

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

Ben Waters



# 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

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

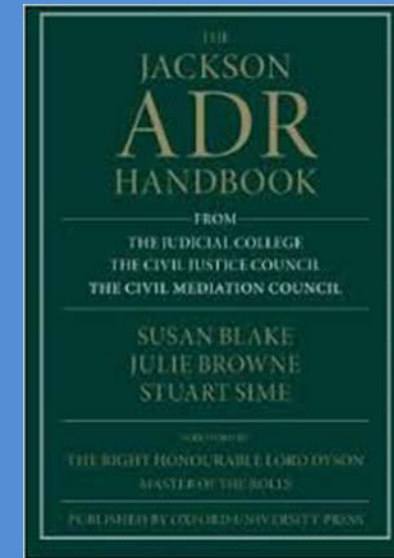
- Emphasis – Avoid litigation (see CPR).

# A Changing Landscape

- Civil Justice Reviews; Woolf (1996) and Jackson (2010);
- Regulation/Clementi, Legal Aid/Carter;
- Access to Justice (Litigants in Person).

# ADR

- 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

Private decision making by parties	Private third-party decision making	Legal (public), authoritative third-party decision making	Extralegal coerced decision making
<p>Conflict avoidance</p> <p>Informal discussion and problem solving</p> <p>Negotiation</p> <p>Mediation</p>	<p>Administrative decision</p> <p>Arbitration</p>	<p>Judicial decision</p> <p>Legislative decision</p>	<p>Non-violent direct action</p> <p>Violence</p>

# 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 LETR

- 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.