

**LITIGATION AND
DISPUTE
MANAGEMENT /
CIVIL PROCEDURE
SUMMARY**



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TABLE OF CONTENTS

Contents

Table of cases	6
Topic 1: Introduction	12
1.1 Background.....	12
1.2 Overriding Purpose.....	12
1.3 Principle of Open Justice	13
1.4 Principle of a Fair Trial	13
Topic 2: Limitation of Actions	15
2.1 Policy and Background.....	15
2.2 Limitation Periods	18
2.2.1 Federal Causes of Action.....	18
2.2.2 Equitable Causes of Action	18
2.3 Accrual – When does the limitation period begin?	19
2.3.1 Torts: Personal Injury.....	20
2.4 Suspension and Extension of Time.....	20
2.4.1 Stopping the limitation period.....	20
2.4.2 Extending the limitation period: personal injury	20
2.4.3 The effect of expiration.....	21
Topic 3: Parties and Joinder	23
3.1 Types of Parties	23
3.2 Suing/being Sued by Particular Parties.....	25
3.3 Joinder of Parties: Introduction.....	27
Jurisdiction	27
Rule and section	27
3.4 Joinder: Plaintiffs	28
3.4.1 ACT Supreme Court.....	28
3.4.2 Federal Court.....	29
3.4.3 NSW Courts.....	30
3.5 Joinder: Defendants.....	31
3.6 Addition and removal of parties by court	31
3.6.1 Addition.....	32
3.6.2 Mistaken Identity.....	32
3.7 Representative Actions.....	33
3.7.1 Introduction.....	33
3.7.2 Opt-In Procedures (Supreme Court).....	33
3.7.3 Opt-Out Procedures (Class Actions).....	34
3.8 Joinder of Causes of Action/Consolidation	37
3.8.1 Joinder of Causes of Action	37
3.8.2 Consolidation	37

3.9 Res Judicata and Issue Estoppel.....	38
Topic 4: Commencing Proceedings.....	40
4.1 Jurisdiction.....	40
4.1.1 Subject Matter Jurisdiction.....	40
4.1.2 Territorial Jurisdiction.....	41
4.1.3 Cross-Vesting of Jurisdiction	41
4.1.4 Forum Non Conveniens	43
4.2 Originating Process	43
4.2.3 Duration and Renewal of Originating Process	47
Topic 5: Service.....	49
5.1 Service of OP inside the jurisdiction (within ACT)	50
5.1.1 Service and Jurisdiction.....	50
5.1.2 Requirements for Personal Service.....	51
5.1.3 Particular Defendants.....	51
5.2 Service of OP inside the jurisdiction (within NSW).....	54
5.3 Service of OA outside the jurisdiction but within Australia.....	55
5.4 Service Outside of Australia.....	56
5.4.1 How is an application made?	58
5.5 Substituted Service.....	59
Topic 6: Challenging Service.....	60
6.1 Challenging Service	60
6.2 Notice of intention to respond	60
6.2.1 Formalities for filing a notice of intention to respond.....	60
6.2.2 Unconditional and Conditional Notice of Intention to Respond.....	61
6.2.3 Time for filing of Notice of Intention to Respond.....	62
6.2.4 Notice of Appearance in NSW.....	62
Topic 7: Pleadings.....	63
7.1 What are pleadings?	63
7.2 Rules of Pleadings.....	64
7.2.1 General Rules	64
7.2.2 Subsidiary Rules.....	65
7.2.3 Particulars.....	67
7.3 Defence.....	68
7.3.1 Counterclaims	70
7.3.2 Set-off.....	70
7.4 Reply and Defence to Counterclaim	71
7.5 Third-party Proceedings	71
7.6 Challenges to Pleadings	72
Topic 8: Amending Pleadings.....	74
8.1 General Amendment Power	74
8.2 Adding a Party – With Leave.....	76
8.2.1 Mistake.....	76
8.2.2 Limitation Periods	76
8.2.3 NSW	77
8.2.4 NSW - Irregularities	78

