

LAWS2311 – Resolving Civil Disputes

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Cause of Action and Joining Parties

Standing

- Right of plaintiff to be considered an appropriate party to initiate a particular proceeding. In matters concerning public duties and rights, A-G can initiate proceedings or initiate fiat for private person (called a 'relator') to sue. This discretion is not justiciable.

Cause of Action Estoppels

Res judicata (cause of action estoppel): "matter already judged"

- Precludes a resolved cause of action from being relitigated. Where the cause of action is litigated to judgment and upheld, it merges in the judgment ('merger doctrine') and loses its separate existence: **Chamberlain v Deputy Commissioner of Taxation (1988)** – amount for defendant to pay had a misplaced decimal point; could not reopen case.
- Exception: fraud, collusion, contra public policy, statute

Issue estoppel

- Precludes particular issue in previous proceedings from being raised in subsequent proceedings: **Blair v Curran (1939)**.
- Only applies to issues and not evidentiary facts or legal questions.
 - Extends to issues assumed or conceded.
 - Issue estoppel is not absolute (at least in Britain): **Arnold v National Westminster Bank [1991]**
 - Cannot be enlarged by evidence: **O'Donel v Commissioner for Road Transport (1938)**
- **Tomlinson v Ramsey Food Processing [2015]**
 - **Facts:** T, a worker, sued R in DC for injury sustained. R argued that T was employed by a labour hiring company, Tempus, as the relevant time so the claim was invalid.
 - In separate proceedings, Fair Work Ombudsman took action in FC against R on behalf of a group of workers, including T, for unpaid severance entitlements, and it was found in this action that T was employed by R at time of injury.
 - R argued in DC that the court was bound by FC's decision due to issue estoppel, and that T had privity of interest with Fair Work.
 - **Held:** no privity of interest as FW was not enforcing T's entitlements 'under or through' or 'on behalf of' T, and the power to sue was not derived from T's entitlements.

Anshun estoppel:

- Stops claims that could have been but was not made in earlier proceedings.
- Can still be raised by different defendant: **Rippon v Chilcotin (2001)**
 - **Facts:** purchasers of business took action against vendors for breach of contract and misrep. They succeeded in breach but failed on misrep as court held they did not rely on financial statements that was allegedly misrepresenting. They sued the vendor's accountants who raised the Anshun defence.
 - **Held:** Anshun defence allowed as P seek to relitigate on substantially the same evidence in the hope that this time they will be believed.
 - Guiding considerations: **State Bank of NSW v Stenhouse**
 - The importance of issue in and to earlier proceedings
 - Opportunity available and taken to fully litigate the issue
 - Terms and finality of finding of issue
 - Identity between relevant issues in the two proceedings
 - Fresh evidence – nature and significance, why it was not part of earlier proceedings
 - Extent of oppression and unfairness to other party; impact of litigation on principle of finality and public confidence
 - Balancing of justice
- **Port of Melbourne Authority v Anshun (1981):**
 - **Facts:** Anshun hired a crane from the Authority. The agreement contained a clause where Anshun would indemnify the Authority against all claims and actions arising out of use of the crane. Anshun's use of crane resulted in serious injury to a worker, who sued both Anshun and the Authority. The Authority was liable for 90% of damages and costs, and Anshun only 10%. The Authority did not raise the indemnity clause in the proceedings, and later initiated second proceedings against Anshun for indemnity.
 - **Held:** the Authority could and should have raised the indemnity as a defence to Anshun's claim for contribution from the Authority in first proceedings. The second proceeding might cause a conflicting judgment: "appear to declare rights which are inconsistent in respect of the same transaction".
- **Redwood v Link Market Services [2007]**
 - **Facts:** R sued Mongoose for breach of contract, arguing a half completed Rights Acceptance Form sent to it by Link on behalf of Mongoose was a contract. Court held that there was no contract. R then sued Link for negligence, which was dismissed on Anshun basis. R appealed.
 - **Held:** no Anshun estoppel: Link did not take part in proceedings so as to allow R an opportunity to raise this issue. R is not looking for any different finding of fact or to get out of previous judgment, but suing on Link's duty based on their own dealings with Link.

