

Bond University

# Australian Journal of Clinical Education

---

Volume 4 Issue 1

---

2019

Fostering future lawyers in an era of globalisation: Integrating  
dispute resolution into overseas clinical legal education externships

Bin Li  
University of Newcastle

Shaun McCarthy  
University of Newcastle

Wei Chen  
Beijing University

---

Follow this and additional works at: <https://ajce.scholasticahq.com/>



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 Licence](https://creativecommons.org/licenses/by-nc-nd/4.0/).

**Fostering Future Lawyers in an Era of Globalisation: Integrating Dispute Resolution into Overseas Clinical Legal Education Externships**

**Bin Li,<sup>\*</sup> Shaun McCarthy<sup>\*\*</sup> and Wei Chen<sup>\*\*\*</sup>**

---

<sup>\*</sup> Lecturer, Newcastle Law School, University of Newcastle, Australia.

<sup>\*\*</sup> Director, University of Newcastle Legal Centre, Australia.

<sup>\*\*\*</sup> Associate Professor and Director, Beijing University of Aeronautics and Astronautics Legal Clinic, China.

## **Abstract**

Twenty first century law students and graduates are increasingly being exposed to legal issues and disputes beyond their own domestic shores and across international jurisdictions. In order to equip students with the necessary knowledge, skills and values to seamlessly transition from law school into dispute resolution processes and legal practice set in the global context, there is a need to incorporate international clinical legal education experiences into the law school curriculum. This paper begins by reviewing the current place of dispute resolution in Australian and Chinese law school curricula and legal practice. The paper then reviews a pilot program conducted by the University of Newcastle Law School, Australia, where Newcastle students undertook a two-week clinical legal education externship in China with a focus on dispute resolution. This included both Australian and Chinese students participating in simulated negotiation and mediation exercises. The program concluded with students interviewing the key stakeholders in a dispute resolution regime based in an arbitration institute, where there were on-site 'live client' mediations and arbitrations. This experiential learning opportunity enabled students from both Australia and China to develop cross-cultural communication skills and sensitivities, and comparative knowledge in different legal systems. It also provided opportunities for students to reflect on ways in which the dispute resolution processes can be enhanced in Australia and China, together with a hands-on clinical experience for students at a time when law schools are seeking to further internationalise their teaching and learning. Students' reflections on this aspect of the externship indicated a strong desire to see additional international dispute resolution learning opportunities set in a practical context.

## I DISPUTE RESOLUTION IN AUSTRALIAN AND CHINESE LAW SCHOOLS' CURRICULA AND LEGAL PRACTICE

### *Australia*

Australian lawyers who act in litigation matters are often involved in dispute resolution processes. For example, there is a compulsory requirement for family dispute resolution to be attempted in family law matters where a party wishes to apply for parenting orders.<sup>1</sup> The Law Council of Australia, a peak body for the Australian legal profession, has set out guidelines for lawyers when they are participating in mediations.<sup>2</sup> The guidelines provide that a lawyer should advise clients as to the importance and process of dispute resolution, and the procedure when dealing with matters which arise during the mediation.<sup>3</sup> Lawyers should act in good faith in dealing with a dispute,<sup>4</sup> and develop strategies and solutions in an attempt to resolve the dispute.<sup>5</sup> The guidelines specifically refer to mediation as not being an adversarial process that makes a determination as to who is right and who is wrong.<sup>6</sup> They also refer to the preferred role of a lawyer in a dispute, which is to be persuasive rather than adversarial in order to be better placed to reach a final settlement of a dispute.<sup>7</sup> In addition to the guidelines, lawyers' professional conduct rules require lawyers to advise their clients about dispute resolution as an alternative to a fully contested adjudication of the legal matter.<sup>8</sup>

