

LAWS2244 Notes

Parties

Step 1: Starting position is Rule 210 CPRs

- each person whose presence as a party is necessary to enable the court to adjudicate effectively and completely on all issues in dispute in a proceeding must be included as a party to the proceeding.

Step 2: Who are the plaintiffs?

Plaintiff:

- the party claiming relief (r20(1)(a) CPRs)
- A plaintiff may include in the same proceeding as many causes of action as the plaintiff has against a defendant (r200(1) CPRs)
- **Rule 211(1) CPRs: Can have multiple plaintiffs:** Two or more people may be included as plaintiffs
 - if:
 - there are common issue of law or fact; and
 - any of the rights to relief claimed in the proceeding are in relation to, or arise out of, the same transaction or event or series of transactions or events; or
 - if the court orders that they be included.

Step 3: Who are the defendants?

- **Definition:** A defendant is the party against whom relief is sought: r20(1)(b) CPRs.
- Rule 211(1) CPRs: Can have multiple defendants: Two or more people may be included as defendants :
 - if:
 - There are common issue of law or fact; and
 - any of the rights to relief claimed in the proceeding are in relation to, or arise out of, the same transaction or event or series of transactions or events; or
 - if the court orders that they be included.

These parties can be sued:

- Crown
 - ACR ss20 and 21 *Court Procedures Act 2004*
 - Cth ss 56 and 64 *Judiciary Act 1903*
- Corporation
 - S124(1) and 30 (4) *Corporations Act*
- Business name registered under *Business Names Act 2011* Cth, CPR r290

CPR r214(1)- if P seeks relief against D who is liable jointly and with someone else, they do not need to be added to the proceeding

If doubt over whom the P is entitled to relief: rule 215(a) CPRs: Two or more people may be included as defendants in a proceeding if there is doubt about the person from whom the plaintiff is entitled to relief.

- the party inappropriately included can ask the court to order that they be removed as a party: r230

P usually pursues the deepest product

Step 4: What about other parties?

- **Third Party** - Where a defendant wants to:
 - claim a contribution or indemnity against a person who is not already a party to the proceeding (r302(a)); or
 - claim relief against a person who is not already a party to the proceeding that:
 - relates to or is connected with the original subject matter of the proceeding; and
 - is substantially the same as some relief claimed by the plaintiff (r302(b)); or
 - require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the plaintiff and defendant but also between either of them and a person not already a party to the proceeding (r302(c))

Step 5: Other Parties

Legal Disability

- People with a Legal Disability: unless a territory law otherwise provides, a person with a legal disability may start or defend, and carry on, a proceeding only by the person's litigation guardian: r275(1) CPR
- A person may be a litigation guardian of a person with a legal disability for a proceeding if the person:
 - is an individual, the public trustee, or a trustee company under the *Trustee Companies Act 1947*; and
 - is not a person with a legal disability; and
 - has no interest in the proceeding adverse to the interests of the person with a legal disability; and
 - has agreed to be the person's litigation guardian: r276(1)
- A party's litigation guardian who is not a legal practitioner may act only by a solicitor: r275(6)
- Division 2.4.9 person with a disability is a child

Amicus

- Amicus is not a party but offers special expertise on law or facts that the court/parties may otherwise not have access to and is admitted at court's discretion.
- "Now, people may not like to hear it but our essential function is to decide cases between parties. We are not here to reform the law generally. If that notion is about, which it seems to be, it ought to be dispelled. As an incident in deciding cases we may have to develop the law, but our primary function is to decide cases between parties" *Garcia v National Australia Bank Limited* S18/1997, HCA Transcript, 4 March 1998, 39

Intervener:

- Intervener: A person who seeks to step in as a party in proceedings to protect his or her interests where those interests are different from those of the existing parties. (*Encyclopaedic Australian Legal Dictionary*)
- Right to intervene often conferred by legislation for example:
 - The A-G: *Judiciary Act 1903* (Cth) s78A for constitutional issues, do not need leave
 - and s27 *Court Procedures Act 2004* (ACT)- AG for states and cth to intervene if matter that concerns validity of law concerning executive powers
 - the A-G and Human Rights Commissioner: ss 35 and 36 *Human Rights Act 2004* (ACT)
 - AG can intervene in any thing for this act, leave needed
 - ACCC: s87CA of the *Competition and Consumer Act 2010* (Cth)
 - ACCC can intervene