Topic 9: Urgent Applications	79
9.1 Interlocutory Injunctions	79
9.2 Division 2.9.3 (Orders about Property)	80
9.3 Anton Piller Orders	81
9.4 Mareva Orders (Freezing Orders)	83
Topic 10: Preliminary Discovery (pre-commencement)	85
10.1 Preliminary Discovery	85
10.1.1 Identity Discovery	85
10.1.2 Information Discovery	87
10.2 Disclosure in Queensland	89
Topic 11: Discovery and Information Gathering	90
11.1 Proper Discovery	90
11.2 Discoverability	90
11.2.1 Possession or Power	91
11.2.2 Relevance	92
11.3 Orders about Discovery and Production in the ACT	92
11.4 Non-party Production in the ACT	93
11.5 Subpoenas in the ACT	94
11.5.1 Issuing a subpoena	94
11.5.2 Responding to a subpoena	95
11.6 Discovery in NSW	95
Topic 12: Privilege	97
12.1 Legal Professional Privilege (Client Legal Privilege)	97
12.1.1 What is LPP?	97
12.1.2 What are confidential communications?	98
12.1.3 What type of confidential communications does LPP apply to?	98
12.1.4 Who is a legal adviser for this privilege?	100
12.1.5 How is LPP waived?	101
12.1.6 How does LPP operate under the <i>Evidence Act 1995</i> (Cth)?	102
12.2 Privilege Against Self-Incrimination; Privilege Against Exposure to a Penalty	102
12.2.1 How do these privileges operate?	102
12.2.2 How do these privileges operate under the <i>Evidence Act 1995</i> (Cth)?	103
12.3 Public Interest Immunity	103
12.3.1 How does PII operate?	103
12.3.2 PII/Matters of State under the <i>Evidence Act 1995</i> (Cth)	104
12.4 Without Prejudice Privilege	104
12.4.1 How does WPP work generally?	104
12.4.2 WPP under the <i>Evidence Act 1995</i> (Cth)	105
12.4.3 WPP and Mediation	106
12.4.4 How is WPP lost?	106
Topic 13: Disposition of Proceedings Before Trial: Baseless Claims and Settlement	108
13.1 Default Judgment	108
13.1.1 Judgment in Default of Appearance	108
13.2 Summary Judgment	109
13.2.1 How does P obtain summary judgment?	110

13.2.2 How does the defendant obtain summary judgment?	110
13.4 Discontinuance	112
13.5 Judgment by Consent	113
13.6 Payment into Court	113
13.7 Settlement.....	114
13.8 Calderbank Offers	115
Topic 14: Costs.....	118
14.1 What is CM?	118
14.2 Three general types of costs awards	118
14.3 Proportionality of Costs.....	119
14.4 Duties	120
14.5 Self Representation.....	121
Topic 15: Case Management.....	122
15.1 What is case management?.....	122
15.2 CM in the ACT Supreme Court.....	122
15.3 CM in the NSW Supreme Court.....	123
15.4 Challenging CM Sanctions.....	125
Topic 16: Alternative Dispute Resolution.....	128
16.1 Types of Alternative Dispute Resolution (ADR).....	128
16.1.1 Determinative Processes	128
16.1.2 Facilitative Processes.....	128
16.2 Fisher and Ury's Interest-based Negotiation Model.....	129
16.3 LEADR Model of Mediation.....	130
16.4 Court-annexed ADR.....	132
16.5 Enforcement of Agreements to Mediate.....	133
16.6 Confidentiality	134

