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The University of Waikato

Abstracts from the Dispute Resolution Interest Group

The Diminishing Trial: A NSW Perspective

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Abstracts
The United States is currently in the grip of research linking the rise of formal dispute resolution mechanisms with a reduction in trials. Anecdotes from the USA include stories of the lack of judges with trial experience and the short supply of lawyers who can actually try a case for a client. Whilst the USA refers to this phenomenon as the "vanishing trial" a closer look at the research shows that trials may be diminishing but are not vanishing. After looking at the situation in the USA this paper will look at some comparative figures in New South Wales and draw some conclusions on whether New South Wales is following the USA down the path of the vanishing trial or whether a combination of factors including the rise of formal dispute resolution process are contributing to the diminishing trial!

Beyond The Rule Of Law; Alternative Dispute Resolution and the Appropriate Jurisdiction Of The New Zealand Insurance And Savings Ombudsman

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Abstract
The purpose of the Insurance and Savings scheme is to provide consumer insured's with a cost free, expert and independent resolution service. In accordance with the philosophies of ADR the ISO scheme is informal, accessible and provides an alternative to judicial adjudication. Decisions are binding on insurers but not on consumers. The scheme is funded by insures whose participation is voluntary.

A central question posed by the scheme is the nature of the relationship between The Rule Of Law and ADR. If consumers benefit from the ISO's decision to sidestep the widely acknowledged disfiguring aspects of insurance law, Insurers may doubt the impartiality of the decision maker. Decisions which apply the existing law raises the same issue from the consumer's perspective. Arguably the resolution of this problem requires the application of elements typically associated with the Rule of Law, including transparency and certainty to be considered in the context of the schemes objectives and Terms of Reference. This paper explores how the ISO might depart from the Rule Of Law in order to achieve substantive fairness while avoiding the pitfalls of individuated justice which would adversely affect the schemes credibility ...and funding.

ONE LAW FOR ALL: problems for ADR practice in a multi-cultural society

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Abstract
This paper will explore some interesting issues that arose from considering a reply to a student's question about effectively providing mediation services to Chinese immigrants in Australia who are involved in commercial disputes. Initial empirical research had shown that public-funded mediation programs were either not being used or were severely under-utilised by Australianbased members of the Chinese diaspora. Questions were raised about the adequacy of publicity and promotion of these services, about public education, as well as about translation and interpreting services. The more interesting questions were centred on the appropriateness of the standard mediation model offered by public-funded programs and any cultural inhibitors that may explain the current lack of engagement, particularly as mediation is seen as an empowering process that sits well with participatory democracy. In this paper the assumptions underlying the provision of public-funded mediation programs is discussed in the context of providing these services to one of Australia's oldest significant cultural groups.

More Laws Than We Need?

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Abstract
The broad categories of Dispute Resolution processes are as follows: Courts, Arbitration, Mediation, and Negotiation. Within each of the processes, excluding the courts, there is a broadly understood model, which still allows the parties flexibility to adapt the process to their own particular needs. This broad understanding could be used to facilitate the parties to a dispute in resolving their differences. Instead, particular statutory requirements are enacted for the subject area of the dispute involved. The effect of this is to limit creativity between the parties as to applicable process, to require specific familiarity with the requirements applying to each subject area, and ultimately to create a level of complexity and unique precedent that limits practical access to economical, speedy, and most importantly, generic processes. The intent of this paper is to consider the feasibility of generic approaches to what have become areas of dispute specialization, and the practical consequences of such a course being taken.

International Trends in ADR for Teaching and Research

Nadja Alexander

Abstract
ADR, and specifically mediation, is a field which is not only expanding as an academic research field but is also developing in terms of how is taught in terms of both theory and skills. This paper explores 10 trends in ADR of relevance to law teachers and thinkers

with a global and future focused outlook. The trends encompass developments from international, interdisciplinary, local and legal perspectives and also engage the theory-practice debate. Within this context, emerging fields such as international and comparative mediation are discussed. The increasingly sophisticated use of technology in both law teaching and ADR practice has generated interesting options for law teachers which will be addressed. Finally, the paper suggests innovative ways of thinking about ADR teaching and research and combining the two.

Engaging with Reflection: The Use of Learning Journals in a Tertiary Education Setting

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Abstract

The adolescent Adrian Mole begins his diary with a set of New Year's resolutions. Thereafter he records events and reflections about his life and family. The expression and capture of varying degrees of personal reflection is not however, the prerogative of 'tortured teenagers'. It also finds a legitimate place within tertiary assessment, in the form of Learning Journals. In 2003 and 2004, Learning Journals were included in the assessment framework of the Mediation Facilitation and Conferencing paper offered to Law students in the School of Law at the University of Waikato. The use of Learning Journals is consistent with a teaching philosophy that is student centred and based on the idea that understanding and knowledge are constructed by the learner and not something that is presented by the 'teacher'. This presentation examines the place for Learning Journals in a Mediation course, outlines various 'set-up' considerations and considers the value of the Journals in tertiary education.