

Civil Procedure — Complete Course Summary

The Big Picture

Civil Procedure is not about who is legally right or wrong. It is about **how disputes move through the court system**.

The entire subject revolves around one central principle:

The court seeks to achieve the **just, efficient, timely and cost-effective resolution of the real issues in dispute**.

This is the **overarching purpose** in s 7 of the *Civil Procedure Act 2010 (Vic)* and underpins almost every procedural decision.

1. Jurisdiction & The Adversarial System

Before a court can hear a dispute it must have:

Subject Matter Jurisdiction

Can the court hear this type of dispute?

Territorial Jurisdiction

Can the defendant properly be brought before the court?

Australian civil litigation is traditionally adversarial:

- Parties control evidence and arguments.
- The judge acts as neutral decision-maker.
- The court resolves disputes according to law.

Modern reforms have reduced pure party control and increased judicial case management.

Key Case

Adam P Brown Male Fashions Pty Ltd v Philip Morris Inc (1981) 148 CLR 170

Procedural law provides the machinery through which substantive rights are enforced.

2. Overarching Purpose & Case Management

Modern litigation is governed by the Civil Procedure Act.

CPA s 7

The court seeks:

- Justice
- Efficiency
- Timeliness
- Cost-effectiveness

CPA s 16

All participants owe a:

Paramount duty to the court.

This duty overrides client instructions where inconsistent.

CPA Obligations

Parties must:

- Act honestly
- Have a proper basis
- Minimise delay
- Narrow issues
- Facilitate dispute resolution
- Comply with disclosure obligations

Key Case

Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175

Modern courts prioritise:

- Efficiency
- Proportionality
- Case management

over unrestricted party autonomy.

3. Commencement of Proceedings

Before commencing proceedings lawyers must consider:

Limitation Periods

Jurisdiction

Proper Parties

ADR

Evidence

Costs

Proper Basis

Proceedings should not be commenced merely because a client believes they have been wronged.

Limitation Periods

General Rule

Contract → 6 years

Tort → 6 years

Defamation → 1 year

Personal Injury

Earlier of:

- 3 years from discoverability
- 12 years from act or omission

Key Case

Brisbane South Regional Health Authority v Taylor (1996) 186 CLR 541

Limitation periods protect fairness, certainty and the quality of evidence.

4. Joinder & Estoppel

The courts dislike multiple proceedings concerning the same dispute.

Joinder

Allows:

- Multiple claims
- Multiple parties

to be heard together.

Res Judicata

Cannot relitigate the same cause of action.

Issue Estoppel

Cannot relitigate an issue already determined.

Anshun Estoppel

Cannot later raise matters that should reasonably have been raised earlier.

Key Case

Port of Melbourne Authority v Anshun Pty Ltd (No 2) (1981) 147 CLR 589

5. Pleadings

Pleadings define:

- Issues
- Facts
- Relief sought

They tell the other side what case must be met.

Plead:

Material facts

Do Not Plead:

Evidence

Defective Pleadings

May be:

- Vague
- Ambiguous
- Embarrassing
- Irrelevant

Remedies

- Particulars
- Amendments
- Strike Out

Key Cases

Downer Connect Pty Ltd v McConnell Dowell

Gunns Ltd v Marr

6. Discovery & Privilege

Discovery ensures relevant documents are available before trial.

Parties must disclose documents that:

- Help them
- Hurt them
- Help the other side
- Hurt the other side

Discovery Test

Relevant?

↓

Possession, custody or power?

↓

Reasonable search?

↓

Privilege?

Privilege

Protects confidential communications created for:

- Legal advice
- Litigation

Key Case

Esso Australia Resources Ltd v Commissioner of Taxation (1999) 201 CLR 49

Established the:

Dominant Purpose Test

7. Interlocutory Applications

These are temporary orders made before trial.

Purpose:

- Preserve evidence
- Preserve assets
- Maintain status quo

Injunctions

Test (*ABC v O'Neill*)

1. Serious question to be tried
2. Damages inadequate
3. Balance of convenience

Freezing Orders

Test (*Cardile*)

1. Good arguable case
2. Assets exist
3. Risk of dissipation
4. Just and convenient

Search Orders

Purpose:

Preserve evidence likely to be destroyed.

Security for Costs

Protects defendants where plaintiff may be unable to pay future costs.

8. Summary Disposal

The court may terminate proceedings before trial.

Summary Judgment

Test

No real prospect of success.

Key Case

Spencer v Commonwealth (2010) 241 CLR 118

Strike Out

Test

Claim obviously untenable.

Key Case

General Steel Industries Inc v Commissioner for Railways (NSW) (1964) 112 CLR 125

Default Judgment

Defendant fails to participate.

Want of Prosecution

Plaintiff delays proceedings excessively.

Key Cases

Nisson v George

Batistatos v RTA

Settlement Offers

Calderbank Offers

Unreasonable rejection can affect costs.

Key Case

Calderbank v Calderbank [1975] 3 All ER 333

9. Costs

Costs are discretionary.

General rule:

Costs follow the event.

The successful party usually receives costs.

Types

Party–Party Costs

Most common.

Indemnity Costs

Higher recovery.

Usually for misconduct.

Factors

- Success
- Conduct
- Delay
- Settlement offers
- CPA compliance

Costs are a major case-management tool.

10. Trial, Appeals & Enforcement

Trial

Purpose:

Determine:

- Facts
- Law
- Liability
- Relief

Standard of Proof

Balance of probabilities.

Appeals

Appeals require error.

Key Case

House v The King (1936) 55 CLR 499

Error may involve:

- Wrong principle
- Irrelevant considerations

- Failure to consider relevant matters
- Manifestly unreasonable result

Enforcement

Winning does not guarantee payment.

Methods include:

- Garnishee orders
- Seizure of property
- Bankruptcy
- Winding up

The 5 Cases Every Student Must Know

1. *Aon Risk Services Australia Ltd v Australian National University* — case management.
2. *Spencer v Commonwealth* — summary judgment.
3. *General Steel Industries Inc v Commissioner for Railways (NSW)* — strike out.
4. *Esso Australia Resources Ltd v Commissioner of Taxation* — privilege.
5. *House v The King* — appeals.

The 5 Provisions Every Student Must Know

1. CPA s 7 — Overarching purpose.
2. CPA s 16 — Paramount duty.
3. CPA s 18 — Proper basis.
4. CPA ss 61–63 — Summary judgment.
5. SCR O 29 — Discovery.

The Entire Subject in One Sentence

Civil Procedure is the law governing how courts manage disputes from commencement to enforcement, with every procedural decision ultimately guided by the overarching purpose of achieving the just, efficient, timely and cost-effective resolution of the real issues in dispute.