

Topic 2: Courts and Jurisdiction

Mode of Trial

- Trial by judge sitting alone – r 47.02
- Trial by judge sitting with jury – r 5.08

Statute of Limitations

- In Vic, Limitation of Actions Act 1958
- Relevant provision includes s 5 of the Act – Contracts and torts
- (1) the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued
 - o (a) actions founded on simply contract, or actions founded on tort including actions for damages for breach of statutory duty
 - o (1AAA) Action for defamation must not be brought after the expiration of 1 year from the date of publication of the matter complained of
 - o (1AA) actions for damages in respect of personal injuries must not be brought after the expiration of 3 years from the date on which the cause accrued
 - o (1A) An action for damages for negligence nuisance or breach of duty
- Need to make sure whole proceeding can't be thrown out because of limitation period expiration
- Distinct from when it is served
 - o 6 years is the general rule: s 5 (breach of contract and tort)
 - o defamation claims – s 5(1AAA)
 - o Action for damages arising from personal injury – s5(1AA)
 - Shorter limitation periods

The Victorian Court Hierarchy

- Australia, as a federation, has several distinct but often overlapping jurisdictions, each with its own court structure.
- Federal Jurisdiction: It extends, within the boundaries set by the Constitution, throughout every State and Territory of the Commonwealth.
- State and Territory jurisdictions: Apply so far as the State legislatures legitimately permit.
- In each State and Territory there are thus two sets of Courts:
 - o Federal Courts; and
 - o State Courts.
- The State and Territory Courts may be vested with federal powers under particular federal enactments, but otherwise they and they alone exercise the judicial powers of the State or Territory concerned.
- Federal Courts, regardless of whether they or their registries are located in any particular State or Territory, can only exercise any federal powers which have been vested in them by the Commonwealth.

- Territorial judicial powers can be vested in federal courts, and federal powers can be vested in State or Territory Courts but State judicial powers cannot be vested in federal courts unless there is a Constitutional amendment or States cede relevant powers to the Commonwealth. This complex position will be considered further under “cross-vesting legislation”.

Typical state judicial hierarchy

- VCAT
- Magistrates Court
- County Court
- Supreme Court
- Supreme Court – Court of Appeal
- High Court

VCAT

- Consolidated numerous ‘specialist tribunals’ in a number of different areas of law
- Fees lower than court system
- VCAT maintains its own rules and regulations: *Victorian Civil and Administrative Tribunal Rules 2008*
 - o Parties may be directed to a mediation, compulsory conference or directions hearing in an attempt to settle a matter
 - o Appeals against decisions of VCAT can be made to SC but on questions of law only: s148
- VCAT hears a range of matters, including:
 - o Anti-discrimination
 - o Purchase and supply of goods
 - o Domestic building works
 - o Guardianship and administration
 - o Legal professional services
 - o Consumer credit
 - o Planning and land valuation
 - o Retail and residential tenancy
 - o Licensing for businesses
 - o State taxation
 - o Transport Accident Commission and Freedom of Information decisions
 - o Small claims disputes
 - o Property division claims

Magistrates Court:

- S100 of Magistrates Court Act 1989
 - o Jurisdictional limit – refers back to definition in s 3
 - o Monetary cap = \$100,000
- S4M – exercises jurisdiction with as little formality and technicality, and with as much expedition, as proper consideration of the matters before the court permit
 - o Engine room of civil jurisdiction

- Processes a lot of cases – from small claims, traffic offences etc.
- Has to get to the heart of the matters
- s109 - Under *s109 of the Magistrates Court Act*, the only avenue for appeals from an order made in civil proceedings is to the Supreme Court, and such an appeal is confined to a question of law.

