Using ODR software to conduct simulations for students at Victoria University

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What is Online Dispute Resolution (ODR)?

• Until 2014, the Victoria University College of Law and Justice did not teach a stand-alone ADR subject.

• Following representations, in 2015, for the first time, LLW3002 Alternative Dispute Resolution was taught as an elective in the Bachelor of Law Degree.

• We discuss the teaching of this subject and a related subject BMO5567 Workplace, and in particular our novel use of ODR to support ADR students at Victoria University to engage in negotiation simulations.

• We argue that the use of ODR can greatly assist negotiation students to conduct simulations.
Online Dispute Resolution and Access to Justice

• Whilst ODR has been used to resolve e-commerce disputes for two decades, and is increasingly being used in civil justice courts, its use to support ADR teaching, is in our belief, novel.

• After two decades, the legal community is finally realizing the potential for ODR to enhance ‘access to justice’.

• Chicago Kent College of Law teaches an Access to Justice and Technology subject in its JD program.

• Katsh and Rabinovitch-Einy (2017) in their ground-breaking book on digital justice illustrates how ODR can operate for the bulk of disputes that operate outside the e-commerce arena.
The Review included 60 recommendations.

Recommendation 5.2 was for the development of an online system for the resolution for small civil claims at VCAT.

The Government agreed to implement this recommendation in May 2017. The review recommends the following three-step process for introducing ODR into the Victorian Civil Justice System:

- establish an ODR Advisory Panel with terms of reference to oversee the introduction and evaluation of an ODR system for small civil claims in Victoria and make recommendations about the possible future expansion of online dispute resolution to other jurisdictions in Victoria;
- provide pilot funding, and, subject to evaluation, ongoing funding, for the development and the implementation of a new online system for the resolution of small civil claims in Victoria; and
- introduce legislation to facilitate the use of the new online system for the resolution of small civil claims.
And Now...

- ODR has become important in Victoria!
- ODR is being suggested as being capable of supporting Self Represented Litigation (SRL): this brings forward the issue of whether SRLs can sufficiently understand legislation, cases and the technology to adequately represent themselves.
- In 2017 the ADR unit at the Victoria University Law School partnered with ODR leaders from Tyler technologies to integrate ODR into the unit as a key form of assessment.
- The Modria platform utilised in the pilot is the one being used in USA and other countries for court/government and/or commercial purposes. It was not developed to be used for assisting in student assessment.
Using ODR software

• All students were required to participate in an ODR simulation in groups of three and primarily to provide legal advice re the content of the simulation together with a written report.

• In 2018, business students were required to conduct Workplace Dispute Resolutions using the Guided Resolution software

• We now discuss the process of developing an ODR simulation and how it helps train ADR students.

• We will also consider how to assess student performance.

• We further outline some of the opportunities and challenges for teaching ODR that were identified in conducting the pilot and also provide ODR insights from students undertaking both the law and business courses.
ADR at Victoria University

• The ADR unit (LLW3002) at the College of Law and Justice at Victoria University was first delivered in 2015.

• Through a Technology Enhanced Learning Grant, a series of videos were developed which followed a case through mediation and arbitration See https://youtu.be/J2KLXAKfIL8

• ODR integration into the ADR curriculum has the potential to offer many benefits for students.
  • The ODR component requires students to develop their technological literacy.
  • It also offers greater time and access flexibility for students.

• Some of the features of ODR are considered both benefits and limitations for the provision of ADR services.

• It should be noted that students were only exposed to one form of ODR, and it was text-based.

• The system used was developed by Tyler/Modria.

• In our discussion of student comments on the negatives of ODR, we shall point out that there are ODR systems that provide far more functionality than text-based systems.

• Such systems are more likely to meet the concerns of students.
Student insights on benefits of ODR

• Provides ODR and supported machine learning to provide advice about

There are a number of benefits offered by the use of ODR where the parties
use a text-based platform with the ability to participate remotely, as
compared to traditional mediation:

• Everything is typed so there is no need to repeat what was said or take notes.
• It can be more cost-effective; there is no requirement for travel, room hire or paper.
• Parties participate remotely which can address safety concerns and allow for a more
  comfortable environment.
• The conflict is less confrontational or emotional as the parties are not in the same
  room.
• A text based discussion keeps the parties more focused on the issues in dispute.
Student insights on negatives of ODR

• The text-based ODR process comes with a number of limitations as compared to the traditional mediation process:
  • The process is impersonal.
  • It can be hard for the parties to express empathy.
  • There is a greater likelihood of the parties becoming keyboard warriors.
  • There is a lack of non-verbal communication.
  • The parties require competency in digital literacy eg typing speed. This is only the case when using text based systems.
  • Asynchronous text communication can have delays between messages.
  • There can technical difficulties with both the hardware and software.
  • Parties can easily type messages in the wrong room.
  • The mediator has less control.
  • There needs to be confidentiality compliance with the typed record.
  • The process creates added complexity for non-English speakers.
Addressing Limitations of ODR

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Using Guided Resolution ODR software to support teaching of Workplace Dispute Resolution

• In 2018, the subject BMO5567 Workplace Dispute Resolution, taught in the Victoria University Business School, used the Guided Resolution ODR Software to conduct workplace dispute resolution simulations.

• Students were given two two-hour lectures about Online Dispute Resolution (https://www.guidedresolution.com/).

• In a third two-hour lecture they were given an introduction to the Guided Dispute Resolution Software by its developer Nitzan Karni.
Using Guided Resolution ODR software to support teaching of Workplace Dispute Resolution

- The thirteen students were asked to form groups of three and develop a workplace conflict of their choosing.
- One party was the mediator and the other two parties acted as disputants in a workplace conflict.
- They used the Guided Resolution Software to attempt a resolution of the dispute.
- They submitted a 5000 word report including a discussion of
  - The benefits of Online Dispute Resolution for Workplace Conflicts
  - The simulation – roles played, techniques used, outcomes.
  - The suitability (or not) of the Guided Resolution Software for their simulation.
- This small sample size makes it difficult to draw conclusions.
- However some trends became apparent.
Advantages/Disadvantages of using Guided Resolution ODR software to support teaching of Workplace Dispute Resolution

**Advantages**

- Ability to prioritise issues in a clear and consistent manner.
- The software takes some emotion out of a face to face meeting.
- The program forces ideas and alternatives to the issues identified via the questions asked. The ranking system was an additional benefit, which gave clear purpose to the dispute and what motivated each party. In addition to this, the ranking system identified what was specifically important to each party, which leads to better negotiation and agreement.
- The software listed the dispute and responses in writing, allowing for clear record keeping from the start to conclusion.
- ODR software was also helpful in keeping the track of the conversation held among the parties including the mediator. This helps the parties to read the conversation recorded over and over again, if needed.

**Disadvantages**

- It occurred to the participants that confidentiality and trust issues became an issue as the participants became guarded in giving comprehensive detail to issues and barriers because ultimately they did not trust the information being provided online was confidential or could be kept confidential.
- The missing ingredients in the simulated mediation process was the lack of verbal and non-verbal communication, the missing cues associated with tone of voice, eye contact, hand gestures were lost therefore the process was unemotional and detached.
- Use of ODR software requires certain protocols to follow where it was only permissible to answer to the points raised by the party using the software for the first time.
- There is no reverting back once the conversation is submitted or locked. ODR software does not allows the parties to revert back the comments that are made in the online portal and hence, this software doesn’t cater the aspects of impulse responses. During verbal communication impulse responses can be judged by the mediators and then they can support the parties by rephrasing or reevaluating their decisions on the spot.
Opportunities and challenges in teaching ODR in university curricula

• Following the introduction of the ODR simulation integration pilot in the Victoria University business and law school ADR units, it is clear that this is an exciting area that has a number of opportunities and challenges to consider as it is further developed and delivered.

• Group work based assessment has a number of challenges and this is no different in an ODR context.

• ODR is an innovative and new area to which students are being exposed.

• This requires expectations to be managed.
Opportunities and challenges in teaching ODR in university curricula

• For the pilot, we used one fact scenario for all the groups.
• There is an opportunity for students to develop their own fact scenario for their group to use in the ODR simulation.
• The ODR simulation will be limited by the platform being used.
• The platform used in the pilot was not designed for student assessment.
• There was no ability to export the content of the simulation for assessment submission.
• For the pilot, students were required to copy the text from the platform and paste it into a word document which was then submitted.
• This a clunky and inefficient process.
Conclusion

• In 2018, the subject BMO5567 Workplace Dispute Resolution, taught in the Victoria University Business School, used the Guided Resolution ODR Software to conduct workplace dispute resolution simulations.

• With the exponential increasing use of technology in education, government, commerce and courts there is an urgent need for students to be aware of and use these new technological trends.

• Whilst the use of ODR in legal practice is still very limited, there is wide acceptance that this will no longer be the case in the coming decade.

• Hence, legal education leaders need to train their students in the potential and use of ODR.

• But as well as training legal students for future practice, the use of ODR in law courses has benefits for teaching students about ADR.

• It allows students to watch and most importantly engage in ADR simulations.

• This opportunity is lost in the traditional teaching of ADR.

• Whilst ODR has been used in e-commerce for twenty years and courts are now starting to use ODR, the use of ODR in ADR teaching has been very limited, despite its obvious benefits.
Conclusion

• The pioneers of ODR, saw it as a futuristic idea that could cope with ecommerce disputes.
• For twenty years it remained mired in this domain, with plenty of academic papers but very few systems that were widely used.
• In the past five years, legal communities have finally accepted the benefits of efficiency and access provided by ODR.
• So ODR systems are being constructed for small claims, civil and family law domains.
• Such systems enhance access to justice and provide important opportunities for self-represented litigants.
With

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