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Definitions

Statement of Claim= a form of pleading used by plaintiffs

Particulars= a feature of pleadings → expand

A court superior to the District= Supreme. **A court inferior to District**= Local

Mediation= An ADR process that may be court-referred

Arbitration= ADR process where determination may be appealed

Open Justice= A fundamental system/feature of the Common law

Case Management= Courts control the interlocutory process

Common Law Civil Litigation System= adversarial

Amendments= Changes to pleadings allowed without leave up to a point

Notice to produce= a request for documents served on parties to the litigation

Affidavit= A deposition. A written sworn statement of fact voluntarily made by a deponent under an oath or affirmation administered by a person authorised to do so by law (ie solicitor). Deponent and affirmation not done by same person.

Prayer for Relief= part of a statement of claim by plaintiff which describes the remedies that the plaintiff seeks from the court.

Interlocutory application= an application that does require an affidavit. An application for interim relief or in relation to a procedural step eg for injunction or discovery.

Interlocutory proceedings= for dealing with a specific issue in a matter- usually between the filing of the application and the giving of the final hearing and decision.

Ex parte application= application to the court where one party not present

Summons= a form of origination process

Privilege= a basis upon which a party refuses to disclose documents

Return of Subpoena= the date when the subpoena will be heard

Subpoena= an order requiring a person (addressee) to attend at court to give evidence or to produce a document or thing to the Court. May only be issued with leave of the Court.

Security for costs= an order requiring plaintiff to deposit money with the court

Statutory Declaration= different to an affidavit because no oath or affirmation. A written statement that allows a person to declare something to be true. You can be charged with an offence if intentionally making a false statement.

Stay= an order imposing a halt on proceedings

Costs= order that the losing party pay legal costs of the winner

Mareva= a freezing order

Calderbank= type of offer of compromise

Instanter= latin term meaning immediately

Notice of motion= an interlocutory application → expand

Caveat= a type of injunction

Deposition= a form of evidence

Cause of action= legal basis of a complaint

Slip rule= court may vary a minor error in a judgment

Ex tempore= a judgment handed down immediately

Cur Adv Vult= a judgment that has been reserved to another day

Abridgment of time= an order shortening time

Expedition= an application that does require evidence in support

Injunction= an order to control a respondent's conduct

Undertaking= a promise made to the court

Jurat= the formal part at the end of an affidavit

Affidavit of service= formal evidence of serving documents on a party

ECM= Electronic Case Management

Redaction= masking text on a document

Application= party filing notice of motion in Supreme Court of NSW

Round brackets around date= used in law reports where you do not need the year

Square brackets around a date= used in law reports where you need to know the year

Discovery= a pre-trial process where parties produce documents

Default judgment= a judgment entered against a defendant in their absence

Notice of appearance= not required where a defendant has filed a defence

Summons= an originating process used when there is no defendant

Reflection Statements

Structure:

- Explain the source material of your reflection- ie content
- Articulate what you learned from the source material
- State how your understanding of the rules of Civil Practice inform or challenge what you learned from the source material (ie link to overriding purpose)
- Identify which Law Graduate Attributes have been targeted.
- Purpose: Demonstrate what has been understood.

Graduate Attributes:

1: Legal Knowledge

A coherent understanding of fundamental areas of legal knowledge including the Australian legal system, social justice, cultural and international contexts and the principles and values of ethical practice.

2: Ethics and Professional Responsibility

A capacity to value and promote honesty, integrity, accountability, public service and ethical standards including an understanding of approaches to ethical decision making, the rules of professional responsibility and an ability to reflect upon and respond to ethical challenges in practice.

3: Critical Analysis and Evaluation

A capacity to think critically, strategically and creatively including an ability to identify and articulate legal issues, apply reasoning and research, engage in critical analysis and make reasoned choices.

4: Research Skills

Well-developed cognitive and practical skills necessary to identify, research, evaluate and synthesis relevant factual, legal and policy issues.

5: Communication and Collaboration

Effective and appropriate communication skills including highly effective use of the English language an ability to inform, analyse, report and persuade using an appropriate medium and message and an ability to respond appropriately.

