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Looking Backwards to Move Forwards: Reviewing Sir Laurence Street’s First Scholarly Contribution to the ADRJ – *Professor David Spencer*

The very first article in the very first edition of the newly minted Australasian Dispute Resolution Journal (known back then as the Australian Dispute Resolution Journal) was written by the late Sir Laurence Street and was entitled, “The Court System and Alternative Dispute Resolution”. His article touched on the role of the judiciary in adjudicating disputes coming before the courts and how there cannot be an alternative mechanism to that sovereign authority. Sir Laurence addressed the different types of dispute resolution processes including arbitration and concluded that none of these processes could be considered as being alternative to a person’s choice to litigate. His article was an appropriate way to introduce the Journal to its readers and to address a salient issue in the life of what, at the time, was this new thing called “alternative dispute resolution”. In his own inimitable way, Sir Laurence gave us a lesson in legal history, clarified the role of the judiciary and positioned dispute resolution not as an alternative to curial adjudication rather as a useful and necessary additional process to resolving disputes. Upon the sad news of the passing of Sir Laurence Street, it is timely to review his first of many contributions to the journal and to honour his role as lawyer, judge, jurist and dispute resolver. 90

“I love you when, I love you if, I love you because ...”: Relationships Mediation – Mieke Brandon

In Australia family dispute resolution has reached maturity through becoming a profession with obligations and responsibilities for practitioners. Many mediators encourage constructive conversations between separated or separating people about their future as individuals and/or as co-parents. However, the process of facilitative mediation to encourage people to see if there is anything to achieve by discussing how they may be able to stay together has as yet not been fully explored in our country. Relationships mediation offers a facilitative mediation process for partners experiencing difficulties in their relationship who are willing to learn to resolve conflict between them, as many often prefer to stay together. This article illustrates why couples in intimate relationships seem to separate and how perhaps this can be avoided by learning more constructive communication patterns, enhancing their togetherness through mediation.

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Uncertainty in Dispute Resolution Clauses: Is there a Way to Escape the Commercial Bargain? – Ahsan Ashraf

Construction industry is a risky business full of disputes. It is essential for parties in a construction contract to include a dispute resolution clause which fully defines a dispute resolution mechanism to ensure that if a dispute arises, the parties are under an obligation to comply with the dispute resolution process. While the complex nature of construction disputes requires that the dispute resolution process under a contract is detailed enough to provide them every opportunity to settle dispute in a timely and cost effective manner before getting to the court, it is equally important to ensure that it is certain enough to be enforceable. This article carries out a review of case law involving enforceability of dispute resolution processes. It identifies very limited circumstances in which the courts will interfere with parties’ mutually agreed bargain. Finally, it concludes that the wording and a measureable standard against which parties’ commitment can be measured against are key factors in determining enforceability of a dispute resolution clause.

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A Model to Use When Representing Clients in Conciliation Conferences in the Queensland Anti-Discrimination Commission – Donna Cooper and Deborah Keenan

In the Queensland Anti-Discrimination Commission our experience has been that cases have a far higher chance of resolution if legal representatives have a comprehensive understanding of the conciliation process, the multiple goals it sets out to achieve and the unique role they should play as dispute resolution advocates. In this article we explain where the conciliation conference sits on the dispute resolution spectrum. We then set out a model that lawyers can use when representing their clients in such conferences. This structured approach will provide the best chance of settlement and has been drawn from the literature which highlights that parties will be more inclined to settle when their underlying substantive, procedural and psychological needs and interests have been addressed.

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