

S2 2020 LLB306 Civil Procedure

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KEY	
CASES	Key cases
Study nuggets	Legislation
Examples	

Week 1 - Module 1 Civil Procedure: Introduction and Overview

Part 1 Introduction

Part 2 Overview of the Litigation Process

Part 3 Costs, Disclosure and Assessment

PART 2 - OVERVIEW OF THE LITIGATION PROCESS

Adversarial system of justice	<ul style="list-style-type: none"> Two parties to a dispute Judge acts as neutral third-party umpire with parties controlling substance of proceedings Emphasis on the presentation of oral argument by Counsel
Compare to an 'Inquisitorial' system of justice	<ul style="list-style-type: none"> Judge as inquisitor Legal proceedings as a continuous series of meetings Emphasis on written submissions by lawyers rather than oral arguments No central hearing like a trial in an adversarial system More hierarchical than participatory
Procedural reforms	<p>Gives courts greater control over litigation (case management). Movement towards minimising the use of courts and the near removal of jury trials. UCPR introduced to reduce costs and delay.</p> <ul style="list-style-type: none"> Uniform Civil Procedure Rules 1999 (Qld) ('UCPR') <ul style="list-style-type: none"> Personal injuries legislation: <ul style="list-style-type: none"> Motor Accident Insurance Act 1994 (Qld) Workers Compensation and Rehabilitation Act 2003 (Qld) Personal Injuries Proceeding Act 2002 (Qld) <p>Civil Liability Act 2003 (Qld)</p>
UCPR	<ul style="list-style-type: none"> Uniformity of procedure for Supreme, District and Magistrates Courts in Queensland Simplified procedures New Forms <p>UCPR R 5 Philosophy – overriding obligations of parties and court</p> <p>1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.</p>

- Accordingly, these rules are to be applied by the courts with the **objective of avoiding undue delay, expense and technicality** and facilitating the purpose of these rules.
- In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.
- The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.

Aon Risk Services Australia Limited v Australian National University (2009) 239 CLR 175; [2.6.8C]

- Overruled the decision in *LJ Holdings* HC elevated the importance to be attributed to case flow management considerations and questions of the proper use of the court resources.
- The court was dealing with the corresponding ACT rule to the Qld rule 5, and the court said that these philosophy provisions must have been inserted with the decision in *LJ Holdings* in mind.
- HC acknowledged that a just resolution remains the paramount purpose but what is a 'just resolution' must be understood in light of the purposes and objectives that are stated.
- The speed and efficiency in the sense of minimum delay and minimum expense are essential to a just resolution of proceedings.
- The decision in *Aon* has been applied consistently and there are cases that refer to it in conjunction with the philosophy provisions for the relevant jurisdiction.
- In Qld, courts will regularly refer to r 5 and *Aon* when they're determining when to apply or interpret one of the rules of the UCPR.

KEY PRACTICE DIRECTIONS

Note: **PD 4 (2030)** - Governs case flow management in the civil jurisdiction in the Supreme Court.

Case Management – Supreme Court of Qld Practice Direction	
PD 4 (2020)	<p>Governs case flow management in the civil jurisdiction in the Supreme Court. It endeavours to implement a system to give effect to UCPR rule 5.</p> <ul style="list-style-type: none"> Establishes a system to monitor the progress of individual proceedings against predetermined timelines and to intervene when a proceeding isn't progressing satisfactorily. If a proceeding doesn't meet the timelines, the court will get involved by giving directions to ensure that the matter does progress appropriately or issues sanctions for non-compliance.
PD 8 (2001)	<p><i>Family Provision Applications</i></p> <ul style="list-style-type: none"> Governs family provision proceedings. Requires applicants to file a dispute resolution plan designed to exhaust the prospects of a consensual resolution of the application
PD 10 (2011)	<p><i>Use of Technology for the Efficient Management of Documents in Litigation</i></p> <ul style="list-style-type: none"> Parties must prepare a document management plan outlining the uses of technology in the litigation.
PD 17 (2012)	<p><i>Case flow management – Civil Jurisdiction</i></p> <ul style="list-style-type: none"> [2.2] Establishes a general system to facilitate the just and timely disposition of proceedings, with minimum necessary commitment of resources by the court and litigants, by monitoring the progress of individual proceedings against pre-

	<p>determined timelines and intervening when a proceeding is not progressing satisfactorily.</p> <ul style="list-style-type: none"> • [2.4] Based on expectation that most proceedings will be ready for trial within 180 days of filing of defence. • [5ff] P must show cause for lack of progress in the proceeding and request a trial date if the proceeding as not been settled.
PD 18 (2018)	<p>Courts required to apply UCPR with objective of avoiding undue delay expense and technicality, and of facilitating the purpose of the rules</p> <ul style="list-style-type: none"> • See also UCPR R 5

The overriding purpose (of litigation)

- The court must manage litigation to bring cases to an early and economical disposition consistently with the needs of justice [UCPR R 5](#)
- UCPR r 5 This important provision expressly provides that the purpose of the UCPR is to “facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.”

PART 2 - OVERVIEW OF A CIVIL PROCEEDING

1. Pleadings
2. Fact finding
3. Judgment
4. Enforcement
5. Costs

1. Pleadings