Table of cases

Cases

<i>A & N Holding NSW Pty Ltd v Andell Pty Ltd</i> [2006] NSWSC 55.....	124
<i>ACCC v ABB Power Transmission Pty Ltd.</i> [2004] FCA 819.....	105
<i>ACCC v Golden Sphere International Inc</i> [1988] ATPR 41-638.....	84
<i>Agar v Hyde</i> (2000) 201 CLR 552.....	59
<i>Air Express v Ansett Transport Industries (Operations) Pty Ltd</i> (1981) 146 CLR 249.....	79
<i>Aiton v Transfield Pty Ltd</i> [1999] NSWSC 996.....	133
<i>Alpine Hardwood (Aust) Pty Ltd v Hardys Pty Ltd (No 2).</i> (2002) 190 ALR 12	116
<i>American Cyanamid v Ethicon Ltd</i> [1975] AC 396.....	79
<i>Amor v Macpac</i> (1989) 95 FLR 10 (SC of NSW).....	42
<i>Angel v National Australia Bank Ltd</i> [2001] FCA 1053.....	109
<i>Anton Piller v Manufacturing Processes Ltd</i> [1975 A. No. 6292].....	81
<i>Aon Risk v ANU</i> [2009] HCA 27.....	127
<i>Arnold v National Westminster Bank Plc</i> ; HL 1991.....	38
<i>Australian Coastal Shipping v Curtis Cruising Pty Ltd</i> (1989) 17 NSWLR 6... 76	
<i>Australian Railways Union v Victorian Railways Commissioners</i> (1930) 44 CLR 319.....	24
<i>AWA Ltd v Daniels</i> (1992) 10 ACLC 933.....	106
<i>AWA v Daniels</i> (1992) 10 ACLC 933.....	135
<i>Bailey v Federal Commissioner of Taxation</i> (1977) 136 CLR 214.....	67
<i>Baker v Campbell</i> (1983) 153 CLR 52.....	98, 99
<i>Banque Commerciale SA v Akhil Holdings</i> (1990) (1990) 169 CLR 279.....	64
<i>Banque Commerciale SA v Akhil Holdings</i> (1990) 169 CLR 279.....	63
<i>Barytes; Baldry v Jackson</i> [1976] 2 NSWLR 415.....	74
<i>Bax v Law Society (Qld)</i> [1999] 2 Qd R 9.....	100
<i>Bendir v Anson</i> (1936) 3 All ER.....	28
<i>BHP Billiton Ltd v Schultz</i> [2004] 221 CLR 400.....	43
<i>Birtles v Commonwealth</i> [SC of Vic, 1960].....	27, 31
<i>Bishop v Bridgeland Securities</i> (1990) (1990) 25 FCR 311.....	29
<i>Bollag & Anor v Attorney-General of the Commonwealth</i> (1997) 79 FCR 198	118
<i>Bourke & Ors v State Bank of NSW</i> (1988) 85 ALR 61.....	42
<i>Bridge Shipping</i>	77
<i>Bridge Shipping v Grand Shipping SA</i> (1991) 173 CLR 231.....	76
<i>Brisbane South Regional Health Authority v Taylor</i> (1996) 186 CLR 541. 17, 18	
<i>Bulldogs Rugby League Club Ltd v Williams</i> [2008] NSWSC 822.....	55
<i>Business Names Act 1963</i> (ACT).....	53
<i>Cachia v Hanes</i> (1994) 179 CLR 403.....	118, 121
<i>Cain v Glass (No 2)</i> (1985) 3 NSWLR 230.....	13
<i>Capolingua v Phylum Pty Limited</i> (1991) 5 WAR 137.....	133
<i>Cardile v LED Builders Pty Ltd</i> (1999) 198 CLR 380.....	83
<i>Cardile v LED Builders Pty Ltd</i> [1999] 198 CLR 380.....	84
<i>Carnie v Esanda Finance Corporation</i> (1994-1995) 182 CLR 398).....	33
<i>Cartledge v Joplings and Sons Ltd</i> [1963] A.C. 758.....	20
<i>Carter v Managing Partner Northmore Hale Davy & Leake</i> [1995] HCA 33... 98	
<i>Chandra v Perpetual Trustee Victoria Ltd</i> [2006] NSWSC 1046.....	124

<i>Charlie Carter Pty Ltd v Allied Employees' Association (WA)</i> (1987) 13 FCR 413.....	65
<i>City of Sydney Council v Satar</i> [2007] NSWCA 148.....	125
<i>Civil Law (Wrongs) Act 2002</i> (ACT)	128, 132, 133
<i>Civil Procedure Act 2005</i> (NSW)	passim
<i>Civil Procedures Rules 2006</i> (ACT)	23
<i>Codey v Toll Ipec Pty Ltd</i> [2003] ACTSC 62.....	117
<i>Commissioner Australian Federal Police v Propend Finance Pty Ltd</i> [1997] HCA 3.....	98
<i>Competition and Consumer Act 2010</i> (Cth).....	18
<i>Cook v Pasmenco Ltd (No 2)</i> [2000] FCA 1819,	37
<i>Corporations Act 2001</i> (Cth).....	25, 52, 54, 56
<i>County Court Civil Procedure Rules 2008</i> (Vic).....	74
<i>Court Procedure Rules 2006</i> (ACT)	passim
<i>Court Procedure Rules 2006</i> (ACT).....	109
<i>Court Procedures Act 2004</i> (ACT).....	24, 25, 26
<i>Court Procedures Rules 2006</i> (ACT)	28, 31, 33, 37
<i>Cth v Mewett</i> (1997) 1 91 CLR 471.....	21
<i>Cubillo v Cth</i> [2000] FCA 1084.....	110
<i>Daya v CNA Reinsurance Co Ltd</i> [2004] NSWSC 795.....	132
<i>De Sousa v MILGEA</i> (1993) 41 FCR 544	121
<i>Dean Wilcocks v Air Transit International</i> [2002] NSWSC 525.....	30
<i>Dennis v Australian Broadcasting Corporation</i> [2008] NSWCA 37.....	127
<i>Dey v Victorian Railway Commissioners</i> (1949) 78 CLR 62	27
<i>Dr Bronte Douglass v Lawton Pty Ltd (No 2)</i> [2007] NSWCA 90.....	118
<i>East Street Properties v Jamison</i>	70
<i>Elite v Salmon</i> [2007] NSWCA 322.....	116
<i>Elizabeth Bay Developments v Boral Building Services Pty Ltd</i> (1995) 36 NSWLR 709	134
<i>Enfield v R (No 2)</i> [2008] NSWCCA 243	13
<i>Environment Protection Authority v Caltex Refining Co Pty Ltd</i> (1993) 178 CLR 477.....	102
<i>Esso v Commissioner of Taxation</i> [1999] HCA 67.....	97
<i>Evidence Act 1995</i> (Cth).....	passim
<i>Express Airways v Port Augusta Air Services</i> (1980) Qd R 543	61
<i>Federal Court Act 1976</i> (Cth)	40
<i>Federal Court of Australia Act 1976</i> (Cth).....	13, 34, 35
<i>Federal Court Rules 1979</i>	12
<i>Federal Court Rules 2011</i>	passim
<i>Field v Commissioner of Railways for NSW</i> (1957) 99 CLR 285	105
<i>Firth v Latham</i> [2007] NSWCA 40	120
<i>Galambos v McIntyre</i> (1974) 5 ACTR 10	70
<i>General Steel Industries Inc v Commissioner for Railways (NSW)</i> (1964) 112 CLR 125.....	109
<i>Georgiadis v Aust and Overseas Telecommunications Corp</i> (1994) 179. CLR 297	21
<i>Gibbs v Kinna</i> [1999] 2 VR 19.....	38, 39
<i>Glover v Australian Ultra Concrete Floors Pty Ltd</i> [2003] NSWCA 80	65
<i>Graczyk v Graczyk</i> (1955) ALR (CN) 1077	54
<i>Grant v Downs</i> (1976) 135 CLR 674.....	98

