

AUSTRALASIAN DISPUTE RESOLUTION JOURNAL

Volume 26, Number 2

May 2015

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ARTICLES

Resistance to the teaching of ADR in the legal academy – *Pauline Collins*

The use of alternative dispute resolution (ADR) mechanisms are now obliged in some cases and encouraged in others by legislation. Despite this, courses in ADR are not part of the Priestley 11 nor offered in most Australian law degrees other than as elective courses. The 2014 Productivity Commission Report on access to justice arrangements strongly advocates for a redressing of this situation. This article considers possible reasons why the legal academy has been slow to bring law curricula in line with the acknowledged practical realities of a law practice, and documents academic resistance to change as one likely obstacle.	64
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Landing in the right class of subject to contract agreements – *David Spencer*

Cases continue to emanate from the courts that appear to show some ignorance of the requirement to evidence intention in subject to contract agreements. Conversely the cases could evidence a deliberate strategy to leave open the possibility of escaping what was thought, at least by one party, to be a concluded agreement. Often this state of affairs arises as a result of a settlement reached at or after protracted mediation. The cases disclose an apparent lack of clarity by parties, lawyers and mediators as to the status of the parties' intentions to be bound by an agreement that is subject to the execution of a formal contract. This article will discuss some of the more recent cases that highlight this element of confusion and reinforce the need to clearly state which class of subject to contract agreement the parties have landed in at the conclusion of negotiations.	75
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Tipping the scales – to what extent does the presence of power imbalances detract from the efficacy of principled negotiation? – *John Woodward*

There is a concern among some dispute resolution practitioners that power imbalances compromise the integrity of principled negotiation. This article cautions against the tendency to accord primacy of importance to power imbalances in dispute resolution dialogue and argues that the exercise of power is merely one of many dynamics at play in consensual dispute resolution processes, and that generally parties are able to manage power imbalances by focusing attention on their BATNA or best alternative to a negotiated outcome.	86
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A theory of interest-based dispute management in business format franchising – *Courtenay Atwell*

This article merges two largely disconnected strands in the literature: the economics of dispute resolution and the economics of franchising. The proposed realignment recognises ex-ante incentives for dispute management and is contrasted to the prevailing legislative and academic focus on ex-post dispute resolution in the event of franchise conflict. A transformation away from the current rights-based conceptions of litigation and arbitration to interest-based dispute management is proposed. This centres on the increased utility of statutory cooling off periods, negotiation and to some extent mediation. A dispute resolution continuum with the spectrum of rights- and interest-based approaches is also established. 94

Zombie mediations – *Dr Rhain Buth*

This article intends to add to the mediation and alternative dispute resolution landscape by introducing the phrase “zombie mediations” to describe those mediations where parties are “dead” to the prospect of settlement and other aims of mediation, yet are held out as if being alive to those aims. While not a common phenomenon, it is arguably an increasingly significant one with the increased role of court-connected mediation in the handling and disposal of matters in the administration of justice. 104

Using conflict coaching to support people to develop a secure mind in relation to conflict – *Karen Prime*

This article aims to expand the theoretical basis of conflict coaching by applying the work of Bennett-Goleman in *Mind Whispering: A New Map to Freedom from Self-Defeating Emotional Habits*. Bennett-Goleman’s theory, which draws upon cognitive psychology and neuroscience as well as Eastern philosophies, proposes that a person’s thought processes are heavily influenced by the “mode” their brain is operating in at any given time. A maladaptive mode produces many of the cognitive biases that are evident when people are experiencing conflict. It is shown that the immediate role of the conflict coach is to support their client to transition to a secure mode so they can process the conflict and its effect on them in a more positive way. The changes that concurrently occur in the brain as a result of this transition are identified and related to specific aspects of the conflict coaching process. 111