

Topic Three – Jurisdiction

1. Introduction

To hear [P's] case, [Court] must have both subject matter and territorial jurisdiction (**Dixon CJ in Laurie v Carroll**)

- Important: strategic & procedurally (size/availability of remedy, costs).

2. Subject Matter Jurisdiction

Federal Courts

Cth judicial power only exercised by High Court, Federal Court created by statute or a State court invested with federal judicial power (**s 71, Chapter III Consti**)

i) Federal Court – Federal Court of Australia Act 1976

- **Original jurisdiction:**
 - 'As it is invested with by Parliament' (**s 19(1) FCAA**)
- **No inherent jurisdiction:** It is a creature of statute
- **Appellant Jurisdiction:**
 - Appeal from single judge Federal Court, State SC exercising federal jurisdiction, Federal Circuit Court (**s 24(1) FCAA**)
- **Accrued Jurisdiction:**
 - Cannot 'cross vest' per **Re Wakin**, but can use accrued jurisdiction.
 - FCA may grant all remedies so that all 'matters' in the controversy may be finally determined. (**s 22**)
 - Requirements for FCA to hear the state courts too:
 1. Jurisdiction is discretionary (**Stack**)
 2. Matter: Arising from same facts or transaction (**Fencott**)
 3. 'State' part of action non-severable from the Federal part
 4. If Federal Claim is untenable, no jurisdiction will accrue (**Johnson Tiles**)

ii) High Court of Australia

- **Original Jurisdiction:** Constitution issues and civil matters between States
 - **s 75 Consti**: Matter arising under treaty; affecting representatives of other countries; in which the Cth is a party; between States
 - **s 76 Consti & s 30 JA**: matters involving interpretation of Consti
 - **s 38 JA**: Matters arising directly under treaty or between states
- **Appellant Jurisdiction:**
 - Hear appeals from all judgments, decrees, orders and sentences of Court's original jurisdiction, courts exercising federal jurisdiction, or Supreme Courts (**s 73 Constitution**)
 - BUT need 'special leave' under **s 35A Judiciary Act**:
 - Proceedings involves question of law of public importance; or
 - HCA is required to resolve differences of opinion between courts as to the state of the law; AND
 - The interests of the administration of justice, either generally or in the particular case, require

State Courts

i) Victorian Civil and Administrative Tribunal

- Jurisdiction derived from multitudinous quantity of legislation including Fair Trading Act, Tenancies Act, Equal Opportunity Act, Planning and Enviro Act. Jurisdiction determined by nature of dispute, not amount

ii) Magistrates' Court – Magistrates' Court Act 1989

- Any claim under \$100k (**s 100 MCA**). No jurisdiction over prerogative writs or admin matters (**s 100(2) MCA**). Civil appeals from MC go to SC
- Matters under \$10k likely to go to Magistrates Court 'arbitration'
 - Natural justice; costs capped; lawyer reads W evidence, then XE

iii) County Court – County Court Act 1958

- General Civil Jurisdiction
 - All claims, disputes and civil proceedings regardless of type of relief sought (**s 37(1)(a)**). No longer \$200k limit.
- Appeals to Court of Appeal. NB: if federal claim, use SC (or Fed Court).

iv) Supreme Court of Victoria

- Unlimited jurisdiction in or in relation to Victoria (**s 85(1) Consti Act**)
- Pick SC over CC if: Want to include fed claim, complex case or SC has particular experience. CC cheaper and quicker
- VSC can exercise federal jurisdiction (s 4 Cth Cross Vesting Act) and jurisdiction of other State courts (**s 9 State CV**)
- Court of Appeal division: Hears applies from SC, CC and VCAT (Pres/dep)
 - Leave needed under **s 14A**: 'Real prospect of success' (**s 14C SCA**)
 - Interests of administration of justice, either generally or in the particular case, require the HCA to consider the judgment

3. Territorial Jurisdiction – Geographic Factors of Disputes

Victorian Courts – need a 'nexus' or territorial link (**s 85(1) Consti**)

1. *Presence* within jurisdiction – even if short (**Laurie v Carroll**); or
2. Defendant *submits* to jurisdiction (**Slater and Gordon v Porteous**), or
3. *Valid service* within or outside the jurisdiction
 - Interstate: **s 15(1) SEPA**
 - 'An initiating process issued in a State may be served in another State' (**s 15(1) SEPA**)
 - Documents served on D – writ enforced with SEPA form
 - If object: apply under case transfer:
 - Overseas: All SC rules allow – **Order 7 SCR**
 - Must be a 'nexus' included on the writ. Examples:
 - The cause of action arose in Victoria/K made?
 - The land the subject of the action is in Victoria
 - If object: Apply for a stay *forum non conveniens*
4. *Responding* to an action
 - Enter unconditional appearance – jurisdiction confirmed (cf. conditional reappearance via solicitor to get jurisdiction changed)

Fed Court: Hear all matters conferred on it by statute (**s 19(1)**)