

MLP391

Civil Procedure and Dispute Resolution

Comprehensive Notes
2025

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Topic 1: Introduction to Procedural Law & the Civil Justice System

What is Procedural Law?

- Procedural law is the law governing the conduct of proceedings before the court
- Procedural and evidential rules are commonly called "adjectival" rules. They are meant to regulate the way in which substantive rights and obligations are claimed, proved and enforced, without impacting on the definition of those substantive rights.
 - the elements of a contract (substantive law) vs the mechanism for bringing a claim for breach of contract (procedural law)
- "Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulate the conduct and relations of courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated." Gibbs CJ, Aickin, Wilson and Brennan JJ citing *Salmond on Jurisprudence* in *Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc* (1981) 148 CLR 170 at 176-7

Chapter III Courts

- Chapter III Commonwealth Constitution - Judicature
 - sets out the judicial power of the Commonwealth
- s 71 - The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

The Concept of the Courts' Jurisdiction

- jurisdiction is the courts' authority to hear and determine cases
- described by HC as '[t]he scope of a court's power to examine and determine facts, interpret and apply the law, make orders and declare judgment': *Wardley Australia Ltd v Western Australia* (1992) 175 CLR 514
- for a court to have jurisdiction
 - an action needs to fall within the **subject matter jurisdiction** of the court, and
 - the issues that a court can determine and monetary limits which may apply
 - the **territorial (or geographic) jurisdiction** of the court
 - acquired by valid service of originating process. Service may be within or outside the state or Australia
 - defendant may also agree to submit the courts' jurisdiction

Subject Matter Jurisdiction of Victorian Courts

Supreme Court of Victoria

- *Constitution Act 1975* (Vic)
 - s 75(1) - A Court shall be held in and for Victoria and its dependencies which shall be styled "The Supreme Court of the State of Victoria"...

- **s 85(1)** - Subject to this Act the Court shall have jurisdiction in or in relation to Victoria its dependencies and the areas adjacent thereto in all cases whatsoever and shall be the superior Court of Victoria with unlimited jurisdiction
- **Supreme Court Act 1986 (Vic)**
 - **s 1** - The purpose of this Act is-
 - **(a)** to amend and consolidate the law relating to the Supreme Court; and
 - **(b)** to amend the law of Victoria insofar as it relates to the procedure of the Supreme Court
 - **s 29** - Law and equity to be concurrently administered
 - **(1)** Subject to the provisions of this or any other Act, every court exercising jurisdiction in Victoria in any civil proceeding must continue to administer law and equity on the basis that, if there is a conflict or variance between the rules of equity and the rules of the common law concerning the same matter, the rules of equity prevail.

County Court of Victoria

- **County Court Act 1958 (Vic)**
 - **s 37(1)** - The court has jurisdiction to hear and determine - (a) all applications, claims, disputes and civil proceedings regardless of the type of relief sought or the subject-matter as are not by this or any other Act excluded from its jurisdiction...

Magistrates' Court of Victoria

- **Magistrates' Court Act 1989 (Vic)**
 - **s 100(1)** - The Court has jurisdiction, subject to subsection (2)—
 - **(a)** to hear and determine any cause of action for damages or a debt or a liquidated demand if the amount claimed is within the jurisdictional limit; and
 - **(b)** to hear and determine any claim for equitable relief if the value of the relief sought is within the jurisdictional limit; and
 - **(c)** to hear and determine, with the consent in writing of the parties—
 - **(i)** any cause of action for damages or a debt or a liquidated demand, irrespective of the amount claimed; and
 - **(ii)** any claim for equitable relief, irrespective of the value of the relief sought; and
 - **(ca)** to hear and determine applications made under section 57B of the Victorian Civil and Administrative Tribunal Act 1998; and
 - **(d)** to hear and determine any other cause of action if the Court is given jurisdiction to do so by or under any Act other than this Act.
 - **s 3** (Definitions) - *jurisdictional limit* in a civil proceeding means \$100 000

