

# LAW4604: CIVIL PROCEDURE 1 EXAM NOTES

- JA = *Judiciary Act 1903* (Cth)
- FCAA = *Federal Court of Australia Act 1976* (Cth)
- FCCAA = *Federal Circuit Court of Australia Act 1999* (Cth)
- RSC = *Rules of the Supreme Court 1971* (WA)
- SCA = *Supreme Court Act 1935* (WA)
- DCWAA = *District Court of Western Australia Act 1969* (WA)
- MCA = *Magistrates Court Act 2004* (WA)
- MCCPA = *Magistrates Court (Civil Proceedings) Act 2004* (WA)
- SATA = *State Administrative Tribunal Act 2004* (WA)
- SEPA = *Service & Execution of Process Act 1992* (Cth)
- LA = *Limitation Act 2005* (WA)

## IDENTIFYING AND DOCUMENTING 'CAUSES OF ACTION'

### 'CAUSES OF ACTION'

- The constituent elements of a claim which give rise to a legal liability
- **Bennett v White**
  - "The whole set of facts that give rise to an enforceable claim. In a cause of action, the plaintiff must prove every fact that is challenged in order to obtain judgment"

### PLEADINGS

- A summary form of the material facts on which the party pleading relies

### PURPOSE

- Define and distil the issues (*Barclay Mowlem Construction Ltd v Dampier Port Authority*)
- Enable the proper assessment of the strength of any claim (*Barclay Mowlem Construction Ltd v Dampier Port Authority*)
- Provide notice to opponent of allegations he/she must face (*Barclay Mowlem Construction Ltd v Dampier Port Authority*)
- Clarify the matters the subject of adjudication (red judicata)
- Help define the ambit of discovery
- Assist in determining what is admissible evidence
- Enable reflection on available remedies

### SEQUENCE OF PLEADINGS

- Statement of Claim
- Defence
- Counterclaim/Set off (maybe)

### METHODOLOGY

1. What does the client want?
  - a) What is the outcome she/he/it seeks?
2. What facts are available to you?
  - a) Question, challenge and seek clarification of those facts
  - b) Be precise
  - c) Identify what you don't know but need to know
3. Marry the facts
  - a) With the substantive law that must be established (elements) to entitle your client to relief

## CASE MANAGEMENT

- **O 1 r 4B RSC** – Use and Objects of System of Case Flow Management
  - Actions/Causes/Matters to be managed/supervised with a system of positive case flow management with particular objects in mind, which include – promoting the just determination of litigation, disposing efficiently of the business of the Court, maximising efficient use of available judicial and administrative resources.
- Commercial and Managed Cases List (CMC)
  - Cases which present management problems or require intensive case management can be referred by a Case Management Registrar to the CMC List
  - Other commercial cases can enter the CMC list by order
- A case cannot proceed to the next stage if the interlocutory steps have not been completed

### LIFE OF A PROCEEDING (ACTION OR CASE)

1. Issue Definition
  - a) Issue of Writ
  - b) Service
  - c) Appearance
  - d) Statement of Claim
  - e) Defence
2. Disclosure
  - a) Discovery
  - b) Expert evidence
  - c) Witness statements
  - d) Subpoena
  - e) Interrogatories
3. Resolution
  - a) Mediation
  - b) Trial
  - c) Discontinuance/Dismissed/ICL
  - d) Summary/Default Judgement
4. Recovery
  - a) **CJEA 2005**