Dispute resolution courses strongly feature in the curriculum of Australian law schools and in practical legal training courses. Civil dispute resolution is an important component of Civil Procedure which is a mandatory 'Priestley 11' course in all law degrees that are accredited for admission to legal practice. The topics covered in this component include dealing with the disposition of legal proceedings without trial, the compromise of litigation, and the obligations of parties and legal practitioners relating to the resolution of disputes. Practical legal training providers in Australia are required to teach and assess competencies and learning outcomes in order for students to satisfy their admission to legal practice requirements. The peak body for Australian practical legal training providers, the Australasian Professional Legal Education Council, has prescribed various competencies in skills and legal content that need to be met by entry level lawyers.<sup>9</sup> Dispute resolution is a required competency in content areas including civil litigation practice and employment and industrial law. Students are required to identify dispute resolution alternatives including mediation in these content areas, together with looking at ways in reaching the settlement of a dispute. The competencies also refer to students gaining skills in negotiation, problem solving and communication.<sup>10</sup>

Dispute resolution skills and strategies are needed by law students so that they are equipped to effectively transition from law school to legal practice, and to be able to adapt to such processes. The need for law students to be deeply engaged in dispute resolution techniques and practices has been referred to in landmark reports, and by a series of authors.<sup>11</sup> In the Access to Justice Taskforce report, A Strategic Framework for Justice in the Federal Civil Justice System, it was recommended that there be a focus on enhancing the education of lawyers in their roles of

---

<sup>1</sup> *Family Law Act 1975* (Cth) s 60I.

<sup>2</sup> Law Council of Australia, 'Guidelines for Lawyers in Mediation' (August 2011).

<sup>3</sup> *Ibid* Principle 3.

<sup>4</sup> *Ibid* Principle 2.2.

<sup>5</sup> *Ibid* Principle 5.1.

<sup>6</sup> *Ibid* Principle 6.

<sup>7</sup> *Ibid* Principle 7.

<sup>8</sup> *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*, rule 7.2.

<sup>9</sup> Law Admissions Consultative Committee, 'Practical Legal Training Competency Standards for Entry-Level Lawyers' (1 January 2015).

<sup>10</sup> *Ibid* 5.10.

<sup>11</sup> See generally Tania Sourdin, 'Not teaching ADR in law schools? Implications for law students, clients and the ADR field' (2012) 23(3) *Australasian Dispute Resolution Journal* 148.

appearing in non-adversarial forums.<sup>12</sup> Commentators including Julie Macfarlane refer to the need for lawyers to adapt their professional roles from the adversarial to the creative conflict resolver of legal problems.<sup>13</sup> She suggests that there should be an overhaul of legal education so that entry level lawyers are exposed to dispute resolution approaches which they will experience in legal practice. This would enable students to see the relevance of dispute resolution experiences at law school, and how such disputes can be settled in practice in a timely and cost effective fashion.<sup>14</sup> Richard Susskind, a commentator on 21<sup>st</sup> century lawyers, and the legal profession and practice, asks whether law schools are in fact educating students to become traditional legal practitioners focusing on black-letter law or are they preparing the next generation of lawyers to be flexible and collegiate professionals.<sup>15</sup> Tania Sourdin refers to this concern by raising the need to prepare law students for the changing models of client service delivery in the 21<sup>st</sup> century.<sup>16</sup> She advocates that law schools play a vital role in the training and education of entry level lawyers together with inculcating the necessary dispute resolution skills and values for professional practice.<sup>17</sup> Jacqueline Weinberg also advocates that “the connection between students’ acquisition of knowledge in alternative dispute resolution and the application of this acquired knowledge to resolve client disputes should be a focus of clinical legal education.”<sup>18</sup>

In order for law students to gain dispute resolution knowledge and skills, there should be opportunities for students to engage in advocacy experiences set in non-adversarial forums such as mediation as opposed to the traditional adversarial forum. Such an approach endeavours to bring the theory of dispute resolution learned in the classroom into reality and moves students’ problem-solving outlooks from an adversarial lens to a dispute resolution context. Entry level lawyers are increasingly likely to be appearing in dispute resolution experiences set in non-adversarial, inquisitorial, and less adversarial settings.