County Court:

- Concurrent civil jurisdiction with Supreme Court
- Unlimited jurisdiction since 2007 (was \$200,000) under the *Courts Legislation (Jurisdiction) Act 2006 (Vic)*
- S36 gives the County Court the power to hear and determine every proceeding in respect of which jurisdiction is conferred on it, notwithstanding that part of the cause of action arose outside Vic, provided that a material part of the action arose within Victoria
- Procedure in County Court similar to Supreme Court – in fact, Civil rules are virtually identical. Procedures specific to the County Court are found in the *County Court Civil Procedure Rules 2008 (Vic)*

Supreme Court

- Jurisdiction is unlimited provided under s 85 of the *Constitution Act 1975 (Vic)*
- The court is also vested with federal jurisdiction under various federal acts, e.g. *Competition and Consumer Act 2010 (Cth) s138B*
- Supreme Court has ‘subject matter’ jurisdiction
 - Necessary that it have ‘in personam’ jurisdiction over defendant
 - For instance, the Supreme Court of Victoria would not have “jurisdiction” or “power” to hear a dispute between two parties in Milan, Italy who had no connection with the State of Victoria.
 - The jurisdiction of the SC to hear a case against a defendant at common law depends on the defendant being served within the state of Vic
 - At common law, the Supreme Court did not have jurisdiction over a defendant who is interstate
 - At common law, the jurisdiction of the supreme Court extends only as far as the state boundaries: **Laurie v Carroll**
- Jurisdiction ‘in rem’
 - Arise where the court can exercise command or control over the property or thing
 - E.g. jurisdiction in an action in rem arises where the action concerns property in Vic
 - Jurisdiction in an action *quasi in rem* may arise where any property or thing belonging to a defendant is found within Victoria, although the proceedings do not directly concern the property,

Laurie v Carroll (1958) 98 CLR 310 – page 322 onwards

Facts:

- Laurie, the defendant, permanently left Victoria

- The next day, Carroll, the plaintiff, issued a writ in Supreme Court
- Obtained ex parte orders (not in presence of Laurie) – substituted services on Laurie’s solicitors

Issue:

- Did Vic courts have jurisdiction?

Principles

- The jurisdiction of the Supreme Court depends on the amenability of the defendant to the writ
- The common law is that the writ does run beyond the limits of the state, not, the jurisdiction of the Supreme Court only goes to the limit of state boundaries
- Amenability or answerability depends on the defendant’s presence in the jurisdiction at the time of service
- Fundamental to the court’s jurisdiction
- Where a writ cannot be legally served to a defendant, the court can exercise no jurisdiction
- The jurisdiction of the Supreme Court is enlivened or becomes active if the defendant can be served with the writ whilst in the state of Victoria, even if the defendant was in the state of Victoria temporarily or fleetingly, Supreme Court has the power to hear the case against the defendant
- Lord Denning in *HRH Maharanee of Baroda v Wildenstein* [1972] 2 QB 283:
 - o [292] If a defendant is properly served with a writ while he is in this country, albeit on a short visit, the plaintiff is prima facie entitled to continue the proceedings to the end.

Procedure of the Supreme Court

- The procedure of the Supreme Court is defined by the **Supreme Court Rules**
- **Section 29 of the Supreme Court Act** provides that every court exercising jurisdiction in Victoria in any civil proceeding must so exercise its jurisdiction in every proceeding before it as to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of proceedings concerning these matters is avoided. This is the governing philosophy to which our civil justice system is geared.
- Rules of the Supreme Court have the force of statute and a court is not prevented from exercising a jurisdiction given by statute by reason of the absence of rules of procedure regulating the exercise of jurisdiction. The court has ***an inherent jurisdiction*** to regulate its own procedure where the rules are silent.

Abuse of Process

- As part of SC’s inherent jurisdiction to regulate its own procedure, it has an inherent power to prevent abuse of its process

Jago v District Court of NSW [1989]

Facts

- Company director, Jago, charged with a number of offences relating to a company he was a director of
- Each count alleged he fraudulently took and applied a cheque other than for legitimate business purposes

- Charged in October 1981
- The fraudulent transactions occurred between 1976 and 1979
- For one reason, wasn't indicted under 1987 between original committal and 1987
- Made application to stay proceedings as an abuse of process
- Application refused by district court of NSW
- Refusal upheld by HC

Issue

- In absence of express rule saying the court may or must stay proceedings if length of time that has elapsed as x years

