

SU8: MEANING OF JURISDICTION

8.1 Relevance of jurisdiction - Civil procedure

Jurisdiction - No courts to hear ALL matters
 - Which Court competent - hear what matter?

Nexus - Court - Parties
 - Court - subject matter

Effective judgment - court - before hearing matter

Jurisdiction issues before procedure

Determining jurisdiction - competent

Failure determining jurisdiction - serious consequences
 - court refuse to hear matter
 - Fresh action in new court - time and money wasted

Before vested with jurisdiction

Jurisdictional issues important in S.A. Civil Procedure

8.2 Concept of Territory

Care - approach right court

S.A. Unitary state - Courts federation

High Courts - serve specific geographical area

High Courts independent - Decision of similar/lower Court not binding
 - Territorial independence - Jurisdictional problems

Decision taken - determining Court - Court's competence

- i) Which court may hear? (Superior/lower)
- ii) Different courts - different litigation
- iii) Correct court - type of claim
- iv) S.A. - jurisdiction - causes arising in territorial area

Both requirements to be met - otherwise no jurisdiction exercised

8.3 Definition of Jurisdiction

8.3.1 I.t.o. Civil Procedure

Halsbury's "Laws of England" 4ed, vol. 10 at 323

- i) Authority which a court has
 - ii) to decide matters
 - iii) that are litigated before it
- OR
- i) take cognizance
 - ii) of matters
 - iii) presented in a formal way
 - iv) for decision.

Ewing McDonald & Co. Ltd v M&M Products Co. [1991] 1 S.A. 252 (A) at 4 and 5 - Nienaber AJA

- i) The power vested in a court to
- ii) adjudicate upon,
- iii) determine, and
- iv) dispose of a matter

Two requirements

- i) Court must have authority to hear matter - Requires link (nexus) - jurisdictional connecting factor
 court - parties - cause of action
- ii) Court must have power to enforce its judgment - Derived from doctrine of effectiveness

8.3.2 I.t.o. other branches of Law

Technical meaning - Public International Law

State competence - legislate - confines - international recognised boundaries