

1. civil justice system

- State & Federal jurisdiction
- Victorian Supreme Court jurisdiction
- cross-vesting
- transfer of Proceedings
- party management of litigation in the adversary system
- court based management scheme & overarching objectives

2. commencing proceedings, service of process, appearance

- originating process & writ
- service
- appearance

3. parties & causes of action

- parties to a proceeding
- particular parties
- representative proceedings
- class actions
- interpleader proceedings
- 3rd party procedure
- joining causes of action

4. pleadings

- nature, objective & function of pleadings
- key rules to pleadings (incl. denials, admissions, particulars)
- striking out pleadings

5. summary disposal, discontinuance of litigation

- default judgement
- claims where a default judgement is applicable
- setting aside a default judgement
- summary judgement - plaintiff
- summarily terminating proceedings or defence
- judgement on admissions
- dismissal for want or prosecution
- discontinuance

6. discovery, interrogations, protecting subject matter of litigation

- discovery & inspection of documents
- privilege
- interrogatories
- failure to give discovery
- non-party discovery
- discovery before proceedings
- subpoenas
- orders for attendance & production
- notice to admit
- inspecting subject matter
- detaining & preserving property
- Anton Piller orders
- Injunctions
- Mareva orders
- medical examinations

7. settlement

- offers of compromise under the rules of court
- contractual offers of compromise
- settlement
- payment into court
- cost consequences of failure to accept an offer of settlement

8. trial & appeal

- mode of trial
- proceedings at trial
- verdict & judgement
- statutory interest
- appeals from a decision at first instance
- appeals by leave
- stay of proceedings
- appeals to the High Court

9. costs & enforcement

- party & party costs
- solicitor & client costs

- indemnity costs
- joint party costs
- assessment of costs
- costs & misconduct of litigation
- security for costs
- appeal costs
- general rules relating to enforcement
- enforcement of money & non money judgements
- enforcement against a partnership

1. the civil justice system & civil disputes

civil procedure & purpose

- procedural law is the law that governs the conduct of proceedings before the court
- "the mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right" (**POYSER V MINORS (1881)** per Lush J)
- **Supreme Court Rules, Civil Procedure Acts 2010 (Vic)**
- civil dispute resolution
 - provide institutions & rules that facilitate dispute resolution
 - perpetuate the rule of law
- overriding purpose clause: to inform all applications of court rules
 - **s 7 Civil Procedures Act** - "...to facilitate the just, efficient, timely and cost-effective resolution of the real issues in a dispute"
- begins with initial instructions from (potential) client(s) > discussions, negotiations, actions with multiple parties
- if proceedings do begin, it must be decided where the dispute ought to be heard:
- **FEDERAL COURT**
 - HCA
 - Full Court of the Federal/Family Court
 - Federal Court/Family Court of Aus
 - Federal Magistrates Court
 - Human Rights & Equal Opportunity Commission
 - Aus Industrial Relations Commission
 - various tribunals - refugee, native title, admin appeals, migration review, etc.
- **STATE (VIC)**
 - HCA
 - Supreme Court of Vic (2 divisions - trial & court of appeal)
 - County Court of Vic
 - Magistrates' Court
 - various tribunals - Vic civil & admin (VCAT), Victims of Crime & Assistance, etc.

sources of civil procedural law

- **STATUTORY JURISDICTION**
 - R.O.P. in superior courts made by legislature, judiciary & the executive
 - legislative source:
 - **Supreme Court Acts (Supreme Court Act (1986), Civil Procedure Act 2010)**
 - HCA & Federal Court:
 - **Judiciary Act 1903 (Cth)**
 - **Federal Courts of Australia Act 1976 (Cth)**

- executive source:
 - made my delegated legislatures (ordinances, by-laws, orders in council, etc.)
 - incl. alternations b judges, rules, committees, committees of review

- **INHERENT JURISDICTION**

- Supreme Courts derive inherent jurisdiction from being 'superior' courts
 - necessary to ensure that their procedures are capable of producing just outcomes
- superior courts have jurisdiction to hear any matter that comes before it unless statute/rule limits that authority
- purpose of inherent jurisdiction is to allow courts to regulate their process & to prevent abuse of process (**Riley McKay Pty Ltd v McKay 1982**)
- entitles the court to issue practice notes and directions
 - usually commentaries, issued by an officer of the court to assist parties in preparing litigation
- inherent jurisdiction to regulate civil proceedings
 - although somewhat of a metaphysical concept, in reality, it is the source of many court procedures
 - practice notes & court orders (eg. **Mareva & Anton Miller Orders**)
 - "vast armoury of remedies" that judges have developed to respond to the "limitless ways in which the due administration of justice can be delayed, impeded or frustrated" (K Mason)