Subject Matter Jurisdiction of Federal Courts

- Commonwealth judicial power is to be vested in the High Court of Australia, in other federal courts created by Parliament and in such other courts as parliament invests with Federal jurisdiction

High Court of Australia

- **Australian Constitution**
 - **s 75** - **Original jurisdiction of High Court**

In all matters:

- (i) arising under any treaty;
 - (ii) affecting consuls or other representatives of other countries;
 - (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
 - (iv) between States, or between residents of different States, or between a State and a resident of another State;
 - (v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;
- the High Court shall have original jurisdiction.

○ **s 76 - Additional original jurisdiction**

The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (i) arising under this Constitution, or involving its interpretation;
- (ii) arising under any laws made by the Parliament;
- (iii) of Admiralty and maritime jurisdiction;
- (iv) relating to the same subject-matter claimed under the laws of different States.

○ **s 73 - Appellate jurisdiction of High Court**

The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences:

- (i) of any Justice or Justices exercising the original jurisdiction of the High Court;
- (ii) of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council;
- (iii) of the Inter-State Commission, but as to questions of law only;

and the judgment of the High Court in all such cases shall be final and conclusive.

• *Judiciary Act 1903 (Cth)*

○ **s 30 - Original jurisdiction conferred**

In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction:

- (a) in all matters arising under the Constitution or involving its interpretation; and
- (c) in trials of indictable offences against the laws of the Commonwealth.

○ **s 38 - Matters in which jurisdiction of High Court exclusive**

Subject to sections 39B and 44, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States in the following matters:

- (a) matters arising directly under any treaty;
- (b) suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;
- (c) suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State;
- (d) suits by a State, or any person suing on behalf of a State, against the Commonwealth or any person being sued on behalf of the Commonwealth;
- (e) matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal court.

○ **s 39 - Federal jurisdiction of State Courts in other matters**

- **(1)** The jurisdiction of the High Court, so far as it is not exclusive of the jurisdiction of any Court of a State by virtue of section 38, shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section.
- **(2)** The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject - matter, or otherwise, be invested with federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38, and subject to the following conditions and restrictions:
 - **(a)** A decision of a Court of a State, whether in original or in appellate jurisdiction, shall not be subject to appeal to Her Majesty in Council, whether by special leave or otherwise.
 - **(c)** The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.
- **s 40 - Removal by order of the High Court**
 - **(1)** Any cause or part of a cause arising under the Constitution or involving its interpretation that is at any time pending in a federal court other than the High Court or in a court of a State or Territory may, at any stage of the proceedings before final judgment, be removed into the High Court under an order of the High Court, which may, upon application of a party for sufficient cause shown, be made on such terms as the Court thinks fit, and shall be made as of course upon application by or on behalf of the Attorney - General of the Commonwealth, the Attorney - General of a State, the Attorney - General of the Australian Capital Territory or the Attorney - General of the Northern Territory.

Other Federal courts

- In addition to the High Court of Australia, s 71 provides that the judicial power of the Commonwealth shall be vested in 'such other Federal Courts as the Parliament creates'
- **s 77 - Power to define jurisdiction**
With respect to any of the matters mentioned in the last two sections the Parliament may make laws:
 - **(i)** defining the jurisdiction of any federal court other than the High Court;
 - **(ii)** defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States;
 - **(iii)** investing any court of a State with federal jurisdiction.
 - state courts can be invested with federal judicial power

Federal Court

- established by the [Federal Court of Australia Act 1976 \(Cth\)](#)
 - **s 19 - Original jurisdiction**
 - **(1)** The Court has such original jurisdiction as is vested in it by laws made by the Parliament.
 - **(2)** The original jurisdiction of the Court includes any jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts.