## China

Compared to Australia, dispute resolution courses are given a lower priority in the Chinese law school curricula. In April 2018, the Chinese Ministry of Education released a *National Standard on Teaching and Learning Quality of LLB programs* report, which requires law schools to offer ten subjects as core courses in undergraduate law programs with only one of these courses having specific dispute resolution content.<sup>19</sup> The Civil Procedure course taught in Chinese law schools provides a general overview of the role of dispute resolution in legal practice. A key aspect of the Civil Procedure course is its coverage of Chapter 8 of the Chinese Civil Procedure Law.<sup>20</sup> This Chapter provides for the regulation of mediation processes with a particular focus on where mediation is conducted within the court system, and the role of judges serving as mediators. In addition, Chapter 28 of the Chinese Civil Procedure Law prescribes arbitration as another dispute

---

<sup>12</sup> Access to Justice Taskforce (Attorney-General’s Department), ‘A Strategic Framework for Justice in the Federal Civil Justice System’ (September 2009).

<sup>13</sup> See generally Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press Vancouver 2008) and Julie McFarlane, ‘The Evolution of the New Lawyer: How Lawyers are Reshaping the Practice of Law’ (2008) *Journal of Dispute Resolution* 62.

<sup>14</sup> *Ibid.*

<sup>15</sup> Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future*, (Oxford University Press, 2<sup>nd</sup> ed, 2017) 135.

<sup>16</sup> See generally Tania Sourdin, Not teaching ADR in Law Schools? Implications for law students, clients and the ADR field, available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2721539](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721539)>, accessed 3 March 2019.

<sup>17</sup> *Ibid.*

<sup>18</sup> Jacqueline Weinberg, ‘Keeping Up with Change: No Alternative to Teaching ADR in Clinic: An Australian Perspective’ (2018) *Monash University* 35, 72.

<sup>19</sup> These ten core subjects are Legal Jurisprudence, Constitutional Law, Chinese Legal History, Criminal Law, Civil Law, Criminal Procedure, Civil Procedure, Administrative Law and Procedure, Public International Law and Legal Ethics. The National Standard is available at <<http://edu.sina.com.cn/gaokao/2018-04-11/docifyzeyqa3643686.shtml>>, accessed on 3 March 2019.

<sup>20</sup> *Civil Procedure Law of the People’s Republic of China* Chapter VIII.

resolution process which centres on the determination of disputes in the context of international commercial settings.<sup>21</sup>

While dispute resolution is a minor topic in core legal courses in Chinese law schools, dispute resolution courses can be studied as elective subjects. For example, Arbitration Law has been offered as an elective course in highly regarded Chinese law schools and regional universities.<sup>22</sup> At some Chinese law schools a specific course in international commercial arbitration is available to students who have a strong interest in practising in arbitration in their future legal career. A course in International Arbitration and Dispute Settlement which is taught in English by leading international arbitration scholars and practitioners is offered at Tsinghua University School of Law. The course provides academic and practical training in a broad range of areas related to resolving international commercial disputes.<sup>23</sup> In law schools where a Masters in Laws program is offered, dispute resolution courses are taught in a practical way with a focus on fostering students in their professional skills.<sup>24</sup> Further, Chinese law students are actively engaged in international arbitration moots and gain valuable learning experience from participating in such competitions and their associated seminars.<sup>25</sup>

Arguably, the marginalised status of alternative dispute resolution courses in Chinese law schools is related to the fact that fully contested litigation accounts for the majority of disputed matters dealt within the Chinese legal system.<sup>26</sup> According to the Supreme Court of China's Annual Report to the National People's Congress tabled in March 2018, for the reporting period of 2013 to 2017 the Supreme Court filed 82,383 cases and closed 79,692 cases with the majority of these finalised cases being determined by the court. These figures represent an increase in disputed cases of 60.6% and 58.8% respectively compared with the previous five-year period. Case volumes in lower courts, including the local people's courts, the intermediate people's courts and the provincial higher people's courts, have also steadily increased with around 889,670,000 cases being registered with the courts at various local levels and 859,840,000 cases closed having been determined by the courts over a five year period. These two figures represent an increase in caseloads of 58.6% and 55.6% respectively in comparison to the caseload five years earlier.<sup>27</sup>

While acknowledging that most civil dispute matters are determined by the courts, there are alternative dispute resolution processes operating in the Chinese legal system. One such process is the community mediation system which is regulated by the People's Mediation Law.<sup>28</sup> People's mediation is conducted by the people's mediation committee, which is a community-based organisation where the mediators are lay people. According to Article 14 and Article 15 of the People's Mediation Law, mediators 'shall be assumed by adult citizens with a certain level of

---

<sup>21</sup> See *Ibid*, Chapter XXVIII.