jurisdiction

- the official power to make legal decisions & judgements
- **FEDERAL & STATE JURISDICTION**
 - **Chap III of the Constitution** authorises parliament to create federal courts & to invest state courts with federal jurisdiction
 - fed. jurisdiction is the jurisdiction a state/fed. court has by virtue of **Ch.III (Capital TV & Appliances Pty Ltd v Falconer 1971)**
 - **s 71 of the Constitution** vests the judicial power of the Cth in:
 1. the HCA
 2. fed. courts created by parliament
 3. state & territory courts vested with jurisdiction pursuant to **Ch.III**
 - Cth judicial power may only be exercised by one of the 3 classes of courts listed in **s 71**
 - **s 71, 73, 75 - 77 of the Constitution**
 - **s 38, 39, 79 of the Judiciary Act 1903 (Cth)**
- **THE HIGH COURT OF AUSTRALIA**
 - original jurisdiction: **s 75 of the Constitution** in matters:
 1. arising under any treaty

- II. *affecting consuls or other representatives of other countries*
- III. *in which the Cth, or a person suing or being sued on behalf of the Cth is a party*
- IV. *between states, or between residents of different states, or between a state and a resident of another state*
- V. *in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Cth*

- **s 76 & 77 Judiciary Act** define additional jurisdiction and power to define jurisdiction
- as a matter of practice, the HCA remits any matters to the State Supreme Court of Federal Court for hearing & determinations (**s 44 Judiciary Act**)
- ▶ **FEDERAL COURT**
 - hears matters that are created by Fed. legislation (**Federal Court of Aus Act 1976** (Cth), Fed. family court, etc)
- ▶ **SUPREME COURT (VIC)**
 - trial division & court of appeal
 - hears appeals from 'inferior' courts
 - the jurisdiction of the supreme court is unlimited in the amount of money that may be claimed & is effectively unlimited in the subject matter of the cases (**s 85 Vic Constitution Act 1975**)
- ▶ **TERRITORIES**
 - the court may have jurisdiction over D - '*in personam*' in jurisdiction
 - territorial jurisdiction may be extended by statute
 - within Aus - **Service & Execution of Process Act 1992 (Cth)**
 - outside Aus - **Rules of the Court**
 - court will gain jurisdiction where D, though not present in the jurisdiction, voluntarily submits to the jurisdiction, or for some other reason can be validly served with the initiating proceeding
 - in respect of an action on a contract, parties may submit to the jurisdiction by an express agreement that disputes be referred to a particular court (a mere choice of law however, does not amount to a submission)

cross-vesting

- 1987 - state & fed. legislatures passed a number of acts collectively known as the '**Cross-Vesting Scheme**' to overcome difficulties of overlapping & competing jurisdictions on a fed. system
- **Cross-Vesting Act 1987** - effectively conferring jurisdiction onto the fed. court, family court & other supreme courts in accordance with the Act (not HCA)
- effect - all superior courts in Aus had the jurisdiction of all other superior courts cross vested to them

- ▶ **objective:**
 - to ensure that one superior court could give complete relief, but to also ensure that people brought actions in most appropriate courts
 - it was the intention that a proceeding could not fail based on a lack of jurisdiction - jurisdictional balance would be maintained btwn courts through courts' power to transfer proceedings
 - to permit the transfer of matters to the appropriate court where commenced in an inappropriate court (**s 5 Cross-Vesting Act 1987 Transfer of Proceedings**)
- **Re Walkim, ex party McNally 1999** - HCA held: cross-vesting laws, insofar as they conferred state jurisdiction onto the fed. courts, were constitutionally invalid
- however, the cross-vesting laws were valid insofar as they confer Fed jurisdiction onto state & territory supreme courts - these portions of the cross vesting laws remain intact
- following **Re Walkim**, all of the states passed **Federal Courts (State Jurisdiction) Act**
 - treats the fed/family court judgements as a single judge state supreme court judgements

managing litigation & the adversary system

- civil procedure systems have been classified along a dichotomy btwn ADVERSARIAL & INQUISITORIAL models
- the traditional adversary system
 - parties and court constituted 2 foundational planks with distinct but related roles
 - assigned to the parties all pre-trial prep, court had limited role
 - even at trial, court's role was relatively passive
- modern day judges as managers of litigation
 - use of case management to control litigation
 - progress of the case through the interlocutory phase (continuous management by judge personally monitors, or by requiring parties to submit info/updates at fixed milestones)
 - meant to reduce cost and delay - all reasonable avenues for settlement are explored
- ▶ **overriding objective:**
 - in most jurisdictions, the rules or a stat enactment lay down an overriding philosophy that the court must manage litigation to bring cases to an early and economic disposition consistent with the needs of justice
- ▶ **overarching purpose (Vic):**
 - "...is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute" **s 7 Civil Procedure Act 2010 (Vic)**
 - the court must exercise its powers and interpret the rule in compliance with the overarching purpose - but also places obligations on parties and lawyers