

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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CASENOTES

- Is mediation a step in proceedings? Is a failure to attend mediation a failure to defend proceedings? And mediation media watch – David Spencer** 3

ARTICLES

- Why ADR must be a mandatory subject in the law degree: A cheat sheet for the willing and a primer for the non-believer – James Duffy and Rachael Field**

The profession of law is deeply steeped in tradition and conservatism, which influences the content and pedagogy employed in law faculties across Australia. Indeed, the practice of law and the institutions of legal education are in a relationship of mutual influence; a dénouement which preserves the best aspects of the common law legal system, but also leaves the way we educate, practice and think about the role of law resistant to change. In this article, the authors lay down a challenge to legal education orthodoxy and a call to arms for legal academic progressivists: that alternative dispute resolution (ADR) should be a compulsory, stand alone subject in the law degree. The authors put forward 10 simple arguments as to why every law student should be exposed to a semester-long course of ADR instruction. 9

- A critical evaluation of ADR in the Queensland Planning and Environment Court – Michael Walton**

Court-assisted alternative dispute resolution (ADR) in the Queensland Planning and Environment Court is relatively new concept. It gained momentum in 2007 and is now firmly entrenched and has become the method by which the large majority of planning and environment disputes are now resolved. This article traces the origins of court-assisted ADR in the Planning and Environment Court, assesses the success or otherwise of the current system, and considers whether ADR is of benefit to self-represented litigants. 20

- Dispute resolution and the demonisation of culture – Dr Lola Akin Ojelabi**

Culture is often used by perpetrators of abuse as an excuse for human rights violations and the deprivation of basic needs in dispute situations. This article argues for a multi-dimensional view of culture and a values approach to the resolution of disputes involving the demonisation of culture. A multi-dimensional approach looks at disputes, culture and cultural issues from different perspectives, and examines the socio-political and economic factors that contribute to the generation and escalation of the dispute. It replaces the culture-demonising discourse with a values discourse, focusing more on recognition of human worth and dignity as a basis for resolving underlying issues. 30

Challenges in co-mediation: A practice issue – Lan Yuan Lim

There are several advantages having two mediators to co-mediate a commercial dispute. However, co-mediation is also fraught with challenges when the mediators disagree with each other. Few studies have examined the difficulties involved. This article attempts to investigate some of these challenges by carrying out a focus group discussion with six senior mediators with several years of experience in conducting joint mediations. Based on the findings, valuable lessons are learnt which help to establish good practices for co-mediators in future mediations. 39

“We assumed that by living in a civilised country things can be freer and better”: Counter stories of dispute resolution in Australia – Siew-Fang Law

This article presents some of the paradoxes of mediation in a multicultural context. Through analysis of “counter stories” of dispute resolution embedded in a broader socio-political context, the author discusses the implications of “majoritarian stories” that have dominated and shaped the paradigms of dispute resolution theory and practices in Australia. The author argues that it is fundamental for scholars and practitioners to critically reflect on the ontology and epistemology of mediation in our increasingly globalised and multicultural society. 45

Solving securities exchange disputes by means of ombudsmen: Does it work? – M Saleh Jaber

Alternative dispute resolution (ADR) is often used in financial market and securities exchange disputes. Brokerage firms in Australia and the United Kingdom use ADR methods in the form of the financial ombudsman services to deal with stock market disputes. The processes and outcomes of these ombudsmen’s activities are governed by special rules, and their techniques include mediation, negotiation and the “determination” procedure to solve referred disputes. This article analyses these procedures, and the proportionality of the ombudsman framework for solving securities exchange disputes. This research has identified number of shortcomings in the ombudsman system, and recommends replacing it with arbitration. 55

BOOK REVIEWS

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