6: Self-management

Ability to implement appropriate self-management strategies. Self-assessment of skill, a capacity to adapt and embrace change etc.

Tutorial Materials

Fisher and Ury's Orange Quarrel:

Roger Fisher and William Ury, *Getting to YES: Negotiating Agreement Without Giving In* (Penguin Books, 1981).

→ The difference between distributive and integrative bargaining

Distributive and integrative bargaining are strategies used within Dispute Resolution processes. Their differences are best characterised by Fisher and Ury in *Getting to Yes* in the orange quarrel.

In distributive bargaining each child would seek to maximise their own share of the limited resource. Assuming a zero-sum game where each child would try to obtain the whole orange for themselves. They would use positional bargaining techniques to try and identify and push towards the other party's resistance points while concealing their own. The best outcome in this scenario is that they would split the orange in half, not entirely satisfying either party.

On the other hand if integrative bargaining were used in the same scenario an interest-based negotiation process could be adopted which would identify each party's interests in the orange. This assumes that through mutual co-operation the joint gain that is available can increase leading to a win-win scenario and maximisation of gains. This process may also be known as increasing the pie. In other words the 'pie' may be maximised or made bigger. However, it should be noted that the pie still needs to be divided, introducing an element of distributive bargaining.

In applying this to Fisher and Ury's scenario, one child wanted the peel of the orange to bake a cake where the other just wanted to eat the flesh of the orange and would discard the peel. By identifying these interests each party can get the whole of what they wanted and be satisfied with the outcome. Additionally, these parties would not damage their relationship in the process and would be willing to work together in the future, which is less likely in distributive bargaining.

Dishonesty Video: RSA Dan Ariely 'The (Honest) Truth About Dishonesty'

https://www.youtube.com/watch?v=XBmJay_qdNc

- Primary Argument: that dishonesty will always happen therefore the way to overcome and reduce dishonesty is to create an environment where people can 'confess' (term from church confessional). This enables people to wipe the slate clean and start anew with the incentive to be better.

- Want to feel good about ourselves and benefit from dishonesty. With ability to rationalise actions and cognitive psychology humans have tendency to cheat and think of ourselves as good people by rationalising.
- Problem have a lot of little cheaters by many people: eg Out of 30, 000 people. 12 were big cheaters, rest little cheaters.
Means that magnitude of dishonesty is by good people who think they're doing good but cheating just a little.
- As psychological distance between us and money increases the level of dishonesty can increase. Easy to be dishonest without feeling or seeing consequences of it.
- Eg difference between walking out of restaurant without paying to pirating/downloading- some things easier to rationalise as being good not bad
- So want to decrease ability to rationalise. How? Reminding people about morality (even if not own moral code) we are supervising ourselves to higher degree and act more honestly.
Experiment at UCLA: remind people to remember the 10 commandments. Then get them to have an opportunity to cheat after, no one cheated. Same thing getting people to swear on bible, even atheists.
- Went to Catholic confessional: why is the effect of confessing, decreasing dishonesty afterwards? Shouldn't they cheat more since they've been absolved?
Perhaps: come out of confession and feel good about yourself, so want to keep feeling good about yourself and stop dishonesty for a short time.
More evidence for: The 'what the hell' effect: If I'm going to be bad and cheat, I might as well love being bad. As such if give chance to ask for forgiveness and confess about their cheating, afterwards dishonesty goes down.
- How to implement in civic society? How to get people to feel clean again and act on the resulting feeling of goodness?
People always see reality influenced by their own perspective- makes conflict of interests with other people who see reality in their own way.
Method: change the incentive structures in order to increase honesty.

Dr Russell Smith- Regulating Dishonest Conduct in the Professions (2002)

- About: how professionals who engage in dishonest conduct in connection with their professional practice should be dealt with?
- 6 main characteristics of professional occupation:
 - Presence of skill based on theoretical knowledge
 - Provision of training and education
 - A means of testing the competence of members
 - Organisation of members
 - Adherence to a code of conduct
 - Element of altruistic service which is not performed for solely financial reward → why dishonesty crimes are disturbing. Because meant to be performing a public service
- Concept of Dishonesty: