

CIVIL PROCEDURE NOTES

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Jurisdiction

(a) Subject matter jurisdiction

FEDERAL COURTS

- High Court
- Federal Court
- Family Court
- Federal Circuit Court

- Participants terminology:
 - Victorian courts: 'plaintiff' & 'defendant'.
 - Federal system (& VCAT): 'applicant' & 'respondent'.
 - Appeals: (State & Federal) 'appellant' & 'respondent'

- **Magistrates Court**
 - Magistrates' Court Act 1989
 - Subject matter jurisdiction: any claim for damages or equitable relief *within* the jurisdictional limit (up to \$100,000) (s 100).
 - From Magistrates' Court - Appeal to the Supreme Court

'Arbitration' in the Magistrates' Court

- Under \$10,000 – goes to arbitration.
- Results in an award.
- Pleadings limit parties to a statement of claim and a defence (O2 MCR).

- **County Court**
 - [County Court Act 1958 \(Vic\)](#)
 - Subject matter jurisdiction "All applications, claims, disputes and civil proceedings regardless of the type of relief sought or the subject-matter as are not by this or any other Act excluded from its jurisdiction" ([section 37\(1\)\(a\)](#)).
 - Previous jurisdictional limit (\$200,000), abolished 1 Jan 2007- Courts Legislation (Jurisdiction) Act 2006.
 - Note **overlap with VSC** jurisdiction

- **Supreme Court**-plenary jurisdiction over VIC
 - [Constitution Act 1975 \(Vic\)](#)
 - [S 75\(1\)](#) A Court shall be held in & for Victoria ...& styled "The Supreme Court of the State of Victoria"...
 - [s 85\(1\)](#)... the court shall have jurisdiction in or in relation to Victoria...& shall be the superior court of Victoria with unlimited jurisdiction

Court of Appeal

- Is the Appeal division of the Supreme Court of Victoria

- Established under the *Constitution (Court of Appeal) Act* (Vic) 1994.
- Hears appeals (including interlocutory) from the Supreme Court and the County Court, and VCAT (decisions of the Dept./President).

Requires Leave

- Leave required - s14A Supreme Court Act
- Test – ‘real prospect of success’ - s14C
E.g. - [Kennedy v Shire of Campaspe \[2015\] VSCA 47](#)
- Procedures - SCR O64

- **High Court**

- [Constitution s 71](#)
- *The judicial power of the Cth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, & in such other Federal Courts as the Parliament creates, & in such other courts as it invests with Federal jurisdiction.*

Appellate jurisdiction

- hears appeals from all judgments, decrees, orders of any justice/s exercising the High Court’s original jurisdiction of any other Federal court exercising Federal jurisdiction, or the Supreme Court of any state...
 - Need special leave to appeal.

Criteria for special leave to appeal [Judiciary Act s35A](#)

- The proceedings involve a question of law of public importance; or
 - The 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 the HCA to consider the judgment

- **Federal Court**

- [S 39B Judiciary Act](#) now gives the Federal Court power to adjudicate all issues under federal legislation

Original jurisdiction “as it is invested with by Parliament” ([s 19](#)).

- Cannot exercise State jurisdiction under Cross-Vesting scheme (*Re Wakim*) but can under **accrued jurisdiction**.
- [S 22](#): FCA may grant all remedies so that all matters in the controversy may be finally determined.
- If you have a *tenable* (*Johnson Tiles*) federal claim (e.g. ACL claims) and a state claim (e.g. tort) arising out of same events/transactions (*Fencott*) or ‘one set of events’ (*Re Wakim*) FCA may hear the state claims too.

VCAT

- VCAT established as a **super tribunal** in 1999 pursuant to the *Victorian Civil and Administrative Tribunal Act* (Vic)1998

- Jurisdiction determined by the nature of the dispute (an Act conferring power to VCAT to determine / review), rather than amount of dispute.