<i>Greenwood v Papademetri</i> [2007] NSWCA 221	77
<i>Henderson v Henderson</i> (1843) 3 Hare 100	38
<i>Hepburn v McLaughlins Nominee Mortgage Pty Ltd & Aerogala Pty Ltd</i> [1997] QCA 037	110
<i>Herbert v Vaughan</i> (1972) 1 W.L.R. 1128	71
<i>High Court of Australia Rules 2004</i>	27, 56
<i>High Court Rules 2004</i>	12
<i>Hill v Reglon Pty Limited</i> [2007] NSWCA 295	75
<i>Hinchcliffe v Carroll</i> [1969] VR 164	39
<i>Holland v Jones</i> (1917) 23 CLR 149	66
<i>Home Office v Harman</i> [1983] 1 AC 280	90
<i>Hooper Bailie Associated Ltd v Natcom Group Ltd</i> (1992) 28 NSWLR 194	133
<i>Hutchings v Clarke</i> (1993) FLC 92-373	107
<i>Ives v ACT and Hehir</i> (1995) CB [4.8.5C]	20
<i>Jackamara v Krakouer</i> (1998) 195 CLR 516	123
<i>Jackson v Goldsmith</i> (1950) 81 CLR 446	63
<i>Jackson v Sterling Industries</i> (1987) 162 CLR 612	84
<i>Judiciary Act 1903</i> (Cth)	18, 25, 40, 41
<i>Jurisdiction of Courts (Cross Vesting) Act 1993</i> (ACT)	41
<i>Jurisdiction of Courts (Cross-Vesting) Act 1987</i> (NSW)	41
<i>Kain v Mobbs (No 2)</i> [2008] NSWSC 599	115
<i>Kennedy v Wallace</i> [2004] FCA 332	99
<i>Kenneth Allison v Limehouse & Co (A Firm)</i> [1991] 4 All ER 500	53
<i>Laurie v Carroll</i> (1958) 98 CLR 310	41, 51
<i>Laurie v Carroll</i> [1969] VR 164	49
<i>Lawrence v Nikolaidis</i> [2003] NSWCA129	121
<i>Leary v FCT</i> (1980) 11 ATR 146	99
<i>Legal Profession Act 2004</i> (NSW) (.....	120
<i>Levy v Victoria</i> (1997) 189 CLR 579	24
<i>Limitation Act 1969</i> (NSW)	15, 19, 20
<i>Limitation Act 1974</i> (Tas)	15
<i>Limitation Act 1989</i> (ACT)	15, 19
<i>Limitation Act 2005</i> (WA)	15
<i>Limitation Act 2008</i> (NT)	15
<i>Limitation of Actions Act 1936</i> (SA)	15
<i>Limitation of Actions Act 1974</i> (QLD)	15
<i>Lindsay Petroleum Co v Hurd</i> LR 5 PC 221, 529	19
<i>Local Court Act 2007</i> (NSW)	12
<i>Long v Specifier Publications Pty Ltd</i> (1998) 44 NSWLR 545	82
<i>Lonhro v Shell Petroleum Co. Ltd. (No. 2)</i> [1982] A.C. 173	91
<i>Mabro v Eagle, Star and British Dominions Insurance Co Ltd</i> [1932] 1 KB 485	32
<i>Magneta Nominee v Richard Ellis (Western Australia) Pty Ltd</i> [1994] FCA 302	116
<i>Maharane of Baroda v Wildenstein</i> [1972] 2 QB 283	50
<i>Maitland Hospital v Fisher</i> (No 2) (1992) 28 NSWLR 721	116
<i>Mann v Carnell</i> (1999) 201 CLR 1	98
<i>Mann v Carnell</i> [1999] HCA 66	101
<i>Mareva Compania Naviera SA v International Bulkcarriers SA</i> [1975] 2 Lloyd's Rep 509	83

