

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

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CASENOTES

- Costs ramifications for parties not mediating in good faith and parties going “completely cuckoo” – David Spencer** 5

ARTICLES

Separation of powers, courts, tribunals and the state – Guy Cumes

The article considers what is meant by the third arm of government within the separation of powers doctrine and examines the core features of courts and tribunals. It questions the place that tribunals occupy within the doctrine and the purpose of the state in creating tribunals. The argument is made that tribunals are hybrid institutions whose central purpose is to foster quick, cheap and informal dispute resolution as a part of the executive arm of government. 10

Foundations for mediation practice: Hong Kong’s evolving landscape – Guy Lipert

The development of mediation practice in Hong Kong goes back to the 1980s. Since then, it has found a receptive audience in the areas of construction and matrimonial disputes. However, it has yet to gain wider acceptance, eg in the commercial sector, and the community more generally. Hong Kong’s Judiciary, ever aware of the excessive costs, delay and complexity associated with the civil justice system has reviewed that system and is proceeding with reforms for its improvement, some of which aim to support the use of mediation. In time, the promotion of mediation in the civil justice system will prove a stimulus for the use of mediation elsewhere in Hong Kong. Presently, however, it is worthwhile considering the existing infrastructure which supports conciliation and mediation in Hong Kong – for arguably this may serve a source of experience and knowledge upon which future developments in the field may build. 17

How do financial services consumers access complaints and dispute resolution processes? – Professor Tania Sourdin and Louise Thorpe

Recent research conducted by the writers into consumer credit disputes has revealed a number of factors that impact upon the use of and access to complaints and alternative dispute resolution processes by consumers. In particular, the research has suggested that many consumers who may have grievances or concerns do not even access or use complaints and dispute resolution services. The research identified that those consumers who take some form of action to resolve their complaints or disputes tend to be located in certain geographical areas, have higher socio-economic status and education levels, and are over-represented in particular age brackets. 25

Teaching ADR to Australian law students: Implications for legal practice in Australia – Judy Gutman, Dr Tom Fisher and Dr Erika Martens

Alternative dispute resolution (ADR) is entrenched in the legal process in all Australian jurisdictions and, as a corollary, in most law school curricula in Australia. This article

examines the interface between ADR practice and contemporary legal education by reporting on an empirical study on attitudinal change among first-year students conducted at La Trobe Law and considers questions that persist about the effect of ADR training on Australian law students and its impact on legal practice in Australia. 42

Culture and negotiation: The role of morality – *David Jenaway*

This article explores the effect of explicitly incorporating personal morality into legal practice, with a specific focus on legal negotiations. This discussion focuses on the technique of “mindfulness meditation”, which allows lawyers to better appreciate the moral choices they make. It will be argued that legal negotiators should be encouraged to adhere to personal moral benchmarks, because it enhances their ability to secure better outcomes for their clients. This is because it provides for an increased job satisfaction for lawyers, allows for a more productive lawyer-client relationship, and contemplates a superior range of negotiation techniques made available by moral commitment. These benefits can be obtained without reducing the partisan roles lawyers must play as client advocates. 49

Culture clash – can online dispute resolution be the way forward? – *Dr Siew Fang Law and David Peter Leonard*

This article explores the challenges of culture and language on intercultural online dispute resolution. It is arguable that culture and language not only bring meaning to the world, they shape one’s cognitive processes, ie perception, interpretations and judgments. Through the examination of Asian language and discourse, particularly Chinese, the article explores an implicit social meaning that is centred in Asian online communication styles. It also examines the alternative strategies, such as the use of a private vocabulary shared by members of the same culture. 55

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