

Personal Jurisdiction

- Gaudron, Gummow and Hayne JJ in *Lipohar v R* (1999) 200 CLR 485
 - Jurisdiction may be used:
 - To describe the amenability of a defendant to the court's writ and the geographic reach of that writ; or
 - To identify the subject matter of those actions entertained by a particular court; or
 - To locate a particular territorial 'law area' or 'law district'
- In this topic the term 'jurisdiction' is used in the sense of the power or authority of a court over a particular defendant i.e. 'the amenability of a defendant to the court's writ and the geographical reach of that writ' or what may be described as 'personal jurisdiction'.
- Australian courts will be jurisdictionally competent if they have:
 1. Subject matter jurisdiction over the particular claims and defences
 2. Personal jurisdiction over the parties to the dispute

Common Law

- At common law there are two bases of personal jurisdiction:
 - The presence of the defendant in the territory of the court (i.e. New South Wales in the case of the Supreme Court of New South Wales, Australia in the case of the Federal Court of Australia or the High Court of Australia); or
 - The defendant's voluntary submission to the court's jurisdiction.
- The defendant's ownership of assets in the territory of the court (the forum) is not a basis of common law jurisdiction.
- The fact that a tort was committed in the forum or that the place of breach of a contract was the forum or that the proper law of a contract is the lex fori is not a basis of common law jurisdiction.

Territorial Jurisdiction based on Defendant's Presence

- Common law jurisdiction clearly is established if the defendant is served with the originating process while present in the forum
- A defendant corporation will be present in the forum for the purpose of common law jurisdiction if the corporation carries on business in the forum at some fixed and definite place and the business has been carried on for a sufficiently substantial period: *National Commercial Bank v Wimborne*
- 3 possible bases of territorial jurisdiction
 - Presence when cause of action arises (but leaves prior to commencement of proceedings) – does not establish jurisdiction
 - Presence when served originating process – establishes jurisdiction
 - Even if the D has fleeting or transient presence in the forum; and subject matter has no connection with forum: *HRH Maharanee of Baroda*
 - D who is not present in the forum at the time of issue of the originating process is not subject to the CL J of the court, unless D later enters the forum and is served there with the originating process: *Laurie v Carroll*
 - Presence when writ issues, but departed before service of originating process – establishes jurisdiction if, and only if: *Laurie v Carroll* [NB this was said in obiter]
 - Defendant left NSW knowing the originating process had been issued; or
 - Defendant left NSW for the purpose of evading personal service

Individuals

Gosper v Sawyer (1985) 160 CLR 548

- Materials, p 1
- If there is a lawful basis for the serving of the originating process on the defendant, then that defendant is subject to the jurisdiction of the Supreme Court of NSW
- Mason and Deane JJ said:
 - The general doctrine of the common law is that, in the absence of a submission to the jurisdiction by a defendant, civil jurisdiction is territorial...The ordinary basis of territorial jurisdiction is the personal presence of the defendant within the court's territory

Laurie v Carroll (1958) 98 CLR 310

- Materials, p 2
- Defendant (lived in England) entered into a contractual relationship with the plaintiff in Victoria. Both defendant and plaintiff were theatrical entrepreneurs. Promoting an Australian-wide dance tour
 - While the defendant was in Victoria, a commercial dispute arose between the parties
 - 13 June 1957 – before proceedings could be commenced, solicitor advised the defendant to leave Victoria immediately to avoid Victorian jurisdiction
 - 14 June 1957 – plaintiff commenced proceedings in the Supreme Court of Victoria
- Defendant was present in Victoria when the cause of action arose – on the day before proceedings were commenced
- Held: presence within the territory of the court at a date prior to commencement of proceedings is not a sufficient basis for common law jurisdiction
- Substituted service was not available
 - An order of substituted service requires the court to have jurisdiction over the defendant

Joye v Sheahan (1996) 62 FCR 417

- On 6 December 1994, Mr. S commenced proceedings in the Federal Court. Defendant, Mr. J was present in Australia on that date
 - Attempts had been made to serve the summons
 - 13 December 1994, Mr. J left Australia knowing the originating process had been commenced against him
 - Mr. J had a solicitor and accountant in Australia, both of whom were served with the originating process
- Issue: whether the federal court had common law jurisdiction over the defendant
- Held: yes
 - *Laurie v Carroll*: substituted service could not be ordered where a person was not in the jurisdiction at the time of issue of suit, but had accelerated his departure because of the threat of suit.
 - i.e. where a person is outside the jurisdiction, presence in the jurisdiction at the time of issue of the writ was a necessary element of substituted service.
 - In light of this dicta, mere presence at the time of issue is insufficient.
 - Curious result if mere transient presence of a traveller at the international transit lounge of an Australian airport or in Australian air space, at the time of the issue of the writ, but where that person had no knowledge of the proceedings, let alone any intention to evade service, would entitle an order for substituted service later to be made on that person.