Federal Circuit and Family Law Court

- established by the [Federal Circuit and Family Law Court of Australia Act 2021 \(Cth\)](#)

Accrued jurisdiction

- Federal courts created in accordance with s 77 can only hear claims arising under state or territory law, or at common law, which are part of the matter or controversy with respect to which the court has federal jurisdiction
- But federal courts may exercise an accrued jurisdiction over claims arising under state or territory law, or at common law when they are part of the (federal) matter or controversy before the court
- *Federal Court of Australia Act 1976 (Cth) s 22*: The Court shall, in every matter before the Court, grant, either absolutely or on such terms and conditions as the Court thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him or her in the matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters avoided.
- similar provision contained in FCFCOA Act s 43
- Accrued jurisdiction relies on the idea that the federal part of the claim and the non-federal part of the claim are part of the same 'matter' i.e. the same justiciable controversy
- "What is and what is not part of the one controversy depends on what the parties have done, the relationships between or among them and the laws which attach rights or liabilities to their conduct and relationships. The scope of a controversy which constitutes a matter is not ascertained merely by reference to the proceedings which they may institute, but may be illuminated by the conduct of those proceedings and especially by the pleadings in which the issues in controversy are defined and the claims for relief are set out.": *Fencott v Muller* (1983) 152 CLR 570 at 608 (per Mason, Murphy, Brennan and Deane JJ)
 - HC found that FCA has jurisdiction to determine the whole of a controversy between the parties, even if some part of the controversy would otherwise be outside its jurisdiction
- Courts exercising federal judicial power can only hear a matter arising under state law by exercising accrued jurisdiction. Such matters **must** involve the exercise of federal subject-matter jurisdiction.

Cross-vesting of jurisdiction

- cross-vesting regime established by state and federal legislation in 1987
- facilitates the vesting (or conferral) of the subject-matter jurisdiction of participating courts with one another
- *Jurisdiction of Courts (Cross-vesting) Act 1987 (Vic)*
- The regime sought to provide:
 - 1. State Supreme Courts with the jurisdiction of all the other state Supreme Courts;
 - 2. State Supreme Courts with the jurisdiction of the Federal Court (except native title, industrial laws);
 - 3. The sharing of jurisdiction between the Federal and (now redundant) Family Court;
 - 4. The Federal Court with the jurisdiction of the State Supreme Courts.
- Federal Courts cannot determine matters that fall within the subject matter jurisdiction of the State Supreme Courts unless it is exercising accrued jurisdiction.
 - Commonwealth Parliament can make laws defining the jurisdiction of federal court and **only with respect to** those matters set out in the Constitution -> CP cannot confer state jurisdiction on a federal court: *Re Wakim; ex parte McNally* (1999) 198 CLR 511

Sources of Civil Procedure

- principles enshrined in procedural legislation
- the rules of court
 - *Supreme Court (General Civil Procedure) Rules 2025* (Vic) set out the practice and procedure of the Supreme Court of Victoria
 - judges empowered to make Rules
 - Practice Notes also use to supplement the general rules and provide guidance on conduct of proceedings
- the inherent jurisdiction of superior courts and
 - inherent jurisdiction to regulate their own processes to ensure that they do not become a source of injustice or render proceedings ineffective or an abuse of process
 - “A superior court always had an inherent power to prevent an abuse of its process and to maintain its authority. Such a power is intrinsic to a superior Court; it is its very life blood, its very essence, its imminent attribute. Without such a power, the Court would have form, but lack substance”... Such powers flowing from the court's inherent jurisdiction may, when exercised, appear on the face of things to go in enforcement of the court's orders as between the parties to a proceeding: *Marriner v Smorgon* [1989] VR 485, 492-3 Murphy J
- common law safeguards
 - Principles which arose in English common law and Court of Chancery are now reflected in procedural legislation and rules. One example is the right to a fair trial which is originated in common law and is reflected in procedural law and rules and expressly enshrined in Victoria's *Charter of Human Rights and Responsibilities Act 2006* s 24(1)