-VCAT bear own cost

Cross vesting of jurisdiction

- **Bottom** “mixed matters”
- State SCs hearing Federal matters (Cross vesting Acts)
- Fed Cts hearing State matters (Accrued jurisdiction)
- **Accrued jurisdiction:**
 - **S 22 Federal Court of Australia Act** allows court to deal with ‘**all matters in the controversy** between the parties’. ‘matters’ = any action arising from same facts or transaction (*Fencott*). Includes ‘state’ matters.
 - **But if federal claim untenable**, no jurisdiction to hear the ‘state’ matter will accrue (*Johnson Tiles v Esso*)
 - Accrued jurisdiction is **discretionary**, and it must appear to the Court that the ‘state’ claim arises from the same facts/transaction (*Stack v Coast*)
- **State courts can exercise Federal jurisdiction** under cross-vesting legislation - **Jurisdiction of Courts (Cross-Vesting) Act 1987**.
 - Federal courts **cannot** exercise state jurisdiction (*Re Wakim*)
- **Transfers between courts** per **Jurisdiction of Courts (Cross-vesting) Act 1987 (Vic)**
 - **5(1)** – from Sup Ct to Fed or Family Court
 - **5(2)** – from Vic Sup Ct to another Sup Ct
 - **5(3)** – from another Sup Ct to Vic Sup Ct
 - **5(4)** – from Fed or Fam Court to Sup Ct
- Courts **must** order transfer under **s 5** of cross-vesting Act where:
 - There are separate but related proceedings pending in a different court, and the court considers it would be more appropriate for all proceedings to be decided by the other court (**s5(2)(b)(i)**);
 - **** “Having regard to” **:**
 - But for cross-vesting Act, where would the case have been heard?
 - Whether the matters arise involving questions of dif jurisdiction
 - The interests of justice (**even if** the others do not apply. Consider ‘connecting factors’ of expense and convenience, used in **BHP v Shultz**)
 - There is only a single proceeding pending, if it would be more appropriate for the matter to be determined in another court (**s 5(2)(b)(ii)**); and
 - **** Having regard to 3 factors above ****
 - It is otherwise in the interests of justice that there be a transfer (**s5(2)(b)(iii)**)
 - Case transfer **within** Victoria allowed by **Courts (Case Transfer) Act 1991**

Territorial jurisdiction

- Territorial jurisdiction acquired in 3 ways:
 1. Presence within the jurisdiction (*Laurie v Carroll*)
 2. D submits to jurisdiction (e.g. *S & G v Porteous-files unconditional appearance*)

3. Valid service within or outside jurisdiction

Service Interstate

- The [Service and Execution of Process Act 1901 \(now 1992\)](#) provides at s15(1) that
- ‘An initiating process issued in a State may be served in another State’.
- Which means that the VSC **does** have jurisdiction over a New South Welshman as long as he is validly served (see “Service”) with the correct SEPA form attached to the writ

Forum non conveniens

- **Test in Aust:** A stay of proceedings (pause) will be granted (in the Australian court where the matter has started) if the Australian court (eg VSC) is a **clearly inappropriate** forum (*Oceanic Sun*)
- This occurs if continuation of proceedings would be (**Voth**):
 - **oppressive** (in the sense of seriously and unfairly burdensome, prejudicial or damaging) or
 - **vexatious** (in the sense of productive of serious and unjustified trouble and harassment) or
 - an **abuse of process**.
- **Factors** used in Australia are those in *Spiliada (as per Voth HCA)*:
 - expense and convenience
 - where did the cause of action arise
 - where do the parties reside or carry on business
 - where do the majority of the witnesses reside (because looking to do convenience for witnesses as well as the parties)
 - which law will apply?
 - are there any other parties involved and are they amenable (i.e. liable to) to any particular jurisdiction
- Other jurisdictions: Stay granted if more appropriate (*Spiliada AC*)
 - **Rowe v Grunenthal GmbH & Ors**

Note: Put in conditional appearance via solitor, r 8.08

How does the transferred matter proceed?

- [S11\(2\)](#) The court applies the laws of the State in which it is sitting
- 2 qualifications
 - Where the right of action arises under the **written law** of another state – then that law gets applied [11\(1\)\(b\)](#). (So the Victorian Wrongs Act / LAA applies)
 - Rules of **evidence** – that are considered appropriate (but must be those of a superior court - not a major issue since UEA)