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Civil Process, Open Justice, Fairness, Case Management

Principles

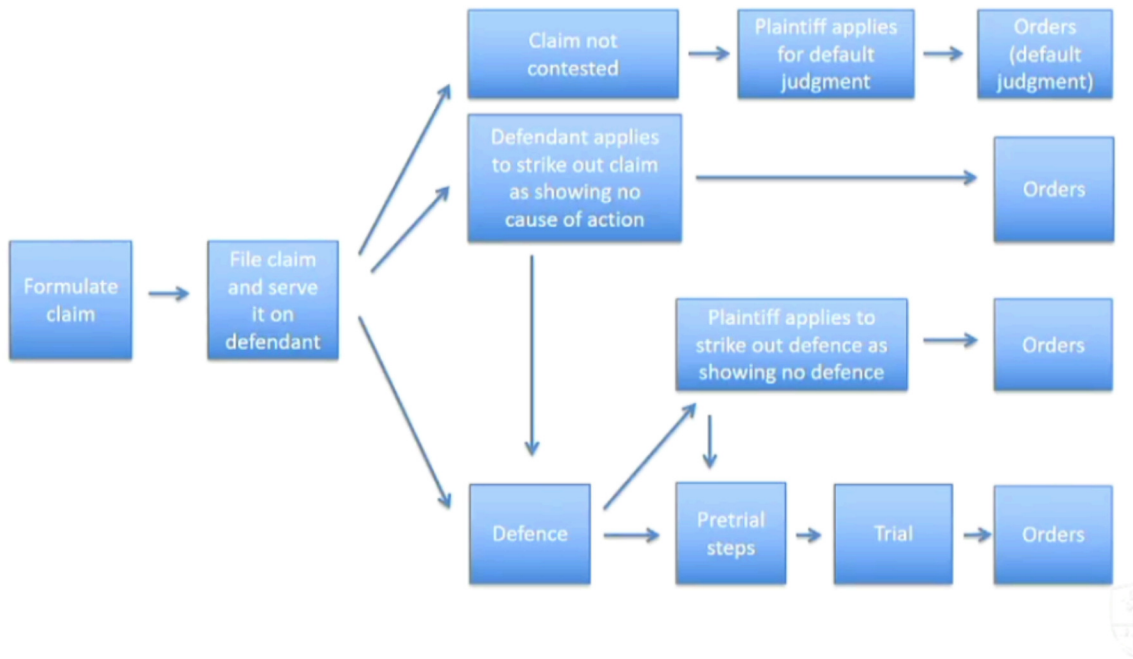
- **Jurisdiction**
 - Gives rise to an inherent power within the court system. Likewise, the power of the court gives rise to an inherent jurisdiction **Grassby**
 - If found to be outside limited jurisdiction, orders can be removed **Pelechowski**
- **Open justice**
 - **Hogan v Hinch**
 - Court have to be **accountable**
 - Means to an end, **not an end in itself**
 - Benefits from **public and professional scrutiny**
 - Critical to public **confidence**
- **Fair trial**
 - If there is a “substantial wrong or miscarriage” Appeal Court can determine orders to be cancelled and new trial called **Stead 1986 + Mastronardi v NSW**
- **Adversarial System of Litigation**
 - **John Pfeiffer Pty Ltd**
 - litigants who resort to a court to obtain relief must **take the court as they find it**. Cannot ask for tribunal etc that is not there
 - P cannot ask to adopt procedures not already there
 - Matters that affects **existence, extent, or enforceability of rights** are substance, not procedure
 - **Costs**
 - **Baulderstone Hornibrook Engineering v Gordian Runoff.**
 - **Costs follow the event** - party who **loses** the case usually pays 'party-party costs' (the legal costs of the other party), although court has discretion to decide differently

Difference between procedural and substantive law

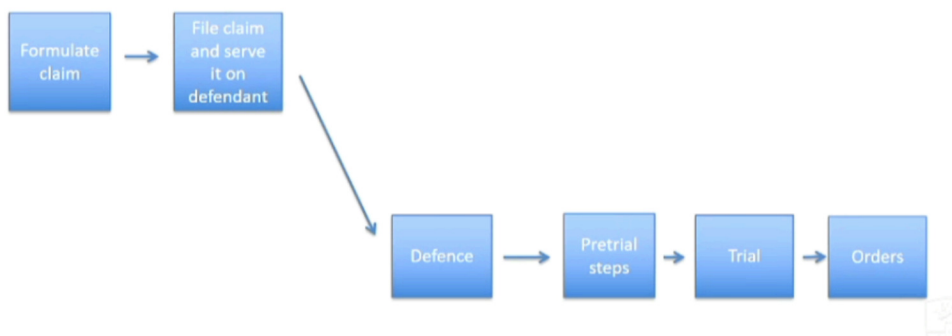
- **John Pfeiffer Pty Ltd v Rogerson (2000)**
 - litigants who resort to a court to obtain relief must take the court as they find it. Cannot ask for tribunal etc that is not there
 - P cannot ask to adopt procedures not already there
 - Matters that affects existence, extent, or enforceability of rights are substance, not procedure

