The Importance of Teaching Dispute Resolution in a 21st Century Law School

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Dispute Resolution

- The traditional law school curriculum
- Vanishing trial phenomenon
- The changing landscape
- Alternative Dispute Resolution
- Our we failing our students?
- Teaching conflict theory
- Ethics/Skills/Research
- The future
The Traditional Law School Undergraduate Curriculum

- UK - dispute resolution not taught as a stand-alone topic;
- Traditional teaching - about dispute resolution focused on doctrinal analysis, case law, black letter law and adversarialism;
- The Foundational Law modules are ‘embalmed’
The Vanishing Trial Phenomenon

- In the UK >95% of cases which enter the civil justice court system settle before trial;

### County Court Activity 2000-2014

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Claims</th>
<th>Claims Defended</th>
<th>Claims Allocated to Track</th>
<th>Claims Disposed at Trial</th>
<th>% of Claims Going to Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>1,943,513</td>
<td>248,167</td>
<td>151,641</td>
<td>71,233</td>
<td>3.66</td>
</tr>
<tr>
<td>2007</td>
<td>1,944,812</td>
<td>338,616</td>
<td>173,751</td>
<td>69,248</td>
<td>3.53</td>
</tr>
<tr>
<td>2014</td>
<td>1,585,275</td>
<td>188,917</td>
<td>143,529</td>
<td>44,778</td>
<td>2.82</td>
</tr>
</tbody>
</table>

- Emphasis – Avoid litigation (see CPR).
A Changing Landscape

- Civil Justice Reviews; Woolf (1996) and Jackson (2010);
- Regulation/Clementi, Legal Aid/Carter;
- Access to Justice (Litigants in Person).
• How then are all these cases being resolved? - ADR!

• ADR is not so much seen as alternative dispute resolution but as appropriate;

• If this is true then lawyers should know about the dispute resolution continuum!
## Dispute Resolution and Decision Making

<table>
<thead>
<tr>
<th>Private decision making by parties</th>
<th>Private third-party decision making</th>
<th>Legal (public), authoritative third-party decision making</th>
<th>Extralegal coerced decision making</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict avoidance</td>
<td>Administrative decision</td>
<td>Judicial decision</td>
<td>Non-violent direct action</td>
</tr>
<tr>
<td>Informal discussion and problem solving</td>
<td>Arbitration</td>
<td>Legislative decision</td>
<td>Violence</td>
</tr>
<tr>
<td>Negotiation</td>
<td></td>
<td></td>
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<tr>
<td>Mediation</td>
<td></td>
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</tbody>
</table>
Challenging Legal Education Convention

• Are we failing our students?

• A ‘socio-legal’ approach to legal education;

• Top ranked US Law Schools teach stand-alone courses on negotiation, mediation and arbitration.
21st Century Law School Curriculum
Conflict Theory

• Conflict in some shape or form underpins all disputes;

• Misplaced assumptions:
  - firstly that conflict is always about principle and rights;
  - secondly that knowledge and information is about winning, and
  - thirdly that lawyers ‘own’ the conflict (MacFarlane, 2002)

• CCCU – LLB Dispute Resolution pathway.
21st Century Law School Curriculum
Ethical and Professional Obligations

• **SRA Code of Conduct** – what are solicitors’ obligations to their clients in terms of advising upon the right course of action to take to resolve disputes?

• Why do they need to be aware? **CPRs 1.4(1), 1.4(2), 26.4(1), 29.5, 44.3(5) and 44.5**;

• **Family Procedure Rules**: MIAM – a requirement from April 2014;

• Updated **Tribunal Rules** (2013).
21st Century Law School Curriculum
Skills Acquisition

• Negotiation and mediation pedagogy;
  - Graduate and Key skills.
  - Competitions

• Clinic – opportunities to put skills into practice (mediation clinics).
Research/KE Opportunities

• A research rich landscape;
  - Outreach/KE;
  - RIT;
  - Policy-making influence.

• UG students can participate – CCCU research.
The debate about what is taught within the Law School curriculum either UG or PG is one which traverses jurisdictions.

- *Ormrod Review 1971* - Objectives of the academic stage of legal education.

- Hope from *LETR*?
The Future

• UK citizens:
  - Those without access to the internet = 5%
  - Those who don’t have access to justice = the majority

• Recent Civil Justice Council's report recommends an ODR system for fast track claims;

  “Solicitors will inevitably be phased out of low-value claims work with the advent of online courts,” Richard Susskind.

• The effect – liberating & disruptive.