Justice Brennan – CLR Report

- Court could stay civil or criminal proceedings if reasonable grounds for abuse of process
- However, proceedings were not an abuse of process
- Prosecution had just finally got to trial to administer criminal law

Supreme Court 'Court of Appeal'

- The Constitution (Court of Appeal) Act 1994 amended the Supreme Court act 1986, establishing a Trial Division of the Supreme Court and a separate Court of Appeal
- Prior to this legislation, the SCV did not have a separate CoA
- Any appeal was heard by the full Court, usually comprised of 3 judges
- None of the judges sitting in the Full Court could be the judge before whom the proceeding on appeal had been conducted, but otherwise, any judge could sit as a member of the full Court
- As a result of the above legislation, the judges of the CoA are known as Judges of Appeal and the head of the CoA is known as the President
- The CoA has jurisdiction to hear and determine inter alia:
 - o All appeals from the Trial Division constituted by a judge;
 - o All applications for new trials;
 - o All appeals from the County Court constituted by a judge;
 - o All appeals, applications, questions and other matters, whether civil or criminal, which, by or under any act are referred to or reserved for the consideration of, or directed to be brought for argument before, the Court of Appeal.

Practice Court

- This court is established to deal with the ancillary business of the court. Interlocutory matters such as applications for amendments, discovery, substituted service, injunctions and other matters are dealt with in this court. Prior to 1987 matters dealt with by the Practice Court were in fact dealt with by judges sitting in 'chambers'. Each hearing conducted in the Practice Court is deemed to be a sitting of the court.
- Judges can still in fact hear urgent matters out of court hours in their own chambers or homes or elsewhere – all are deemed to be a sitting of the court.

The Courts (Case Transfer) Act 1991 (Vic)

- Provides for proceedings to be moved up or down between courts when just and convenient to do so, having regard to gravity, difficulty and importance
- The triggering mechanism as to whether to transfer an individual case may be initiated by a judicial or administrative officer of the court in which the proceeding was commenced or by a party to the proceeding.
- Two major thrusts:
 1. To transfer down from higher courts to lower courts, and up from lower courts to higher courts, groups of cases for the purpose of adjusting the case loads of the courts
 2. To transfer a case up or down when it is just and convenient to do so, having regard to its **gravity, difficulty and importance**. Section 16 (1) of the Act sets out the criteria for individual case transfers:
 - a. The transferor court does not have *exclusive jurisdiction* to hear and determine it
 - b. The transferee court has the appropriate *skill, experience and authority* to hear and determine it having regard to its gravity, difficulty and importance
 - c. It is just and convenient that it be transferred.

Cross-vesting of jurisdiction

- Because Australia has a system of federal and state courts, there was a clear distinction between subject matter jurisdiction
- Apart from the *Service and Execution of Process Act 1992 (Cth)*, which allows a person to file an initiating process in another state (because situation where may have someone who does business in Vic, but not ordinarily domiciled there at time writ is filed or at time plaintiff attempts to serve writ), there was a clear divide of territorial jurisdiction between federal and state courts – i.e. if the defendant was in NSW, the defendant could not be prosecuted in SC Victoria
- It became difficult to know which court a case could be heard in, if the defendant was interstate – jurisdictional problems frequently arose, particularly when commercial transactions transcended the borders of more than one State
- A typical scenario which was likely to raise these issues is as follows:
 - o A plaintiff wishes to institute proceedings against a defendant for breach of contract (a State matter).
 - o In its defence, the defendant wishes to allege that the plaintiff has breached **s18 of the Australian Consumer Law** (which is in a schedule to the **Competition and Consumer Act 2010 (Cth)** (a Federal matter);
- Much legal argument was to be had in determining the correct court to hear and determine a case
- This resulted in inefficiency, uncertainty, delays and unnecessary expenses
- In 1987, both Cth and state parliaments passed identical legislation: *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987 (Cth)*, *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Cth)* and *Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic)*
 - o Conferred jurisdiction of one court to another

