

## Miles and Dowler, *A Guide to Business Law 21st edition*

### Study Aid – Chapter summaries

#### Chapter summary – ch 2 – legal institutions

1. The “adversary system” is the basic method of dispute resolution in the Australian courts (judicial system).
2. To avoid the adversarial approach, there is an increasing tendency towards alternative dispute resolution (ADR) by mediation and conciliation. Here an independent third party helps the disputants to resolve the issues themselves. Examples are the:
  - Small Claims Division of the Local Court; and
  - NSW Civil and Administrative Tribunal.
3. There are two Parliaments, State and Commonwealth (federal); and therefore there are two judicial systems, State and federal.
4. The jurisdiction of a court includes the type of legal matters that it can deal with. The civil jurisdiction is its jurisdiction to deal with matters of a non-criminal nature. The criminal jurisdiction relates to the types of crime that the court can deal with. Some courts have an appellate jurisdiction, which means that they can hear appeals from the decisions of other courts.
5. The New South Wales judicial system has a variety of courts and tribunals.
6. In most States and Territories, there is a “small claims” court or tribunal that handles claims involving small amounts of money. In South Australia, the Magistrates Court has a Small Claims Division that hears matters up to \$25,000. In NSW, the Small Claims Division in the local courts can hear civil matters up to \$10,000.
7. Local Courts (in its General Division) can hear claims over \$10,000 and up to a maximum of \$100,000. The criminal jurisdiction of the Local Court extends only to summary offences, generally the less serious criminal matters.
8. District Courts can hear civil claims of up to \$750,000 in value. In addition, they can hear claims for damages for personal injuries to any amount. The criminal jurisdiction deals with most indictable criminal offences; the judge sitting with a jury of 12 persons.

The District Court has an appellate jurisdiction. It can hear appeals from decisions of the Local Court and some tribunals.

9. The Supreme Court, the highest court in NSW, has two levels. The divisional level consists of ordinary judges of the Supreme Court, called “puisne” judges, who deal with common law, equity, serious criminal offences and other matters,



sitting alone or with a jury (usually in criminal trials). There are few limits to jurisdiction, although the court generally only deals with more serious matters.

10. The Supreme Court/Court of Appeal exercises appellate power; ie hears appeals in civil matters from the District Court, appeals from the decisions of single judges of the Supreme Court and sometimes direct appeals from magistrates courts (where statutes allow such appeals)
11. Supreme Court/Court of Criminal Appeal is similarly constituted and obviously deals exclusively with appeals arising from criminal trials.
12. The Land and Environment Court was established by the New South Wales Parliament to determine matters relating to planning and environment. The court consists of both judges and assessors and the emphasis is on a negotiated settlement if it is possible.
13. **Tribunals.** In recent years, Parliament has established various tribunals to take some of the workload from the courts and to provide faster and cheaper means of resolution of disputes. One example is the Administrative Appeals Tribunal.
14. The Federal legal system consists of various courts and tribunals.
15. Federal Court of Australia deals with a variety of matters of Commonwealth law; including bankruptcy, intellectual property and breaches of the *Competition and Consumer Act 2010* (Cth) (formerly the *Trade Practices Act 1974* (Cth)). Matters are heard by a single judge. Appeals lie to the Full Court of the Federal Court (three or more judges) and from there to the High Court (with leave).
16. The Family Court of Australia deals with matters of family law: marriage, divorce, and associated areas like custody and property settlements. There are two levels: judges sitting alone, and the Full Court of the Family Court. The Full Court hears appeals from magistrates on family law matters and from single judges of the Family Court. There are no juries. Appeals may lie from the Full Court (with leave) to the High Court of Australia.
17. The Federal Circuit Court of Australia was established from 1 July 2000 to deal with federal law matters previously heard before the Federal Court and the Family Court. It can deal with most federal law matters. Appeals can be made to either the Full Federal Court or Full Family Court depending on the nature of the matter. Appeals may then go to the High Court (with leave).
18. The High Court is the highest and most important court in Australia. Its jurisdiction falls into three main areas:
  - (a) interpreting all constitutional matters and hearing various commonwealth legal issues;
  - (b) hearing appeals from all Federal courts; and
  - (c) hearing appeals from all State/Territory courts.



The High Court does not hear all appeals, it must first grant leave to appeal and often such leave is refused. This means the High Court only deals with appeals it considers important.

19. The Commonwealth Parliament has established a number of tribunals to provide alternate dispute resolution. Two important Commonwealth tribunals are: the Administrative Appeals Tribunal (AAT); and the Australian Competition and Consumer Commission (ACCC).
20. **Cross-vesting of jurisdiction.** State courts are sometimes given power to hear matters involving Commonwealth law. Jurisdiction is normally granted to the State courts by way of Commonwealth statutes.
21. Other States/Territories have differing legal hierarchies and tribunals
22. **Western Australia.** The Magistrates Court can hear civil matters up to \$75,000 in value and minor crimes. The civil jurisdiction of the District Court has a limit of \$750,000 but the amount is unlimited for damages claims. The Supreme Court handles civil cases over \$750,000 and deals with the most serious crimes.
23. **Queensland.** The magistrates court handles minor criminal matters and civil cases up to \$150,000. The District Court hears civil disputes from \$150,000 to \$750,000 and the more serious criminal offences. The Queensland Supreme Court handles civil claims over \$750,000 and the most serious criminal matters.
24. **Victoria.** The civil jurisdiction of the Magistrates Court is \$100,000 and it hears less serious criminal matters. The intermediate court is the County Court and it hears all personal injury claims and commercial matters and most of the serious crimes. The Victorian Supreme Court deals with the most serious crimes and civil disputes involving large amounts. It acts as an appellate court to hear appeals from the lower courts in both civil and criminal matters.
25. **South Australia** has a magistrates court that handles both civil and criminal cases. It hears civil matters up to \$100,000. The District Court hears civil matters over \$100,000 for non-personal injury and up to \$100,000 for personal injury claims. It hears most serious criminal cases. The SA Supreme Court is the superior court with civil and criminal powers and tries the most serious criminal cases. It also hears appeals from lower courts.
26. **Tasmania.** The courts in Tasmania are only on two levels. There is a magistrates court dealing with civil matters up to \$50,000 and minor crimes. The Tasmanian Supreme Court has unlimited civil powers and deals with the most serious criminal trials and civil matters over \$50,000
27. **Northern Territory.** The jurisdiction of the Local Court extends to civil claims of up to \$100,000. There is no intermediate court. The Supreme Court handles civil claims over \$100,000 and the most serious criminal matters as well as hearing appeals from the lower courts of the Northern Territory.
28. **Australian Capital Territory.** There are only two levels of courts in the ACT.



The magistrates court has civil jurisdiction up to \$250,000 and hears minor criminal matters. The Supreme Court has unlimited powers over \$250,000 and deals with serious criminal cases. It also hears appeals from lower courts and tribunals. The Court of Appeal now handles appeals from decisions of the ACT Supreme Court.

29. **Burden and standard of proof.** In civil proceedings, the plaintiff has the burden of proof (he who sues must prove). In civil proceedings the standard of proof required is on the balance of probabilities. In a criminal trial the prosecution, that is, the State, has the burden of proof and the standard of proof is beyond a reasonable doubt.

30. **Disputes with government and other organisations.** Procedures exist to help citizens in their disputes with the administrative actions of government departments and other bodies. The use of prerogative writs and special appellate legislation is augmented by the establishment of Ombudsmen.

An Ombudsman is an independent person appointed to investigate complaints against the actions of governmental and other bodies. The Commonwealth Ombudsman operates in the Commonwealth area and State Ombudsmen investigate the activities of State authorities. Semi-governmental and private organisations have also established Ombudsmen, eg the Telecommunication Ombudsman and the Banking Ombudsman. The Office of the Ombudsman is also established and used in all other States and Territories

31. **Precedent:** the doctrine of precedent provides that when a superior court makes a decision (*ratio decidendi*) later cases with similar facts should be decided in the same way. This doctrine of precedent is sometimes called by its Latin phrase “*stare decisis*” (roughly translated as “let the decision stand”).

32. Precedent may be “binding” in that lower courts are legally bound to follow the decision of a higher court in similar cases. Precedent may also be “persuasive” meaning that lower courts may choose to follow a previous decision but they are not obliged to do so. Precedent is intended to provide consistency in courts decisions.