<i>Markisic v Department of Community Services of NSW (No 2)</i> [2006] NSWCA 321	64
<i>McCormack v DCT</i> (1979) 143 CLR 284	99
<i>McDonnell and East v McGregor</i> (1936) 56 CLR 50	70
<i>Mediation Act 1997</i> (ACT)	106, 134
<i>Metropolitan Petar v Mitreski</i> [2008] NSWSC 293	123
<i>Microsoft v CX Computer Pty Ltd</i> [2002] FCA 3	103
<i>Mirror Newspaper v Waller</i> [1985] 1 NSWLR 1	13
<i>Mondel v Steel</i> (1841) 8 M. & W. 858	70
<i>Morrow v Chinadotcom</i> [2001] NSWSC 209	133
<i>Mummery v Irvings Pty Ltd</i> (1956) 96 CLR 99	67
<i>National Australia Bank v Singh</i> [1995] 1 Qd R 377	109
<i>Nicholas John Holdings v ANZ Banking Group Ltd</i> [1992] 2 VR 715	79
<i>Norwich Pharmacal v Customs and Excise Commissioners</i> [1974] AC 133 ..	86
<i>Oil Basins Ltd v BHP Billiton Ltd</i> [2007] VSCA 255	52, 53, 56
<i>Okura v Forsbacka Jernverks Aktiebolag</i> (1914) 1 K.B. 715	52
<i>Packer v DCT</i> (1984) 15 ATR 1038	98
<i>Palmdale Insurance v Grollo and Co. Pty Ltd</i> (1987) VR 113	91
<i>Panasonic Australia Pty Ltd v Ngage Pty Ltd</i> [2006] NSWSC 399	88
<i>Paramasivam v Flynn</i> (1998) 160 ALR 203	19
<i>Payne v Young</i> (1980) 145 CLR 609	30
<i>Peruvian Guano</i> (1882) 11 QBD 55	92
<i>Pfeiffer v Rogerson</i> (2000) 203 CLR 503	22
<i>Philipps v Philipps</i>	65
<i>Poignand v NZI Securities</i> (1994) 12 A.C.L.C. 550	43
<i>Port of Melbourne Authority v Anshun Pty Ltd (No 2)</i> [1981] HCA 45	38
<i>Port of Melbourne v Anshun Pty Ltd</i> [1981] HCA 45	39
<i>Porter v Freudenberg</i> [1915] 1 K.B. 857	59
<i>Pratt Holdings v FCT</i> (2004) 207 ALR 217	100
<i>Priest v NSW</i> [2007] NSWSC 41	120
<i>Quad Consulting v David R Bleakley & Associates</i> (1990). 27 FCR 86	106
<i>Queensland v JL Holdings Pty Ltd</i> (1997) 189 CLR 146	126
<i>Quirk v Bawden</i> (1992) 111 FLR 115	116
<i>Rayscan Management Pty Ltd v Sir Nandan Moodliar</i> [2008] NSWSC 857 ...	75
<i>Re the Black Stump Enterprise Pty Ltd and Associated Companies (No 2)</i> [2006] NSWCA 60	121
<i>Re Vandervell's Trusts (No 2)</i> [1974] Ch 269	64
<i>Re Wakim; ex parte McNally</i> (1999) 198 CLR 511	41
<i>Redwood Pty Ltd v Link Market Service Pty Ltd</i> [2007] NSWCA 286	39
<i>Reid v Howard</i> [1995] HCA 40	102
<i>Roads & Traffic Authority of NSW v Australian National Car Park Pty Ltd</i> [2007] NSWCA 114	87
<i>Rules of the Supreme Court 1971</i> (WA)	passim
<i>Sali v SPC Ltd</i> (1993) 67 ALJR 841	125
<i>Sankey v Whitlam</i> (1978) 142 CLR 1	103
Section 63 defines irregularities as anything done or omitted to be done, or a failure to comply with any requirement of <i>Civil Procedure Act 2005</i> (NSW) or <i>Uniform Civil Procedure Rules 2005</i> (NSW). Irregularities do not always invalidate the proceedings, any step taken in the proceedings, or any document, judgment or order in the proceedings. However there are some	

