

Civil Notes

Week 1-Lecture 1

Introduction

Background-not assessable

- Look at online commentary and loose-leaf services
- Who are parties?
- Need appropriate documents, people, expert witnesses, what is the question to be decided?
- How to enforce the judgement?
- Which court is appropriate? And how does structure differ?
 - Jurisdiction defined by statute
 - Limited by locality, subject matter, monetary limit (ceiling for civil matters), court or tribunal that allows legal representation (e.g. limited in QCAT), are costs relevant? Is a jury advantageous?
- Trial by jury-came in a little before magna carta i.e. A trial by peers was common
- Accused people weren't allowed to testify-a person whose property was at stake should not be called upon to testify as would feel pressure to lie
- Trials in kings court-did everything orally, oral allegations
- In 13/14th century there became written proceedings, had to frame issues in a certain way and things had to come down to 1 question, had to pick law or facts as in issues, no backups allowed
- *Judicature Act 1876*-law administered by one court (Common law and equity), equity prevails, first set of civil rules (written in UK), everyone except NSW adopted
- Wolf report? 1990-relied on for drafting UCPR
- UCPR-applies across all civil courts, but each court has their own rules on procedure (need to look at specific rules e.g. federal court rules)
- Rule 5? UCPR-If parties don't do anything for approx. 12 months, judge will tell them they need to start something or case will be dismissed

Rules

- Rule 5-purpose of the rules is to facilitate just and expeditious resolution of the real issues at a minimum of expense
- Courts have adopted various procedures of case management so matters proceed expeditiously
- Courts can issue practice directions-apply to certain types of proceedings e.g. building cases, criminal cases etc.
- S 58 *Supreme Court Qld Act* – courts issue case lists to manage different types of cases e.g. commercial

Aon services Australia v ANU (HCA)-appeal from ACT on equivalent to rule 5 (rule 21), on 3rd day of a 4 week trial applied for very different amendment to statement of claim, was refused as it goes against the management directions of the Court Rules, whether there's a right to amend depends on reason for delay, prejudice, costs, stage of litigation and prejudice to other litigants awaiting trial
French CJ-there is a liberal approach to amending applications, unless it results in some injury to the opponent that can't be compensated for, usually allow amendment but