Joinder and Cross-Claims

Joining Defendants

- Different defendants can be joined in the same proceedings if the claim of relief against each defendant arises out of the same transaction and the causes of action give rise to a common question of law or fact.
- UCPR 6.19
 - (1) Ps or Ds can join where:
 - (a) proceedings involve common question of law or fact, or
 - (b) when right arise out of same transaction
 - or if court gives them leave.
- UCPR 6.22
 - if joinder of party/cause may embarrass, inconvenience or delay the conduct of the proceedings, the court:
 - (a) may order separate trials or
 - (b) may make such other order as it thinks fit.
- Meaning of 'transaction'
 - **Birtles v Cth [1960]**: includes accident, injury, litigation and limitation of issue.
 - **Payne v Young (1980)** (quoting Vaughan Williams LJ in *Stroud v Lawson*): "I do not think the rule means that the whole of a transaction must be involved in each of the causes of action joined. I think that, if there was a transaction or series of transactions in respect of which one plaintiff was interested up to a certain point, and other plaintiffs were interested, not only up to that point, but in respect of the entire transaction or series of transactions from beginning to end, under this rule they might join their separate causes of action in one action, because there would be one transaction or series of transactions in respect of which the various plaintiffs all claimed a right to relief."
- Joinder by leave: 6.19
 - May be appropriate where the court was of the view that justice between the parties was to be served and costs and delay minimised.
 - **Dean-Willcocks v Air Transit International (2002)**
 - **Facts**: three related companies went into liquidation together. The liquidator commenced action joining all three companies as plaintiff against all creditors seeking recovery of money.
 - **Held**: it was in the public interest to allow joinder because the liquidator should be permitted to efficiently pursue claims on behalf of all the unsecured creditors in a single action.

Set-offs and Cross Claims

- **Set-off**: a mechanism whereby one party can apply a debt owed to him or her by another party to discharge all or part of a debt that s/he owes to that other party: CPA s 21.
- **Counterclaim**: a procedural device whereby actions by one party against the other and vice versa are heard as part of the one proceeding: CPA s 22
 - Required to be within same parties to the original claim and be a matter in which the court has jurisdiction
 - If D's cross-claim against non-party is allowed to join, the non-party becomes a cross-defendant and bound by the judgment between P and D.

Changing Parties

- UCPR 6.19
 - (2) retrospective joinder: leave can be granted after proceedings have commenced.
- UCPR 6.24: court may join party if joinder is proper or necessary to determination of all matters in dispute.
 - Whether party "ought to be joined" is a matter of degree and judgment.
 - Third party's rights against or liability to any party in proceedings must be directly affected: *News v Australian Rugby Football League*.
 - Whether a party is 'desirable' or 'necessary' to determine an issue/question in a way that binds all affected parties and avoids the need for further litigation: *Weber v Ankin*.
- UCPR 6.29: reverse of 6:24 – allows court to remove parties who should not have been joined.
- **New Idafe v Barnard [2007]**: dispute between Barnard and Kasteel factions as to who constitutes the Board of New Idafe, a non-profit organisation which provides disability services. Court ordered:
 - Kasteel as plaintiffs; Barnard as active defendants; New Idafe removed as plaintiff and joined as passive defendants.
- **News v Australian Rugby Football League (1996)**
 - **Facts**: News tried to establish a new professional rugby league competition called "Super League".
 - News attacked several contractual arrangements between the two leagues and the 20 clubs participating in the competition.
 - NSWRL and ARL cross-claimed against News, some clubs that defected to SL, and SL franchisees, that the defecting clubs breached their fiduciary and contractual obligations by joining SL, and that News and SL induced or encouraged these breaches.
 - Trial judge found for the respondents and prevented the appellants organising or participating in a rugby league competition other than one authorised by NSWRL or ARL until 2000.
 - The issue is whether the coaches and players who had signed SL contracts should be joined.