- The Act applied to Federal, Family, Supreme Courts of each state, did not apply to Magistrates' or County Courts
- Federal Court could hear state matters and state courts could hear federal matters
- STATE COURTS WERE INVESTED WITH FEDERAL JURISDICTION AND FEDERAL COURTS WERE INVESTED WITH STATE JURISDICTION
- Ultimately, can transfer proceedings in the interests of justice
- Conferral of jurisdiction between one court and another: **Re Wakim (1999)**
 - HC held that for various constitutional reasons, a FC could not be invested with state jurisdiction, it was constitutionally invalid

Jurisdiction of the Courts (Cross-Vesting) Act 1987 (Cth) and (Vic)

S5(2) Where:

- (a) a proceeding (in this subsection referred to as the **relevant proceeding**) is pending in the Supreme Court of a State or Territory (in this subsection referred to as the **first court**); and
- (b) It appears to the first court that:
 - i. the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of another State or Territory and it is more appropriate that the relevant proceeding be determined by that other Supreme Court;
 - ii. having regard to:
 - A: whether, in the opinion of the first court, apart from this Act and any law of a State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court of another State or Territory;
 - B: the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the State or Territory referred to in sub-subparagraph (A) and not within the jurisdiction of the first court apart from this Act and any law of a State relating to cross-vesting of jurisdiction; and
 - C. the interests of justice;

it is more appropriate that the relevant proceeding be determined by that other Supreme Court; or

- iii. it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of another State or Territory:

the first court shall transfer the relevant proceeding to that other Supreme Court.

Possibility that jurisdiction can be transferred either because of:

- Factual reasons (incidents happen somewhere, but parties carry on business somewhere else)
- Legal reasons (because one or more of laws infringed, may have been federal law)
 - Although in Vic, wrongdoer a Queenslander

'In the interests of justice'

- Lord Goff in *Spiliada*
 - o Expense and convenience
 - o Where did the cause of action arise?
 - o Where do the parties reside or carry on business?
 - o Where do the majority of witnesses reside?
 - o Which law will apply?
 - o Are there any other parties involved and are they amenable (ie liable) to any particular jurisdiction?

BHP Billiton Ltd v Schultz (2004)

Facts

- Schultz had asbestos and other related illnesses, claimed that this was the direct result of being exposed to asbestos over a period of time, working with BHP in SA
- Brought an action against BHP and 4 other defendants in the Dust and Disease Tribunal in NSW
- According to Schultz, asbestos was manufactured in NSW, two of the defendants were incorporated in NSW, BHP conducted business in NSW, Schultz lived in SA
- Defendants asked the case to be transferred to SC of NSW, then to SA
- Note: the cross-vesting provisions don't apply to this tribunal

Held

- The jurisdiction of one SC has the same jurisdiction as another unless more appropriate to hear the case elsewhere
- The party that wants to move the case to a more appropriate court does not have to show that the court was inappropriate
- The case will be transferred if it is in the interests of justice
- To decide whether or not in interest of justice, the courts adopt a nuts and bolts management decision – i.e. what is the more appropriate court?
- Usually the court asks this question: which is the more natural forum to hear this case, which has a closer connection to hear this case?

Beston Parks Management Holding Pty Ltd &Ors v Sexton &Anor [2008]

Facts:

- Swiss Bank, only with business in NSW, lent money to Australians to buy property in QLD
- Defendant applied to have matter transferred to QLD

Held

- Following *Spiliada* factors, relevant law is that of QLD
- Most parties/witnesses/documents in QLD and less expensive/inconvenient to run in Queensland

Note: Issue is simply – what do the interests of justice require?

Irwin v State of Queensland [2011] VSC 291 (27 June 2011)

Facts

- Mum of police officer whose son killed in Queensland
- Mum living in NT, moved to Melbourne, commenced proceedings in SC of Vic
- Queensland police sought to have matter transferred to QLD

- Types of considerations:
 - Where accident happened
 - Where most of the witnesses will be
 - If there is an expert required
 - Where they reside or apply their trade
 - Where parties' legal representatives are, parties' relationships arose in particular jurisdiction
 - Terms of contract
 - Corresponding proceedings initiated (multiple parties suffered loss)
- Is it in the interests of justice: s 5(2)(iii)?