General Issues:

- Let's not forget this general rule:
 - The court may order that a person be included as a party to a proceeding if—
 - (a) the person ought to have been included as a party; or
 - (b) including the person as a party is necessary to enable the court to adjudicate effectively and completely on all issues in dispute in the proceeding: r220

Step 6: Consolidating Proceedings

- **Rule 270 CPRs:** This rule applies if, in relation to 2 or more proceedings, it appears to the court that:
 - a common issue of law or fact arises; or
 - the relief sought in each of the proceedings is in relation to, or arises out of, the same transaction or event or series of transactions or events; or
 - a decision in a proceeding will decide or affect the other proceeding or proceedings; or
 - it is otherwise desirable to make an order under this rule.
- The court may order that:
 - the proceedings be consolidated; or
 - the proceedings be heard together or in a particular sequence; or
 - any of the proceedings be stayed until any other of the proceedings have been decided.

Step 7: Separating Proceedings

- Rule 202 CPRs:
 - If the court considers that including a cause of action in a proceeding:
 - may unfairly prejudice another party; or
 - may delay the conduct of the proceeding; or
 - is otherwise inconvenient;
 - The court may:
 - order separate trials; or
 - make any other order (including about costs) it considers appropriate.
- Rule 217 CPRs:
 - If the court considers that including a party to a proceeding may unfairly prejudice another party, may delay the conduct of the proceeding or is otherwise inconvenient, it may:
 - (a) order separate trials; or

- (b) make any other order (including about costs) it considers appropriate.

Step 8: Third Party Joinder

Under CPR 302, D may file a 3rd party notice if D wants to:

- (a) Claim contribution or indemnity against a party to the proceeding; or
- (b) Claim relief against a person who is not already a party to the proceeding that
 - i. Relates or is connected with the original subject matter of the proceeding; and
 - ii. Is substantially the same as some relief claimed by the plaintiff

Common example- insurer

Jurisdiction

High Court of Australia

Sources of jurisdiction:

- (1) *Judiciary Act 1903* (Cth) s 38: **HCA has exclusive jurisdiction** in:
 - Matters dealing with treaty
 - Suits between states
 - Matters of writ/ mandamus/ prohibition against Cth of Cth agency
- (2) *Judiciary Act 1903* (Cth) s 30- **original jurisdiction under** all matters under constitution or interpretation, and trials of indictable offences against cth
- (3) *Constitution s 75* **original jurisdiction for all matters:**
 - Arising under treaty
 - Affecting consuls/ other representatives of other countries
 - In which the cth, or person suing or being sued on behalf of cth, is a party
 - Between state
 - Mandamus/ prohibition etc

Federal Court

- (1) *Judiciary Act 1903* (Cth) s 39B (1A) the **original jurisdiction** includes any matter
 - Arising under constitution or dealing with interpretation
 - Arising under laws made by parliament, except for criminal matters
 - Essentially any cth legislation
- (2) *Federal Court Act s32(1)*
 - The Federal court has **associated jurisdiction** in respect of matters not within its jurisdiction that are associated within jurisdiction
 - Unlikely to arise in exam

Federal Magistrates Court

Federal Magistrates Act 1999 (Cth) s10- has original jurisdiction as is vested in it by law made by parliament

State Courts

Judiciary Act 1903 (Cth) s 39(2), all courts of states have original jurisdiction for all matters that HCA has original jurisdiction

ACT

Supreme Court Act 1933 ACT s 20(1)

- Supreme Court has both original and appellate jurisdiction necessary to administer justice in Territory

- S20(3) also has inherent jurisdiction over what is incidental and necessary to exercise its jurisdiction
- S48(a) may have further jurisdiction as conferred

ACT Magistrates Court

Magistrates Court Act 1930 (ACT)

- S57(1) jurisdiction on civil disputes between 10k and 250k
- S258(1A)- may grant any relief or remedy that Supreme Court may grant in similar action

Transfer of Proceedings

Look to other notes