<i>Pelechowski v Registrar (1999)</i>	<p>Regulating abuse of powers - 'Necessary' is defined as 'reasonably required' and not 'essential'</p> <p>Jurisdiction - beyond, cannot order on</p>	<p>Facts: The other respondent violated the order and was held in contempt. Appealed on the basis that the District Court had no inherent jurisdiction to make that order.</p> <p>Held: 'Necessary' is read not as 'essential' but as 'reasonably required'. However, the order in this case was beyond that broader meaning as well - it operated in the nature of an additional security which was not restricted by any undertakings by the appellant or anything. Thus, it was beyond the limited jurisdiction and is removed</p>
<i>John Pfeiffer Pty Ltd v Rogerson (2000)</i>	Difference between procedural and substantive law	<ul style="list-style-type: none"> - litigants who resort to a court to obtain relief must take the court as they find it. Cannot ask for tribunal etc that is not there - P cannot ask to adopt procedures not already there - Matters that affects existence, extent, or enforceability of rights are substance, not procedure
<i>Hogan v Hinch (2011)</i>	Principle of Open Justice	<ul style="list-style-type: none"> - courts are accountable - Means to an end, not an end in itself - Benefit from public and professional scrutiny - Critical to public confidence - "serves to maintain that standard. However, it is not absolute"
<i>Mastronardi v NSW</i>	<p>Open Justice</p> <p>a court can order a new trial if it appears to the court that "some substantial wrong or miscarriage" has been occasioned</p>	<p>Facts: Mastonardi was a prisoner who was assaulted by fellow prisoners. He brought proceedings in negligence against the NSW because prison officers failed to provide protection against a threat of a physical attack. The claim was rejected and Mastonardi alleged a miscarriage of justice.</p> <p>Held: a court can order a new trial if it appears to the court that "some substantial wrong or miscarriage" has been occasioned (UCPR r 51.53). In this case, the plaintiff did not have a fair trial since part of the evidence was misapprehended and part was not relied upon.</p>
<i>Stead v State Government Insurance Commission (1986)</i>	Fair Trial	<ul style="list-style-type: none"> - <u>Supreme Court Rules 1970</u> = appeal court can order a new trial for "some substantial wrong or miscarriage" occasioned

Some major stages in civil proceedings



The usual course of litigation



Stages of Litigation

1. Formulate the claim: **Statement of claim/Summons**

- Orders P claims is entitled
- Materials facts which give rise to
- the cause of action

2. Serve the claim

- D who lives overseas can be validly served there, only in particular circumstances

3. Apply for default judgment

- D will either defend claim or not
- If does not defend, will suffer default judgment

OR

3. Defendant files notice of appearance

- D accepts court has jurisdiction and chooses to defend, must formally submit to jurisdiction of court through "NOA"

4. D strikes out claim

- orders are for claim to be dismissed

OR

4. D files defence

- gives notice on grounds which to defend the claim
- "defence" to statement of claim
- Must respond to each allegation
 - These are called "pleadings"

5. Pretrial steps

- "discovery" parties make available documents relevant to the issue
- Witness statements: including affidavits
- Subpoenas for production
 - Orders directed to persons other than the parties
 - Once produced, may be inspected by the parties (subject to privilege)

Jurisdiction

- Gives rise to an inherent power within the court system. Likewise, the power of the court gives rise to an inherent jurisdiction **Grassby**
- If found to be outside limited jurisdiction, orders can be removed **Pelechowski**