classes of irregularities that may be so fundamental that they render the proceeding a nullity.	78
<i>Seigfried Konig v Canberra Casino</i> (2000) ACTSC	88
<i>Service and Execution of Process Act 1992</i> (Cth)	55, 56, 59
<i>Service and Execution of Process Regulations 1993</i> (Cth)	56
<i>Sheldon v Brown Bayley's Steel Works Ltd & Dawnays Ltd</i> (1853) 2 QB 39261	
<i>Smith v Cardiff Corp</i> [1953] 2 All ER 1373	33
<i>Sneade v Wotherton Barytes & Lead Mining Co Ltd</i> [1904] 1 KB. 295	74
<i>Southern Equities Corp v Arthur Anderson & Co (No 6)</i> [2001] SASC 398... 100	
<i>Stead v State Government Insurance Commission</i> (1986) 161 CLR 141	13
<i>Supreme Court (General Civil Procedure) Rules 1996</i> (Vic)	12, 56, 80
<i>Supreme Court (General Civil Procedure) Rules 2005</i> (Vic)	passim
<i>Supreme Court Act 1933</i> (ACT)	40
<i>Supreme Court Act 1970</i> (NSW)	132
<i>Supreme Court Rules</i> (NT)	passim
<i>Supreme Court Rules 1937</i> (ACT)	12
<i>Supreme Court Rules 1987</i> (NT)	12, 56, 85
<i>Supreme Court Rules 1987</i> (SA)	passim
<i>Supreme Court Rules 2000</i> (Tas)	passim
<i>Supreme Court Rules 2006</i> (SA)	44, 56
<i>The Why Not</i> (1868)	63
<i>Theodore v Australian Postal Commission</i> [1988] VR 272	91
<i>Thorp v Holdsworth</i> (1876) 3 Ch.D. 637	63
<i>TPC v Abbco Ice Works Pty Ltd</i> (1994) 123 ALR 503	102
<i>Trade Practices Act 1974</i> (Cth)	42
<i>Triplex Safety Glass v Lancegaye Safety Glass Ltd</i> [1939] 2 KB 39	102
<i>Trustee Companies Act 1947</i>	28
<i>Trustee Companies Act 1947</i> (ACT)	26, 27
<i>Truth About Motorways v Macquarie</i> (2000) 200 CLR 591	23
<i>Uniform Civil Procedure Rules 1999</i> (Qld)	passim
<i>Uniform Civil Procedure Rules 2005</i>	44
<i>Uniform Civil Procedure Rules 2005</i> (NSW)	passim
<i>Uniform Civil Procedure Rules 205</i> (NSW)	120
<i>US Tobacco Co v Minister for Consumer Affairs</i> (1988) (1988) 82 ALR 509.. 24	
<i>Van Heyningen v Netherlands-Indies Government</i> [1949] St R Qd 54	61
<i>Vella v Australia & New Zealand Banking Group Ltd</i> [2008] NSWSC 209 ... 119	
<i>Vogel v R&A Kohnstamm Ltd</i> [1973] QB 133	41
<i>Voth v Manildra Flour Mills</i> (1990) 171 CLR 538	59, 61
<i>Walker v Commonwealth Trading Bank of Australia</i> (1985) 3 NSWLR 496 ... 27	
<i>Walton v Gardiner</i> (1993) 177 CLR 378	111
<i>Wardley Australia v Western Australia</i> (1992). 175 CLR 514	40
<i>Waterford v Cth</i> (1987) 163 CLR 54	100
<i>Waterhouse v Perkins</i> [2001] NSWSC 13	133
<i>Weldon v Neal</i> (1887) 19 Q.B.D. 394	76
<i>Weldon v Neal</i> (1887) 19 QBD 394	32
<i>Whyked Pty Ltd v Yahoo!7 Pty Ltd</i> [2008] NSWSC 477	121
<i>Williams v Minister, Aboriginal Land Rights Act</i> (1994) 35 NSWLR 497	19
<i>Williams v Spautz</i> (1992) 174 CLR 509	111
<i>Williams v Spoutz</i> (1992) 174 CLR 509	111
<i>Wong and Ors v Silkfield Pty Ltd</i> (1999) 73 ALJR 1427	35

Zanella v Madden [2007] NSWSC 559..... 119

Sample

Topic 1: Introduction

1.1 Background

Litigation and dispute resolution management (also known as civil procedure) includes the rules and regulations which oversee court proceedings and conduct. This management is concerned with the enforcement of a right. This may be distinguished from substantive law which is concerned with the establishment of a right.

Civil procedure draws its authority from various rules across different Australian jurisdictions. The principal rules for each jurisdiction are identified in the table below.

