

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 22, Number 4

November 2011

CASE NOTES

- When is a garden equipment salesman a farmer?; Can a solicitor act for two different defendants against the same plaintiff?; and mediation media watch** 209

ARTICLES

International arbitration in Australia – 2010/2011 in review – *Albert Monichino SC*

The past 15 months mark a historic period for the reinvigoration of arbitration in Australia. The avowed objective of the federal government is to position Australia as a hub for dispute resolution in the Asia-Pacific region. This article considers legislative, policy, case law and institutional developments in international arbitration in Australia since 1 July 2010. 215

The challenges and opportunities of the role of student ombudsmen in an Australian university – *Sally Varnham and Maxine Evers*

The feeling is often expressed that there are increasing numbers of students who are less interested in the student experience than in completing their qualifications with the best marks in the shortest possible time. In many instances this translates to a greater readiness to express dissatisfaction when the delivery of a course does not match up to expectations or when there is a perception of having been dealt with unfairly in terms of assessment or in other processes. It is ever more important that universities ensure that their processes and procedures are transparent, fair and consistent, and accommodating of diversity. Student ombudsmen play a vital role in this process, both in their investigations of requests for assistance and in their recommendations on systemic matters. This article considers the challenges faced by the authors in their roles as student ombuds in an Australian university. It contrasts the “last resort” model of student ombud used in that university with models used in other Australian universities and those in comparative jurisdictions, and considers which may be best suited to today’s climate of higher education. 228

International peace mediation through a legal lens – *Brenda Daly and Noelle Higgins*

Mediation has recently emerged as a suitable method of resolving armed conflicts (international peace mediation), with a significant increase in the amount of conflicts being resolved by “negotiated settlement” as opposed to military dominance. Development of the international peace mediation discourse has, however, been ad hoc and disjunctive, resulting in a significant disparity regarding its conceptualisation, a lack of established accountability mechanisms, and the absence of a pragmatic coherent framework. This article highlights how the application of the extant framework on mediation in legal discourse can provide clarity in defining and developing an understanding of international peace mediation. It focuses on the case study of the international peace mediation efforts in the Acehese region of Indonesia. 238

Impugning expert determination: When does an error justify setting aside a determination? – Troy Peisley

This article discusses impugning expert determinations, particularly the circumstances in which an error by the determiner will justify setting aside a determination. It analyses three important cases to demonstrate the evolvement of Australian law in this regard. 247

Using a values-based approach in mediation – Lola Akin Ojelabi and Tania Sourdin

Mediation is increasingly employed in the international and domestic context to support agreement-making and to manage and resolve conflict. Practitioners and participants in such processes may not have clearly defined obligations and may not be subject to any systemic or other controls. As a result, mediation can be conducted in a procedural manner that is offensive from the perspective of social or human norms and may also result in outcomes that are not transparent and may be unfair. This article proposes that a values-based approach be used by practitioners to assist to ensure that the processes and outcomes do not lack integrity. In addition, a values-based approach can inform the development of participant obligations, systemic approaches and objectives. To support a values-based approach an “ERSR” framework is proposed, focusing on education, recognition, support and resolution. 258

An effective enforcement mechanism for online consumer arbitration awards – Chinthaka Liyanage

The success of international commercial arbitration is driven mainly by the presence of an effective cross-border mechanism for the enforcement of international commercial arbitral awards. Most importantly, there is a well-designed legal framework to sustain this enforcement mechanism in a firm and consistent manner. Online consumer arbitration as a new phenomenon also deserves an effective enforcement mechanism, due primarily to the vulnerability of online consumers and the lack of effective government-sponsored mechanisms for the enforcement of private online consumer arbitration awards. The purpose of this article is to highlight some of the merits of international arbitration-related legal frameworks that might be useful for strengthening the enforcement of online consumer arbitration awards in the resolution of cross-border business-to-consumer electronic disputes. 267

VOLUME 22 – 2011

Table of Authors	277
Index	279