

Module One - Introduction, adversarial system and case management

Law of Civil Procedure

- Civil procedure rules differ in each jurisdiction (state) but are largely similar
- Civil procedure is concerned with the rules governing the way in which cases before the courts are conducted
 - Rules and procedures that must be followed when conducting civil litigation in the various courts
- Entrenched within this procedure are important questions about access to justice (does the process work fairly for all?)
- Law of civil procedure found in:
 - Common law
 - Statute, in QLD:
 - *Supreme Court of Queensland Act 1991*
 - *Civil Proceedings Act 2011*
 - *Queensland Civil and Administrative Tribunal Act 2009*
 - Delegated legislation (court rules)
 - *Uniform Civil Procedure Rules 1999*
 - *Federal Court Rules 2011 (Cth)*
 - *High Court Rules 2004 (Cth)*
- This course - court rules in Supreme, District and Magistrate courts of QLD
 - Uniform Civil Procedure Rules (UCPR) - key source of rules
 - Also civil procedure in QCAT and Fed court

Uniform Civil Procedure Rules

- UCPR is delegated legislation made under *Supreme Court of Queensland Act 1991* Part 10 (Note the 'rules committee')
 - Rules committee decides on any changes that are needed to UCPR, changes then, on recommendation of rules committee, are legislated through usual process
- UCPR in effect since 1st July 1999
- UCPR apply generally across the Supreme Court (Trial Division and Court of Appeal), District Court and Magistrates Courts in QLD
- 'Uniform' civil procedure rules does not mean uniform amongst states - it means they apply uniformly through the courts in QLD

Systems of Law

Two dominant models in western world:

- Common law/adversarial system (e.g. ours, UK, USA, NZ)
 - Application of judge-made case law, but heavy modern reliance on detailed statutory law
 - Have doctrine of precedent - e.g. *Mabo* - rejected the precedence of Terra Nullius, created precedent that Aus continent was not devoid of people at time of settlement so was not terra nullius, so to certain extent they must recognise laws of those people
 - Parties control the dispute (decide what the relevant issues are and evidence is)

- Judge is relatively passive (not a decision maker in terms of which witnesses will be called etc - the parties determine this)
- Civil law/inquisitorial system (e.g. European nations, France, Germany)
 - Source of law is code (statute law) - judiciary do not have ability to create new law
 - Role of judiciary is proactive and inquisitorial
 - Less formal court room procedures (to a minor extent, mostly to do with the fact that the judge is more interactive with the parties as they are actively involved in defining key issues and determining the evidence to be heard)
- Hybrid System?
 - Tends to happen in lower level courts
 - Judiciary in AUS is more active, participatory than it used to be
 - Aspects of inquisitorial process have been implemented in QCAT
 - E.g. Tribunal members may question parties in detail to ascertain relevant facts and law - does not generally happen in other courts
 - Parties generally not allowed legal representation in QCAT so need assistance of QCAT members to help them understand the relevant facts of the law etc (can still apply for legal representation in some areas of law)