Jurisdiction	Rule
Queensland	<i>Uniform Civil Procedure Rules 1999 (Qld)</i>
New South Wales	<i>Uniform Civil Procedure Rules 2005 (NSW)</i>
Australian Capital Territory	<i>Supreme Court Rules 1937 (ACT)</i>
Victoria	<i>Supreme Court (General Civil Procedure) Rules 1996 (Vic)</i>
Tasmania	<i>Supreme Court Rules 2000 (Tas)</i>
South Australia	<i>Supreme Court Rules 1987 (SA)</i>
Northern Territory	<i>Supreme Court Rules 1987 (NT)</i>
Western Australia	<i>Rules of the Supreme Court 1971 (WA)</i>
High Court	<i>High Court Rules 2004</i>
Federal Court	<i>Federal Court Rules 1979</i>

The various civil procedure rules are generally flexible enough to accommodate the unique characteristics of each individual court.

NOTE: It is advisable that the actual text of the applicable rules in your jurisdiction should be read in conjunction with this law summary.

Civil procedure also draws its authority from various Acts across different Australian jurisdictions. In New South Wales, for example, the *Civil Procedure Act 2005* (NSW) and various court Acts such as the *Local Court Act 2007* (NSW) govern civil procedure. The *Evidence Act 1995* (Cth) plays a key role at the Commonwealth level.

1.2 Overriding Purpose

The overarching purpose of many of the Acts regarding civil procedure can be summarised as 'efficiency'. This purpose includes common features such as:

- just resolution of disputes;
- quick resolution of disputes;
- cheap resolution of disputes;

- correct and accurate fact-finding; and
- enforcement of judgments or court orders.

Notably, section 37M(1) of the *Federal Court of Australia Act 1976* (Cth) stipulates that the “overarching purpose” of civil litigation is to “facilitate the just resolution of disputes (a) according to law; and (b) as quickly, inexpensively and efficiently as possible”.

Furthermore, section 56 of the *Civil Procedure Act 2005* (NSW) prescribes the “just, quick, and cheap” resolution of civil proceedings to be the ‘overriding purpose’ of civil litigation. The provision is overriding in the sense that when the court exercises procedural powers, it must always have regard to this purpose (s 56(2)). Furthermore, any parties or legal practitioners which are part of the proceedings must also assist the court in achieving this objective (ss 56(3), (4)).

The overriding purpose help interpret other rules in the context of the overriding purpose. It informs the application of other rules, provides a guide to interpretation and is most useful in resolving issues where the *Uniform Civil Procedure Rules 2005* (NSW) are silent or unclear or there is a conflict between rules.

1.3 Principle of Open Justice

In support of the ‘overriding purpose’ of civil litigation is the principle of open justice. The general principle is that the public is free to observe all court proceedings. This acts as a safeguard to ensure that court proceedings are just as it allows the public to scrutinise the legal process and moreover creates the perception that justice is delivered which instils public confidence into the legal system (*Enfield v R (No 2)* [2008] NSWCCA 243). will An exception to open justice may arise in extreme circumstances, which include:

- protecting the identity of an informer (*Cain v Glass (No 2)* (1985) 3 NSWLR 230);
- protect the identity of victims of blackmail; and
- matters of national security (*Mirror Newspaper v Waller* [1985] 1 NSWLR 1).

Section 71 of the *Civil Procedure Act 2005* (NSW) provides a broad range of categories in which proceedings can be conducted with the absence of the public.

1.4 Principle of a Fair Trial

Due to the court’s inherent ability to control its own processes, there is a duty on the courts to prevent the abuse of process. This helps maintain public confidence in the justice system.

- In *Stead v State Government Insurance Commission* (1986) 161 CLR 141 the majority held that in spite of the principle of fair trial not every

departure from the rules of natural justice will entitle the aggrieved party to a new trial. An appellate court will not order a new trial if the denial of natural justice does not have a material effect on the outcome of the trial.

In NSW, the requirements for a new trial are stated in r 51.53 of the *Uniform Civil Procedure Rules 2005* (NSW).



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