minimise court appearances, realistic timetables and ASAP trials, ADR encouraged, communication within court and those involved in litigation process.

Civil Procedure Act 2005 (NSW)

S56 **Overriding purpose** ***

(1) Facilitate the **just, quick and cheap resolution** of real issues in proceedings.