<sup>22</sup> Shanghai Jiaotong University and Jiangxi University of Finance and Economics as respective examples in this regard.

<sup>23</sup> Tsinghua University School of Law, 'International Arbitration and Dispute Settlement Course', *Tsinghua University* <<http://www.law.tsinghua.edu.cn/publish/law/8274/20130719092936403304372/3.pdf>>, accessed on 3 March 2019.

<sup>24</sup> For example, in the Masters program at Beijing University of Aeronautics and Astronautics Law School, a course entitled 'Negotiation and Mediation' is a compulsory subject for all Masters students.

<sup>25</sup> For instance, in terms of the 15<sup>th</sup> Willem C. Vis East International Commercial Arbitration Moot held in Hong Kong in 2018, there were a number of top Chinese law schools that sent out their teams to compete, including Peking University, Tsinghua University, Fudan University and Wuhan University.

<sup>26</sup> See generally Jiajun Zhang, An Empirical Study on the Rate of Cases Settled by Mediation in Civil Procedure, available at <[http://www.faxueyanjiu.com/ch/reader/create\\_pdf.aspx?file\\_no=20120103&flag=1&journal\\_id=fxyj&year\\_id=2012](http://www.faxueyanjiu.com/ch/reader/create_pdf.aspx?file_no=20120103&flag=1&journal_id=fxyj&year_id=2012)>, accessed on 3 March 2019.

<sup>27</sup> Available at <<https://www.chinacourt.org/article/detail/2018/03/id/3225373.shtml>>, accessed on 13 October 2018.

<sup>28</sup> See *People's Mediation Law of the People's Republic of China (2011)*, available at <[http://www.cspil.org/Uploadfiles/attachment/Laws%20and%20Regulations/\[en\]guojifalwvwenjian/PeoplesMediationLawofthePeoplesRepublicofChina.pdf](http://www.cspil.org/Uploadfiles/attachment/Laws%20and%20Regulations/[en]guojifalwvwenjian/PeoplesMediationLawofthePeoplesRepublicofChina.pdf)>, accessed on 3 March 2019.

culture, policies and legal knowledge.<sup>29</sup> In addition, the mediators receive regular mediation training from the local government enabling them to conduct mediations in a professional way.<sup>30</sup>

It is anticipated that dispute resolution will play a more important role in Chinese legal practice and its legal system in the future given the large number of cases filed in courts and the pressure on courts to finalise cases within a limited period of time.<sup>31</sup> Arguably, the rise in the use of dispute resolution in the courts is likely to have a corresponding impact on the importance placed on dispute resolution courses in Chinese law schools and curriculum.

## II INTEGRATION OF DISPUTE RESOLUTION ELEMENTS INTO OVERSEAS CLINICAL LEGAL EXTERNSHIP

### *Clinical program at Newcastle Law School*

Clinical Legal Education is an experiential method of teaching and learning which enables students to develop professional skills in the practice of law. The value of such experiential learning for law graduates has been widely recognised in Australia and internationally.<sup>32</sup> A study of clinical legal education in Australia refers to it being a model of education providing real-life reference points for the learning and practice of law, and the practical realities of accessing justice.<sup>33</sup> Clinical teaching involves reflection and feedback so that law students can develop skills from acting in simulated exercises and dealing with 'live clients'.<sup>34</sup>

Newcastle Law School offers a fully integrated clinical legal education program within its law degree. Students in the Newcastle law program incrementally acquire professional legal skills and techniques over the final two years of their program, incorporating experiential learning that is both interdisciplinary and internationally focused. The University of Newcastle Legal Centre (UNLC) is the centrepiece of the Newcastle Law School's clinical program where students work with real clients providing legal advice and assistance under the supervision of lawyers.<sup>35</sup> Students are exposed to dispute resolution processes at the UNLC including observing negotiations and mediations. The curriculum and research at Newcastle Law School incorporates a range of dispute resolution courses including Civil Dispute Resolution, Alternative Dispute Resolution, Commercial Dispute Resolution, Mediation Skills and Theory, Negotiation in a Legal Context and the Masters of Dispute Resolution degree.

---

<sup>29</sup> Ibid, arts 14 and 15.

