

## JURISDICTION

To hear [P]'s case, the Court must have both **subject matter** and **territorial** jurisdiction: *Laurie v Carroll* per Dixon CJ. Issuing proceedings in the correct court is important for strategic and procedural reasons.

### TERRITORIAL JURISDICTION

#### IF VICTORIAN COURT:

- P must show a **nexus or territorial link** between the dispute & Victoria: **s 85(1) Vic Constitution**.
  - If D is **present**, the Ct will have acquired jurisdiction: *Laurie*; OR
  - D may **submit** to jurisdiction (e.g. under contract): *Slater & Gordon v Porteous*; OR
  - Valid **service** was given to D under [SEE BELOW FOR SERVICE REQUIREMENTS]:
    - Interstate: *SEPA*; and D enters an unconditional appearance.
    - Overseas: Order 7 SCR; OR
  - D may **respond** to the action by entering an **appearance**.

#### IF FEDERAL COURT:

- Territorial jurisdiction need not be established. FCA's jurisdiction is wholly dictated by Parliament: **s 19(1) FCA Act**.

### CHALLENGING TERRITORIAL JURISDICTION

D may first try and challenge any irregularities with service. Otherwise:

#### D IS OVERSEAS

- If D is overseas, D may seek to stay proceedings in Australia if it is an **inappropriate forum** ('*forum non conveniens*').
- **TEST:** Is the Australian Ct a "**clearly inappropriate forum**"? (*Voth*; *Oceanic*; *Rowe*)
  - Clearly inappropriate = **oppressive, vexatious or an abuse of process** (*Voth*)
    - **Oppressive** – "seriously and unfairly burdensome, prejudicial or damaging);
    - **Vexatious** – "productive of serious and unjustified trouble and harassment);
- Also look to *Spiliada* factors:
  - Expense and convenience;
  - Where cause of action arose;
  - Where parties arise or carry on business;
  - Where majority of witnesses reside;
  - Which law will apply;
  - Other parties which may be involved or amenable (liable) to a particular jurisdiction;
- **Examples:**
  - In *Voth*, it was clear US was *more* appropriate, but that did not make the Aus Ct *clearly inappropriate*.

## D IS INTERSTATE

- D may seek a **case transfer** to have it moved to [other Ct]: **s 5(2)(b) Cross Vesting Act**.
- **TEST**: The Ct **SHALL** transfer to the other Supreme Court where it appears to the Ct that:
  - (i) relevant proceeding is related to another proceeding, pending in another State/Territory Sup Ct [old Ct], and it is **more appropriate that the proceeding be determined by that other Sup Ct**; OR
  - (ii) it is more appropriate proceeding to be determined in other Sup Ct, having regard to:
    - (A) whether in opinion of first Ct, despite laws re: cross-vesting, whether the proceeding would have been incapable of being instituted in first Ct but capable of being instituted in another Ct; AND
    - (B) extent to which, in first Ct's opinion, matters for determination in relevant proceeding are matters arising from / involving questions as to application / interpretation / validity of law of State/Territory referred to in (A) [new Ct] and not within jurisdiction of first court [old Ct] apart from this Act and any law re: cross-vesting; AND
    - (C) the interests of justice: see **BHP Billiton** factors:
      - Extent to which matters involve application of law of another jurisdiction;
      - Expense;
      - Inconvenience;
      - Weighing costs.
  - (iii) it is otherwise in **interests of justice** that relevant proceeding be determined by another State/Territory Sup Ct.
    - **Rosenboom**: party moved case NSW to VSC b/c 300 similar cases were being heard there.

## MOVING TO THE FEDERAL COURT

- D may seek a case transfer to have it moved from the VSC to a Federal Court (**s 5(1) Cross Vesting Act**) if (a) a proceeding is pending in the Supreme Ct and (b) it appears to the Supreme Court that (ii) having regard to: [**SEE (A)–(C) ABOVE BUT REPLACE SUP CT WITH FED CT**]

### If a transfer has been made

- Per **s 11(2)**, the Ct applies the laws of the State in which it sits.
- However, where right of action arises under **written law** of another state, then *that* law should be applied: **s 11(1)(b)**.

## SUBJECT MATTER JURISDICTION

### A. MAGISTRATES' COURT

- Any claim at CL or equity up to \$100,000: **s 100 MCA**
- Has **general civil jurisdiction** (debts, damages for breach of contract, damage to property or for inquiry and limited neighbourhood disputes)

### B. COUNTY COURT

- Deals with all claims, disputes and civil proceedings, regardless of the type of relief sought: **s 37(1)(a) CCA**. It has **original jurisdiction** in all civil matters.
- No limit on \$\$\$ damages.
- Cheaper and quicker than VSC
- **Cannot hear federal matters**.