

WEEK	TOPIC
1	THE CONTEMPORARY IMPORTANCE OF DISPUTE RESOLUTION FOR LAWYERING AND LAWYERS
2	INTRODUCTION TO DISPUTE RESOLUTION AND THE SPECTRUM OF DISPUTE RESOLUTION FORUMS
3	NEGOTIATION
4	COMMUNICATION SKILLS FOR DISPUTE RESOLUTION PRACTITIONERS
5	MEDIATION
6	CONCILIATION/ARBITRATION
7	INTERNATIONAL COMMERCIAL ARBITRATION
8	MENTAL HEALTH AND THE LAW
9	TECHNOLOGY AND DISPUTE RESOLUTION
10	EXAM LECTURE (NO NOTES)
11	LAWYERS AS MANAGERS AND RESOLVERS OF DISPUTES AND CONFLICTS
12	PSYCHOLOGY AND DISPUTE RESOLUTION
13	ETHICS AND DISPUTE RESOLUTION

WEEK 1 LECTURE: THE CONTEMPORARY IMPORTANCE OF DISPUTE RESOLUTION FOR LAWYERING AND LAWYERS

READINGS

- Chapter 1 - Field, Duffy and Huggins
 - Chapter 1 – Spencer
 - James Duffy and Rachael Field, ‘Why ADR Must be a Mandatory Subject in the Law Degree: A Cheat Sheet for the Willing and a Primer for the Non-Believer’ (2014) 25(1) *Australasian Dispute Resolution Journal* 9. (link on the BB site)
-

TEACHING AND LEARNING OBJECTIVES FOR THIS WEEK

- Exploring the diverse nature of legal practice.
 - Considering the contemporary importance of Dispute Resolution (DR) for law students, lawyers and lawyering.
 - Considering the importance of developing a positive professional identity for lawyers.
-

THE DIVERSE NATURE OF LEGAL PRACTICE

- Solicitors in private law firms.
 - Barristers.
 - Public servants in government departments.
 - Solicitors or barristers in Legal Aid Offices.
 - Practitioners in Community Legal Centres.
 - Academics.
 - Lawyers can work specifically in the legal profession or they can use their legal skills to work in a non-legal or legally-related context such as management, policy, or business contexts.
-

DEFINING ADR

‘**ADR** is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution. Some also use the term ADR to include approaches that enable parties to prevent or manage their own disputes without outside assistance.’

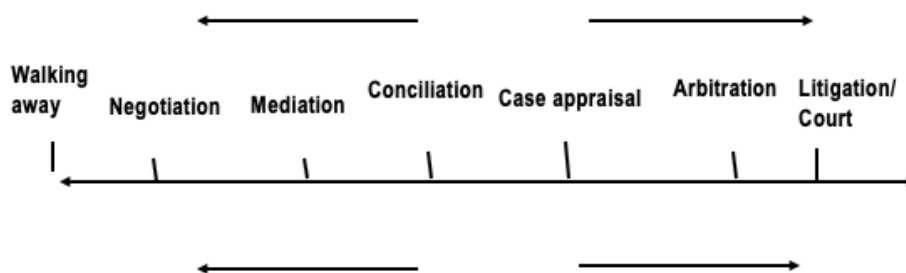
(NADRAC, 2003, p. 4)

- The A in ADR is contestant. Some people don’t like the use of the word alternative because it suggests that you can engage in one process and not another (strict alternatives- that is you have to attempt different alternative solutions before trying litigation for example).
- As well as this some people find that it suggests on process is superior to another.

UNDERSTANDING THE KEY PROCESSES:

- Negotiation
- Mediation
- Conciliation
- Case appraisal
- Arbitration
- Litigation

THE SPECTRUM OF DISPUTE RESOLUTION



THE CONTEMPORARY IMPORTANCE OF DISPUTE RESOLUTION (DR) FOR LAW STUDENTS, LAWYERS AND LAWYERING

James Duffy and Rachael Field, 'Why ADR Must be a Mandatory Subject in the Law Degree: A Cheat Sheet for the Willing and a Primer for the Non-Believer' (2014) 25(1) *Australasian Dispute Resolution Journal* 9.

(1) DISPUTE RESOLUTION IS AN IMPORTANT ASPECT OF CONTEMPORARY LEGAL PRACTICE

- ADR is now the main way that disputes in Australia (and worldwide) are resolved.
- Litigation continues to be privileged as a dispute resolution tool in our law schools.
- It has been estimated that the number of commenced civil actions that culminate in adjudication is actually less than 5%.
- The legal academy is arguably presenting a distorted image to law students about how legal disputes are commonly resolved.

(2) PARTICIPATION IN DR PROCESSES IS REQUIRED UNDER CERTAIN LEGISLATION

- Legislation requires parties to engage in ADR in a number of circumstances.
- For example, the *Civil Dispute Resolution Act 2011* (Cth) was enacted to ensure that parties take genuine steps to resolve disputes before civil proceedings are instituted (s 3).
- Section 53A of the *Federal Court of Australia Act 1976* (Cth) allows a court to refer a matter to mediation or arbitration – Judges can exercise their authority and tell two parties to go away and mediate as it is not appropriate in the court room
- Genuine steps: negotiation or a third-party assisted process before they are permitted to commence a civil action
- If ADR can be mandatorily imposed upon lawyers in practice, then law students need to know about it

(3) LAWYERS HAVE A DUTY TO ADVISE ABOUT DR

- Legal practitioners have a duty to advise a client about alternatives to litigation:
- Rule 7.2 of the Australian Solicitors Conduct Rules states:
- A solicitor must inform the client or the instructing solicitor about the alternatives to fully contested adjudication of the case which are reasonably available to the client, unless the solicitor believes on reasonable grounds that the client already has such an understanding of those alternatives as to permit the client to make decisions about the client's best interests in relation to the litigation.
- If you are a solicitor/barrister in practice, how do you meaningfully discharge this duty?

- What are the alternatives to litigation / the key characteristics of these processes / how well a dispute might be suited to a particular forum

(4) GOOD LAWYERS POSSESS EMOTIONAL INTELLIGENCE AND DR INSTRUCTION INCREASES EMOTIONAL INTELLIGENCE

- Emotional intelligence is an important trait or ability for lawyers to possess because the lawyering role is people intensive.
- Emotion may be the cause of conflict, the result of conflict or the reason why a conflict escalates.
- ADR knowledge, skills and attitudes can increase the emotional intelligence of law students and their interpersonal and intrapersonal efficacy.
- People have emotions, and ADR processes recognise the importance of emotion to the resolution of disputes. In litigation, emotion is not relevant. In ADR, emotion can be what starts a conflict, but it can also be what ends a conflict.
- Experiential learning techniques, such as role-plays, activate interpersonal and intrapersonal intelligence. Students can understand how they react to conflict and how they manage conflict in others.
- Students get to learn or relearn the value of empathy, warmth and genuineness to the resolution of disputes.