<sup>30</sup> Ibid.

<sup>31</sup> The Supreme People's Court of China launched a campaign to establish a diversified dispute resolution system in 2004 with an aim of incorporating litigation and other dispute resolution processes, such as mediation into this comprehensive system. In this regard, please see Bin Li, China's Diversified Dispute Resolution System, *The Australia Dispute Resolution Research Network* (19 September 2017), available at <<https://adrresearch.net/2017/09/19/chinas-diversified-dispute-resolution-system-by-dr-bin-li/>>, accessed on 13 October 2018.

<sup>32</sup> See, eg, New England Law, Boston, Experiential Learning, <<http://www.nesl.edu/experiential/>>; School of Law, University of California, Irvine, Experiential Learning (2010) <[http://www.law.uci.edu/experiential\\_learning.html](http://www.law.uci.edu/experiential_learning.html)> , Law School, Duke University, Clinical and Experiential Learning <http://www.law.duke.edu/curriculum/clinics>, Windsor Law, University of Windsor, Experiential Learning <<http://www.uwindsor.ca/law/experiential-learning>> , Yale Law School, Clinics and Experiential Learning (2011) <<http://www.law.yale.edu/academics/clinicalopportunities.htm>>.

<sup>33</sup> Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone, Simon Rice and Ebony Booth *Best Practices Australian Clinical Legal Education* (Report, 2013) <[https://www.monash.edu/\\_data/assets/pdf\\_file/0003/591042/Australian-CLE-Best-Practices-2012.pdf](https://www.monash.edu/_data/assets/pdf_file/0003/591042/Australian-CLE-Best-Practices-2012.pdf)>, accessed on 3 March 2019.

<sup>34</sup> Adrian Evans, Anna Cody, Anna Copeland, Jeff Giddings, Mary Anne Noone and Simon Rice, *Australian Clinical Legal Education – Designing and Operating A Best Practice Clinical Program in An Australian Law School*, Australian National University Press (2012), <<https://press-files.anu.edu.au/downloads/press/n2366/pdf/book.pdf>>, 13, accessed on 3 March 2019.

<sup>35</sup> Ibid.

## **Overview of the pilot Clinical Legal Externship Program in China**

In 2014 the Australian Government launched The New Colombo<sup>36</sup> Plan Mobility Program (NCP).<sup>37</sup> The NCP has been designed to encourage Australian students to develop global awareness and cross-cultural communication skills to prepare for future career opportunities in the Indo-Pacific region. Funding to Australian universities is provided to support undergraduate students in semester-based or short-term study in 40 host locations across the Indo-Pacific and Asia regions. Asia is a large export market for Australian goods and services. According to 2018 data from the Australian Government, China was the largest Australian two-way trading partner in 2017.<sup>38</sup> Significantly, both Australia and China have recently entered into a China-Australia Free Trade Agreement.<sup>39</sup> Further, the legal services sector of both nations has enjoyed the benefits brought by this bilateral arrangement together with the merger of a number of large Chinese and Australian law firms.<sup>40</sup>

The NCP program is being conducted at a time when Australian law schools are moving towards internationalising their law school curriculum following transnational developments in law and legal practice.<sup>41</sup> This has included a focus on the range of knowledge, skills and attributes which are essential for law graduates working in a global cross-jurisdictional environment.<sup>42</sup> The development of the connected global economy, increasing globalisation of law firms and the sizeable growth in transnational business transactions has changed the landscape of the legal market with law schools needing to respond to such changes. In this regard, Carmel O’Sullivan and Judith McNamara observe<sup>43</sup>

“Accordingly, globalisation has resulted in legal practice, even for domestic lawyers, increasingly incorporating international and transnational elements. It has also created the potential for new career opportunities for law graduates. However, in order for the legal practitioner to be able to resolve legal issues with an international element or to avail of these emerging career opportunities, they need to have an understanding of international and foreign law and global issues. Consequently, law curricula should incorporate knowledge of international law and the skills to work in international spheres.”

