

A Glimpse into the Future of Mediation – Opportunities for Cross Border Mediation

Topics

- Cross border disputes presently mediated
 - Generational change
- Online Dispute Resolution
 - Use of hybrids

Cross border disputes presently mediated

- IP infringement and licensing
 - Distributorship
- Sale of goods or services
 - Banking
 - Partnership

Generational change

- Wiser users
- Let's not be impatient
- Lawyers trained in ADR

2016 ICC International Commercial Mediation Competition

- Won by University of NSW, Australia
- 2nd University of Auckland, New Zealand
- 3rd Monash University, Australia

The winners!



Online Dispute Resolution

- Email
- Telephone
- Automated apps
- Online chatrooms
- Videoconferencing

Online Dispute Resolution

- eBay and PayPal
- online court filing
 - e-court

Hybrids in cross border disputes

- Cross border mediated settlements not easily enforceable
- Converted into arbitral award, enforce under New York Convention

Australian legislation

International Arbitration Act, 1974 (Cth)

- Implements NY Convention and Model Law
- Foreign arbitral award enforceable as court order
- Except where breach of rules of natural justice

Natural justice (procedural fairness)

- Party entitled to know case it has to meet
 - How does this apply to hybrids?

Domestic hybrids

- After mediating, arbitrator resumes arbitration
- Discloses confidential information

Conclusion

If domestic hybrids pass the test, so can cross border hybrids

Thank you.