

Resolving Civil Disputes – Final Exam Notes

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Case Management

56 Overriding purpose

(1) The overriding purpose of this Act and of rules of court, in their application to civil proceedings, is to facilitate the **just, quick and cheap** resolution of the real issues in the proceedings.

(2) The court **must** seek to give effect to the overriding purpose when it exercises **any** power given to it by this Act or by rules of court and when it interprets any provision of this Act or of any such rule.

(3) A party to civil proceedings is under a **duty** to assist the court to further the overriding purpose and, to that effect, to participate in the processes of the court and to comply with directions and orders of the court.

57 Objects of case management

(a) the just determination of the proceedings,

(b) the efficient disposal of the business of the court,

(c) the efficient use of available judicial and administrative resources,

(d) the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties.

Courts reluctant to dismiss a case without hearing on merits, but if a party demonstrates repeated failures to comply with directions, it is by their own conduct that they are denied hearing – *Dennis v Australian Broadcasting Corp* [2008] NSWCA 37

- Respondent tried to invoke *JL Holdings* (pre-CPA case where it was held individual justice prevailed over case management) to amend its pleading for the fifth time
- HELD since *JL Holdings*, CPA passed and according to it, court must prioritise overriding purposes

Balancing: 60 Proportionality of costs

In any proceedings, the practice and procedure of the court should be implemented with the object of resolving the issues between the parties in such a way that the cost to the parties is proportionate to the importance and complexity of the subject-matter in dispute.

Issue of balancing 'quick' and 'cheap' with 'just' – *Halpin v Lumley General Insurance Ltd* [2009] NSWCA 372

- Respondent kept certain information confidential and then deployed it during cross-examination; judge excused them from serving affidavits regarding that information and appellant argued court could not because new procedural rules were designed to prevent trial by ambush
- HELD purpose of the Act and rules is to facilitate just, quick and cheap outcome – answer to question of how court should approach this exercise is partly found in s 57, "the Court is entitled, and in appropriate cases obliged, to interfere and give directions to ensure that the broader objects of case management within the court are effected.

DIRECTIONS HEARINGS pg82,87

Directions are to give effect to overriding purpose and objects of CM.

- Directions are not to punish: *Hans Construction*

Balancing act of JUSTICE vs quick and cheap, justice comes first. Directions include:

- Conduct of hearings: s 62; procedural irregularities: s 63.
- UCPR: 2.1 - such directions and make such orders for the conduct of any proceedings as appear convenient for the just, quick, and cheap disposal of the proceedings.

COMPULSORY MEDIATION: pg224 – CPA 2005

Instituting Proceedings

Pick Jurisdiction	Value	Jurisdiction
Supreme: Supreme Court 1970; CPA 2005	> 750k	CL, Equity, Appeals
District: DC Act 1973	100 – 170k	Crim, Civ
Local: Local Court Act 2007	< 100	Small claims, General div
Cross Vesting Jurisdiction of Courts (Cross-Vesting) Act (1987)(Cth)		
Grants Jurisdiction: invest each court with the civil jurisdiction of each of the other courts. Transfers Cases: the legislation also permits the transfer of cases in another court within the scheme, if that court was the most appropriate court.		
Transfer between the courts: s 5; BHP v Schultz.		
GP: "follow the defendant" – BHP v Schultz. Apply: s 4.		
Courts' Discretion - Transfer to Most "Appropriate Court: "this transfer is to the most appropriate court. Transfer is possible if both the transferring court and the court to which transfer is sought have jurisdiction.		
Consider the "Interest of Justice:" in deciding what is the most appropriate forum, the courts should consider the "interests of justice."		
Factors: in considering the interest of justice, the courts will consider; the place where the parties reside; location of the subject matter in dispute; importance of local knowledge; procedures available in different court; likely hearing dates in the different courts.		

Have to commence proceedings by filing a statement of Claim or Summons: UCPR (NSW) r 6.2. Here, the most appropriate is: <ul style="list-style-type: none"> Statement of Claim: likely that there are going to be controversial determinations of fact/law as to who is liable. 	
Originating process <i>must</i> be personally served on each defendant (UCPR 10.20(2))	
STATEMENT OF CLAIM 6.3	SUMMONS 6.3
Requirements: 6.2(3): Served on each defendant with seal of court, case#, listing date	
(a) debt or other liquidated claim, (b) tort, (c) allegation of fraud, (d) breach of duty involving: death of any person; personal injuries to any person; damage to any property, (e) trust, other than an express trust wholly in writing, (f) claim for possession of land, (g) proceedings on a claim for relief in relation to the publication of defamatory matter.	(a) no defendant, (b) appeal or application for leave to appeal, other than proceedings assigned to the Court of Appeal, (c) preliminary discovery or inspection (d) s75 <i>Civil Procedure Act 2005</i> of an agreement for the compromise or settlement of a claim, (e) proceedings on an application for the removal or transfer of proceedings to the court under any Act (f) proceedings (other than proceedings on a claim for damages) on any application made under any Act
Wrongly started in Summons 6.6	Wrongly started in Claim 6.5