Court	Info	Legislation	Limits
NSW STATE COURTS			
Supreme Court of NSW	<p>Highest state court</p> <p>Appellate Divisions:</p> <ul style="list-style-type: none"> - Court of Appeal (Civil, appellate judges) <ul style="list-style-type: none"> • Supreme, District, Land & Environment, Tribunals - Court of Criminal Appeal - If very important principle of law, full bench of 5 judges will sit in either 	<u>Supreme Court Act 1970</u>	<ul style="list-style-type: none"> - Unlimited civil jurisdiction - Most serious criminal matters - Everything not within exclusion jurisdiction of federal courts - Equity Division: commercial, corporations, equity, trusts, family provisions legislation <p>> \$750,000</p>
Industrial Relations Commission + Industrial Court of NSW	<p>Equivalent Status to Supreme Court</p> <p>Has an appellate division</p>	<u>Industrial Relations Act 1996</u>	<ul style="list-style-type: none"> - employment law - Industrial relations - Industrial disputes
Land and Environment Court of NSW	<p>Equivalent Status to Supreme Court</p>	<u>Land and Environment Court Act 1969</u>	<ul style="list-style-type: none"> - Environmental - Development - Building + planning disputes
District Court of NSW	<p>Intermediate court of NSW</p>		<ul style="list-style-type: none"> - civil + criminal - < \$750K - Can deal with larger amounts if parties agree - Unlimited jurisdiction in claims for damages for personal injuries from vehicle or work
Local Court of NSW	<p>2 x divisions: 1. Small Claims and 2. General</p>	<u>Local Court Act</u>	<ol style="list-style-type: none"> 1. <10K 2. 10K - 100K <p>Jurisdictional limit of 60K for personal injury or death claims</p>

Court	Info	Legislation	Limits
Workers compensation commission	Workers compensation claims (not miners)	<u>Workplace Injury Management and Workers Compensation Act 1998</u>	
NSW Civil and Administrative Tribunal	Super Tribunal. Consolidated 22	<u>Civil and Administrative Tribunal Act 2013</u>	
FEDERAL COURTS			
High Court of Australia	Cth judicial power - only Appellate jurisdiction	Commonwealth Judicial Power ONLY: <u>S71 of the Australian Constitution</u> Jurisdiction: <u>S75 and 76 of the Constitution</u> Judiciary Act 1903 exercise of power provided in S77 Appellate Jurisdiction: <u>S73 of Constitution + Judiciary Act</u>	(JA 1903) - matters arising under treaty - between states - Between pardoned on behalf of states, people to state - Cth between State, or person behalf of
Federal Court of Australia	<ul style="list-style-type: none"> - civil matters, including those under the constitution - Appellate jurisdiction: 3 x judges to appeal judgments of single judge <ul style="list-style-type: none"> - Certain Supreme Courts of NSW 	<u>Federal Court of Australia Act (1976)</u> Various State Statutes	<ul style="list-style-type: none"> - industrial disputes - Corporations - Trade practices - Judicial review - Federal tax matters
Family Court of Australia		<u>Federal Court of Australia Act (1976)</u>	
Federal Circuit Court of Australia	- less complex federal disputes - previously heard in FC and FCA		<ul style="list-style-type: none"> - Family Law - Child Support - Admin Law - Bankruptcy - Copyright - Consumer Protection Law - Trade Practices - Privacy law - Unlawful discrimination - Migration - Industrial law - Fair Work Division

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Intro to Criminal Procedure

Key Principles:

- The law regulates criminal justice actors and processes through procedure
- Procedure focuses on the actions of state officials which involve or authorise the use of force and interference with liberty
- Procedure supports the substantive law - substantive cannot perform functions without it
- Adversarial nature of our system influences criminal procedure
 - Balance between state power and rights of the individual underpinned by CL principle of **fair trial** which **includes fundamental principle**
 - = **it is the duty of the prosecution to prove accused's guilt**
 - Prosecution bears onus of proof, accused cannot be compelled to give evidence for prosecution **Lee (No 1)**
 - derived from **Woolmington v DPP** "**golden thread**" **always to be seen** - duty of prosecution to prove prisoners guilt subject to insanity and subject to statutory exception
- The right to legal representation **Dietrich**

> **Procedural law put into action through acts of individuals exercising discretion**

- central question in civil and criminal is to what extent to regulate exercise of discretion

Proceedings upon indictment: presentment, or ex officio information are pleas of the crown

- Serious, highest crimes, affect State, gravest liabilities

Ex Officio: Even if committal proceedings have not taken place, or if a magistrate has found during the committal proceedings that there is insufficient evidence to put a defendant on trial, the Director of Public Prosecutions may file a special information (known also as an indictment), called an ex officio information, against a person and that person must then stand trial in the normal manner in the District or Supreme Court.

Prosecution for an offence punishable summarily: proceeding between subject and subject

- Deal with in manner adopted by Legislature, expedient, efficient, statutory regulations, maintenance of quiet and good order of society

Common Law principles underlying criminal justice

- i. Right to personal liberty
- ii. Presumption of innocence
- iii. No detention without legal cause (related to (i) – the right to personal liberty).
- iv. No punishment without conviction by due process.
- v. A fair trial: *Dietrich v The Queen* (1992) 177 CLR 292.
- vi. Individualised justice and consistency in decision making.
- vii. Special provision for young people.