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Mediating Workplace Bullying: A Reflective Case Study – *Elizabeth Spencer*

In this article reflections by a complainant in workplace bullying contrast theory with personal experience and highlight potential misconceptions about the process of mediation in that context. The article outlines several areas of misalignment between theory and practice, according to the author's lived subjective experience. These areas include the framing of the problem and identification of the parties who need to be involved in the process; the question of who must bear the weight of the burden of addressing and resolving workplace bullying; the idea that the process is consensual; the concept of impartiality; and finally, the matter of confidentiality. 114

The Emotional Advantage: How Dispute Resolution Practitioners Can Embrace the Transformative Capacity of Emotion and De-escalate Conflict – *Sophie Whittaker*

Alternative dispute resolution is increasingly being adopted to resolve conflicts outside of the adversarial arena. Accordingly, the role of "dispute resolution practitioner" is becoming more and more common. Australia's current legal education programs, however, do little to prepare law graduates for a career as a dispute resolution practitioner. Instead, young practitioners are forced into a program of self-guided learning that often occurs on one's feet (or seat), so to speak. For this reason, this article seeks to draw on extant literature relevant to dispute management, as well as literature relevant to other problem-solving professions, to (1) synthesise the skills required of dispute resolution practitioners; and (2) provide guidance on how to implement those skills to harness the transformative capacity of emotion for the purpose of conflict management and dispute resolution. 122

Mediation for Tackling Nigerian Medical Disputes: A Mutually Beneficial Option? – *Adesina Temitayo Bello and Adetoun Onibokun*

One of the ways disputes arise is through interface with medical personnel known as medical disputes. Due to the nature and scope of medical disputes, it has become increasingly clear that the typical means of resolving disputes will no longer suffice; the bare minimum has become unacceptable. This article discusses mediation as a process of voluntarily submitting a dispute to a neutral third party, who facilitates communication and

negotiations between the disputing parties. It takes into cognisance that it is confidential and non-adversarial nature, mediation suits the resolution of medical disputes. The article concludes that mediation is more effective in resolving medical disputes if its processes are properly harnessed and applied. 131

Carve Outs in Arbitration Agreements: Tianqi Lithium Kwinana Pty Ltd v MSP Engineering Pty Ltd [No 2] – *Thomas Camp*

The Western Australian Court of Appeal has delivered a decision concerning carve out clauses in arbitration agreements. The Court held the carve out in the standard form AS4902-2000 General Conditions of Contract for Design and Construct only allows for payment claims to be determined in court where there is no triable issue. In doing so, the Court also made clear that an arbitration clause will be subject to the breadth of the carve out clause, and where a dispute comes within both the carve out and arbitration clause, arbitration will be optional. Further, if a carve out clause is too narrow, any curial determination could be stayed by a mere claim that the matter is disputed, requiring arbitration to determine the merits. The drafting of carve out clauses is therefore critical to the integrity of any dispute resolution regime. 141

The Court of Arbitration for Sport and the Shayna Jack Doping Case – *James Duffy and John O'Brien*

After testing positive to the prohibited substance Ligandrol in July 2019, Australian swimmer Shayna Jack has endured the spotlight and ignominy that accompanies an anti-doping rule violation under Swimming Australia's Anti-Doping Policy 2015. In November 2020, Jack had an initial sanction of a four-year period of ineligibility reduced to two years by a sole arbitrator in the Court of Arbitration for Sport (CAS), on the basis that the ingestion of the prohibited substance was not intentional. Subsequently, both the World Anti-Doping Agency and Sport Integrity Australia have lodged an appeal with the CAS against the decision to reduce the period of ineligibility. This article analyses the Shayna Jack decision and identifies legal principles that may need clarification by a CAS appeal tribunal. The authors ultimately conclude that an appeal against Shayna Jack's reduced sanction should not succeed, due to the cumulative effect of factors unique to her case. 146

Family Dispute Resolution for Property Matters: The Case for Making Space – *Genevieve Heard, Andrew Bickerdike and Jamie Lee*

The use of family dispute resolution (FDR) for property matters is low in Australia, despite positive outcomes. Data from a national, longitudinal study of FDR clients in 2017–2018 are used to identify reasons for this. Although 372 participants hoped for property settlement in FDR, only 2/3 of these discussed property matters at all. In a subsample of 112 interviewees with property disputes, an even lower proportion (37%) reported a serious attempt at property settlement. The most common reason for participants' inability to progress with property negotiations was an unwilling former partner. This suggests that recent changes to Family Relationship Centre rules permitting property FDR regardless of concurrent parenting matters would not have altered outcomes greatly across the sample. The latent proposal to mandate pre-filing FDR in property (as in parenting) matters would increase the likelihood that those wishing to attempt property negotiations are able to do so. 158

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