

Lecture 1 Cases

Introduction and Pre-Litigation Requirements

Queensland v JL Holdings Pty Ltd (1997) 189 CLR 146

Key words- pleadings, amendment, case management practices

Facts:

- Estimated length of trial = 4 months
- Ds applied to amend their defence

Held:

- A party should be permitted to raise an arguable defence provided any prejudice to other parties could be compensated by costs
- While case management principles are relevant, they cannot be used to prevent a party from litigating an issue which was fairly arguable
 - “Case management is not an end in itself” – Dawson, Gaudron and McHugh JJ

AON Risk Service v Australian National University (2009) 239 CLR 175

Key words- pleadings, amendment, case management practices

Facts:

- On the 3rd day of a 4-week trial of a proceeding that had been on foot for 2 years, P applied for an adjournment and for leave to amend its statement of claim to add a substantial new claim against D

Held:

- Relevant dispute/controversy must exist at the time of the application in order to be regarded as a real issue for the purposes of r 501(a) and for the amendment to be necessary
- Court is entitled to consider whether reasonable diligence on the part of the moving party would have led to the bringing of the claim in the existing proceedings when considering whether an amendment is necessary to avoid multiple proceedings under r 501(c) – so that further proceedings might be barred on grounds of abuse of process or estoppel
- Amendments raising entirely new issues are to be considered under the general discretion given by r 502(1), read with the objectives outlined in r 21(2).
 - A party did not have an entitlement to amend a pleading, subject to payment of costs as compensation
 - All matters relevant to the exercise of the power to permit amendment should be weighed:

- Substantial delay and wasted costs, effect on the parties, the court and other litigants (the concerns of case management) would assume importance on an application to leave to amend
 - Relevant matters also include the nature and importance of the amendment to the party applying, the stage of litigation reached when amendment was sought and explanation for any delay in applying for amendment
- Disapproved ***Queensland v JL Holdings Pty Ltd (1997)***, approved ***Sali v SPC***
 - French CJ: Potential loss of public confidence in legal system
 - Gummow, Hayne, Crennan, Kiefel and Bell JJ:
 - “Parties have the right to invoke the jurisdiction and the powers of the court in order to seek a resolution of their dispute...The question of a further amendment of a party’s claim is dependent upon the exercise of the court’s discretionary power.”
 - “Speed and efficiency, in the sense of minimum delay and expense, are seen as essential to a just resolution of proceedings. This should not detract from a proper opportunity being given to the parties to plead their case, but it suggests that limits may be placed upon re-pleading, when delay and cost are taken into account.”
 - “The Rule’s reference to the need to minimise costs implies that an order for costs may not always provide sufficient compensation and therefore achieve a just resolution.”