

# AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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## ARTICLES

### **What do litigants really want? Comparing and evaluating adversarial negotiation and ADR**

*Just Balstad*

What do litigants really want to get out of a dispute resolution process? What are the underlying assumptions and principles in relation to different ways of negotiating conflict? To what degree can different processes fulfil the parties' expectations of procedural fairness and grant psychological satisfaction? This article focuses on the degree to which the parties' expectations are met in cases of adversarial negotiation (mainly within a court-based adjudication system) and in alternative dispute resolution with third-party intervention (mainly facilitative mediation). The article compares the level of satisfaction parties can assume to get from each process. In conclusion, it suggests that both processes have advantages and disadvantages and that making an informed choice often leads to the greatest satisfaction.....244

### **Meanings of home in relationship breakdown: Understandings for conflict resolution professionals**

*Susan M Thompson*

This paper discusses the profound symbolic and physical meanings of the concept of home. It explains how the loss of an intimate relationship, through separation or divorce, significantly impacts on these meanings. Research with individuals who have experienced relationship loss and mediators who work with separating couples is presented. The data reveal intense feelings of grief and despair, as different aspects of home are irretrievably lost in the wake of a relationship collapse. An understanding of the meanings of home and how they change during a relationship breakdown will assist conflict resolution professionals to be more sensitive and effective when working with separating couples and their families. ....257

## **Negotiating responsibility for project change in collaborative working environments**

*Dr Issaka Ndekugri and Dr Sai On Cheung*

Disputes from project cost escalation and delays have exercised the attention of construction management researchers for a long time. Several developments suggest research towards development of conceptual and practical tools for negotiating away informal differences before they escalate into formal disputes requiring litigation or arbitration. Of these developments, the most pressing drive for negotiation is the increased use of procurement strategies requiring the stakeholders to work in collaboration. This article reviews the literature on negotiation of variations and claims. The findings of this review are that: (i) there is very little literature on the negotiation of variations and claims which resonates with general negotiation theories; and (ii) there is a need for research on negotiations models and tools which will reflect the volume of information scattered across different documents prepared for purposes other than negotiation and the multiplicity of relevant issues and stakeholders.....271

## **New arbitration rules of the China International Economic and Trade Arbitration Commission**

*Sarah E Hilmer*

The China International Economic and Trade Arbitration Commission (CIETAC) is dealing with the highest number of international cases from among approximately 180 arbitration centres of mainland China. There are many reasons to conduct arbitration within China, in particular with CIETAC. China has ratified a number of international Conventions and CIETAC offers several incentives to conduct arbitration with this same institution: the international panel of arbitrators provides a great variety of expertise; CIETAC's introduction of its Ethical Rules, as well as the new Arbitration Rules of CIETAC – these updated Rules have been in force since 1 May 2005.....280

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5. Austin, n 4, p 56.

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7. Sheehy et al, n 6 at 221.

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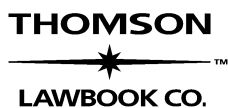
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