Bringing together the need for students to be exposed to dispute resolution processes together with initiatives to internationalise law school curriculum, Newcastle Law School conducted a two-week pilot clinical legal education externship in China in late 2017 under a NCP. A focus of the program was to expose students to comparative dispute resolution processes. Building on its embedded clinical legal education program, Newcastle Law School secured government funding under the NCP to cover the trip-related costs for students including airfares and accommodation in China. Students were selected through an expression of interest process based on selected criteria including whether the student experiences economic hardship, their previous clinical legal education exposure and their reasons for wishing to undertake the externship. The trip also attracted two postgraduate Juris Doctor students who self-funded.<sup>44</sup> To facilitate the

---

<sup>36</sup> See Australian Trade and Investment Commission, <<https://www.austrade.gov.au/news/economic-analysis/australias-two-way-trade-with-the-world-was-up-11-to-763-billion-in-2017>>, accessed on 3 March 2019.

<sup>37</sup> ‘About the New Colombo Plan’, *Australian Government Department of Foreign Affairs and Trade* <<https://dfat.gov.au/people-to-people/new-colombo-plan/about/Pages/about.aspx>>, accessed on 3 March 2019.

<sup>38</sup> See <<https://www.austrade.gov.au/news/economic-analysis/australias-two-way-trade-with-the-world-was-up-11-to-763-billion-in-2017>>, accessed on 3 March 2019.

<sup>39</sup> See <<https://dfat.gov.au/trade/agreements/in-force/chafta/pages/australia-china-fta.aspx>>, accessed on 3 March 2019.

<sup>40</sup> Leanne Mazrani, ‘Dacheng, Dentos merger a wake-up call for Aus firms’, *Lawyers Weekly*, January 2015, available at <<https://www.lawyersweekly.com.au/news/16097-dacheng-dentons-merger-a-wake-up-call-for-oz-firms>> accessed on 12 October 2018.

<sup>41</sup> See generally Carmel O’Sullivan and Judith McNamara, ‘Creating a Global Law Graduate: The Need, Benefits and Practical Approaches to Internationalise the Curriculum’ (2015) 8(2) *Journal of Learning Design* 53.

<sup>42</sup> See generally ‘Internationalising the Australian Law Curriculum’, *Council of Australian Law Deans* available at <<https://cald.asn.au/itlc/>> accessed on 21 August 2018.

<sup>43</sup> See above n. 41.

<sup>44</sup> In 2018, two Newcastle Law School staff members took 20 students for a clinical legal externship in China from 24 November to 10 December, comprising 10 undergraduates and 10 Juris Doctor students. Government funding was



implementation of this overseas trip at a university level, an embedded course entitled “Clinical Legal Externship in China” was developed for the selected students. Students could claim 10 units towards their study program upon the successful completion of the externship. The assessment for the course included satisfactory participation in the clinical activities in China (including simulated mediations) together with the submission of a one-thousand-word reflection paper on the externship. After completion of the program, students were overwhelmingly positive in their feedback on the course. In the Student Feedback on Courses survey conducted by the University of Newcastle after the completion of the externship, 5 out of 12 students responded and rated the course with the highest satisfaction scores achievable, being 5.

The two-week intensive clinical legal education placement was primarily hosted by Beijing University of Aeronautics and Astronautics (BUAA) School of Law in Beijing, China. The work-integrated placement consisted of students attending and participating in legal advice clinics held at BUAA, together with attending clinics at a number of other universities in Beijing and Shanghai, including Peking University Legal Clinic. The placement also consisted of students attending seminars and participating in workshops with BUAA law students and staff focusing on the comparative study of law and procedure in Australia and China. Further, students attended the Beijing office of Fangda Partners,<sup>45</sup> an international law firm which serves clients worldwide including the e-commerce giant Alibaba. The Newcastle delegation also visited the Australian Chamber of Commerce in Beijing, and spoke with staff about Australia-China business relations and associated opportunities for Australian law students.

