

MLP391 CIVIL PROCEDURE AND DISPUTE RESOLUTION EXAM NOTES

UPDATED MAY 2026

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TOPIC ONE: INTRODUCTION TO PROCEDURAL LAW & THE CIVIL JUSTICE SYSTEM

The Supreme Court (General Civil Procedure) Rules 2015 have been REPLACED by the Supreme Court (General Civil Procedure) Rules 2025, commenced 8 September 2025

What is Procedural Law?

Procedural law governs the conduct of legal proceedings before a court, providing the framework or 'machinery' by which substantive rights and obligations are claimed, proved, and enforced. It focuses on process rather than substantive rights themselves.

- **Definition:** Often referred to as 'adjectival law', **procedural law is the mechanism for bringing substantive claims and having them determined by courts.** It is the "handmaid of justice" rather than its "mistress" (Lord Collins)
- **Purpose:** Regulates how claims are brought before the court and adjudicated, ensuring proper presentation and enforcement of substantive rights.

Substantive Law vs Procedural Law

- **Substantive Law:** Concerns the objectives of justice (e.g., contract enforcement, property rights)
- **Procedural Law:** Deals with the methods by which courts and litigants manage litigation to achieve those objectives.

Case References

- **Adam P Brown Male Fashions Pty Ltd v Philip Morris:** Substantive law defines the rights (e.g., contract validity); procedural law manages the litigation process.
- **Neil Andrews:** Procedural law converts claims into binding determinations, enforces court orders, and enables appeals.
- **"Handmaid of Justice":** Re Coles and Ravenshear emphasises the auxiliary function of procedural rules in achieving justice.

1.2 JURISDICTION AND CROSS-VESTING

Jurisdiction: The court's authority to hear and decide cases, including examining facts, applying law, and issuing judgments (*Wardley Australia Ltd v Western Australia*).

1.1 THE AUSTRALIAN COURT SYSTEM

Australia's courts operate under a dual system of federal and state/territory jurisdictions, each with its hierarchy.

State and Territory Courts

Magistrate's Court

- Handles minor civil and criminal matters
- Jurisdiction includes low-value claims (e.g., disputes up to \$100,000).

District/County Courts

- Handles more serious civil and criminal cases.
- Exists in all states except Tasmania and the Territories

Supreme Courts

- Highest state/territory courts.
- General civil and criminal jurisdiction, including appeals.

Federal Courts

High Court of Australia

- Apex court for appeals and constitutional matters (s 71 of the *Constitution*)

Federal Court of Australia

- Jurisdiction includes bankruptcy, industrial relations, and trade practices.

Federal Circuit and Family Court

- Handles less complex family law and general federal law matters.

Key types of Jurisdiction.

1. **Subject Matter Jurisdiction:** Authority to hear specific types of cases.
2. **Territorial Jurisdiction:** Authority based on the location of the parties or events
3. **Invested Jurisdiction:** Allows state courts to exercise federal judicial powers (s 77(iii) of the *Constitution*)

Key Provisions:

- **Cross-Vesting Act 1987:** Allows state and federal courts to share jurisdiction, simplifying litigation.
- **Re Wakim (1999):** High Court ruled that federal courts cannot exercise state judicial power directly, except under accrued jurisdiction (**Fencott v Muller**).

Bogan v Smedley [2025] HCA 7 is now the leading authority on cross-vesting/transfer where federal jurisdiction is invoked under the Corporations Act

- confirmed that where a state court is exercising federal jurisdiction (e.g. under the Corporations Act 2001 (Cth)), the picking up of state laws under s 79 Judiciary Act 1903 (Cth) means a Victorian Group Costs Order under s 33ZDA Supreme Court Act 1986 (Vic) does NOT travel if proceedings are transferred interstate. The existence of a GCO is, however, a relevant factor under s 1337H(2) Corporations Act and weighs decisively against transfer where transfer would stultify the proceeding.

1.3 SOURCES OF CIVIL PROCEDURE

Procedural Legislation

Supreme Court Act 1986 (Vic): Defines the structure and powers of the Supreme Court of Victoria.

Civil Procedure Act 2010 (Vic): Promotes just, efficient, and cost-effective resolution of disputes.

- **Key Provisions:**
 - Section 1: Uniformity across courts, simplified language.
 - Section 7: Overarching purpose guiding court proceedings.

Delegated Legislation (Court Rules)

Supreme Court (General Civil Procedure) Rules 2025: Core procedural rules.

- Made by the Council of Judges on 28 August 2025 and commenced 8 September 2025, replacing the Supreme Court (General Civil Procedure) Rules 2015 which sunset under s 5(1) Subordinate Legislation Act 1994 (Vic).

Further amended by the Supreme Court (Chapter I Costs and Other Amendments) Rules 2025 (S.R. No. 127/2025).

Practice Notes: Supplement court rules with practical guidance (e.g., SC GEN 5 for technology use).

Inherent Jurisdiction

Authority of superior courts to control their procedures and prevent abuse.

- **Marriner v Smorgon (1989):** Described inherent jurisdiction as “the lifeblood” of superior courts.

Common Law Principles

Rooted in fairness and the adversarial system.

Reflects in Victoria’s **Charter of Human Rights and Responsibilities Act 2006 (s 24(1))**.

1.4 COURT ADJUDICATION UNDER THE ADVERSARY SYSTEM

Key Features:

- **Party Control:** Litigants manage evidence and arguments.
- **Judicial Passivity:** Judges ensure fairness but do not actively investigate.
- **Costs as Control:** The “loser pays” rule deters frivolous claims.

Purpose

Truth-Seeking:

- Litigants present arguments; judges impartially assess evidence.

Justice According to Law:

- **Jones v National Coal Board (1957):** Judges aim to find truth and administer justice within legal boundaries (Lord Denning).

1.5 PROCEDURAL REFORMS AND CHALLENGES

Recurring Issues:

- High costs, delays, and complexity.
- Limited judicial control over proceedings (VLRC Report 2008, Productivity Commission 2014).

Key Reforms:

Lord Woolf's Report (UK, 1996):

- Advocated for greater judicial management and ADR to reduce delays and costs.

Civil Procedure Act 2010 (Vic):

- Introduced active judicial case management and proportionality in litigation.
- Emphasised early resolution of disputes and efficient resource use.

Hybridization of Systems:

- Australia's adversarial system incorporates inquisitorial elements (e.g., judicial case management) to enhance efficiency and fairness.

1.6 BROADER ROLE OF CIVIL JUSTICE

Dual Function:

1) Individual Dispute Resolution: Provides enforceable judgments.

2) Social and Policy Role:

- Promotes social order and enforces civic values.

Insights

- **Murray Gleeson:** Litigation discourages abuses of power and maintains accountability.
- **Productivity Commission (2014):** Accessible dispute resolution benefits society by preventing escalation and fostering confidence.

Summary of Key Concepts

- **Procedural Law:** Framework for enforcing substantive rights.
- **Jurisdiction:** Determines authority to hear cases.
- **Adversarial System:** Party-driven litigation with passive judges.
- **Reforms:** Emphasis on judicial case management, proportionality, and ADR.
- **Civil Justice:** Balances individual resolution with broader societal benefits.