

WEEK 1 - INTRODUCTION

INTRODUCTION	
What is procedural law?	Poyser v Minors (1881) 7 QBD 329 at 333 (Lush J) • “[T]he mode of proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right”.
SOURCES OF PROCEDURAL LAW	
Sources of procedural law	• Legislation • Rules of Court • Practice Directions • Inherent “jurisdiction” (powers) of superior courts to regulate their process and avoid abuse of process
SUPREME COURT OF WA	
Supreme Court of WA	Key legislation: • Supreme Court Act 1935 (WA) • Rules of the Supreme Court 1971 (WA) (RSC) • Consolidated Practice Directions (CPD) • Annotated commentary - The “Red Book” RSC Order 1 rule 3A - Inherent powers not affected: • The inherent power of the Court to control the conduct of a proceeding is not affected by these rules.
DISTRICT COURT OF WA	
District Court of WA	Key legislation: • District Court of Western Australia Act 1969 (WA) • District Court Rules 2005 (WA) • Civil Practice Directions, Forms and Usual Orders DCR Order 6 - Rules of the Supreme Court 1971, application of 1) The RSC apply to and in respect of any case in the Court. 2) For the purposes of subrule (1) — a) a reference in the RSC to “the Court” is to be taken as being a reference to the District Court, unless the context requires otherwise; and 3) If there is a conflict or inconsistency between these rules and the RSC, these rules prevail.

FEDERAL COURT	
Federal Court	Key legislation: - Federal Court Rules 2011 (Cth) - Federal Court of Australia Act 1976 (Cth) - Federal Court Practice Notes
CONCERNS OF PROCEDURAL LAW	
Purpose of procedural law	Union Bank of Australia v Harrison Jones and Devlin Ltd (1910) 11 CLR 492 at 504 (Griffiths CJ) "[R]ules and forms of procedure are not ends in themselves, but means to an end, which is the attainment of justice."
Concerns of procedural law	Key concerns: - Fair and just determination of litigation - Public justice / open court principle - Principle of finality - Court processes are administered in an efficient and proportionate manner (i.e. managing litigation costs and minimising delay) - Avoiding abuse of process
FAIR AND JUST DETERMINATION	
Securing that justice is done	Scott v Scott [1913] AC 417 at 437 (Viscount Haldane LC), quoted in DPP (Vic) v Smith [2024] HCA 32 at [63] (Gageler CJ, Gleeson, Jagot and Beech-Jones JJ) - The chief objective of courts is to secure that justice is done. This is the overriding purpose underpinning all procedural rules and the exercise of judicial discretion. - The court's primary concern is substantive justice, not rigid adherence to procedural technicalities. - Procedural rules should therefore be interpreted and applied in a manner that promotes a fair and just outcome.
Ensuring procedural fairness	Re Nolan; Ex parte Young "[General features of judicial process] include: - open and public enquiry (subject to limited exceptions), - the application of the rules of natural justice, - the ascertainment of the facts as they are and as they bear on the right or liability in issue and the identification of the applicable law, followed by an application of that law to those facts"

	Wainohu v New South Wales • “[The defining or essential characteristics of a court] include the reality and appearance of the court’s independence and its impartiality. • Other defining characteristics are the application of procedural fairness and adherence, as a general rule, to the open court principle ... it is also a defining characteristic of a court that it generally gives reasons for its decisions.”
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