Students attended Chinese courts with a tour of Haidian District People’s Court in Beijing. One of the features of this court is a legal advice clinic which is conducted by BUAA law students on-site assisting clients with their legal matters being heard that day in court. The BUAA law students are permitted to appear before the court on behalf of their clients in accordance with Chinese laws and regulations.<sup>46</sup> This contrasts with the restrictions in most Australian jurisdictions on law students being required to seek leave to appear in court on behalf of a client. The Director of Case Filing Division at the Haidian District People’s Court informed the visiting Australian students about the case management work within the court and how BUAA law students contribute to the court process.<sup>47</sup>

### ***Dispute Resolution in the Clinical Legal Externship in China***

A key feature of the clinical externship in China was the emphasis placed on students having exposure to dispute resolution processes. While placed at BUAA Law School, Australian students practised and demonstrated their dispute resolution skills to an audience comprised of Chinese students and academics from the Law School. Translation into Mandarin and English was undertaken by a bilingual academic. Students participated in simulated negotiation and mediation scenarios which they had devised themselves, having been reviewed by an academic. The simulations involved students taking on the role of a lawyer in a hypothetical case, in a controlled and supported situation under the supervision of an experienced academic and lawyer.<sup>48</sup> David Chavkin promotes the merits of simulation as an important agent in the development of

---

also secured for this externship through the Endeavour Mobility Grants Scheme administered by the Commonwealth Government Department of Education and Training. The Endeavour Grants Scheme funds postgraduate students to undertake a short-term mobility program. Details about this program can be found at <<https://internationaleducation.gov.au/Endeavour%20program/studentmobility/Pages/International%20Student%20Mobility%20Programs.aspx>>, accessed on 14 October 2018.

<sup>45</sup> See <<http://www.fangdalaw.com>>, accessed on 3 March 2019.

<sup>46</sup> *Regulation of Legal Aid* Art. 10. Chinese legal aid institutions may provide legal services to eligible Chinese citizens in certain types of cases, including requesting the payment of labour remunerations. Chinese law students under the supervision of legal practitioners working in legal clinics are permitted to act as agents for eligible clients in the court. <<http://www.lawinfochina.com/display.aspx?lib=law&id=3023&CGid=>>>.

<sup>47</sup> Personal communication with Ms. Li, the director of Case Filing Division at the Haidian District Court, 30 November 2017.

<sup>48</sup> Elliott Milstein, ‘Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations’ (2001) 51(3) *Journal of Legal Education*, 376.

persuasive advocacy skills in students.<sup>49</sup> He argues that students should participate in simulated advocacy cases where they can hone their skills and develop values and virtues in a setting where no one is adversely affected by any errors.<sup>50</sup> At the same time, it provides an opportunity for students to engage in some risks which they would not ordinarily be able to experience, if the student was formally acting for a 'live client' and their client's interests could be harmed.<sup>51</sup> A simulation can show a student how to transfer their doctrinal knowledge to practical application, which is an essential skill in thinking as a lawyer.<sup>52</sup>

In order to prepare for the negotiation and mediation simulations, Australian students were placed into groups so that they could undertake, in rotation, various client and lawyer roles. For the negotiation exercise, groups of four students acted as the applicant and their lawyer, and as the respondent and their lawyer. In the mock mediation, groups of four students acted as the applicant and their lawyer, and the respondent and their lawyer with an academic serving as the mediator. After each group's demonstration, an academic provided feedback on their performance together with a debriefing session for students, which provided deep learning opportunities for reflection. This verbal reflection was complemented by students submitting a written reflection on the role of the simulations in their learning process.

As part of the dispute resolution focus, students attended the Minhang District Labour and Personnel Arbitration Institute based in Shanghai ('MLPAI') (formerly Minhang District Labour Arbitration Institute).<sup>53</sup> MLPAI is affiliated with the Minhang District Human Resources and Social Security Bureau which is part of the Minhang District Government of Shanghai Municipality. MLPAI is a government-funded organisation which deals with matters in the legal areas of labour and personnel through arbitration. Mediation is initially required by the MLPAI which the parties in the dispute are required to attend. Should the mediation fail then an arbitration process can be triggered.<sup>54</sup> One of the major responsibilities of MLPAI is, as suggested by its title, to register, file and deal with labour and personnel arbitration cases.<sup>55</sup> Hiring, training and assessing its own arbitrators constitutes another major role for MLPAI.<sup>56</sup> There is no charge levied against parties to participate in the mediation and arbitration process.<sup>57</sup> A key aspect of the visit was the opportunity for students to engage in extensive discussions with stakeholders involved in the actual mediation process and the subsequent arbitration process should mediation be unsuccessful. This included in-depth conversations with a mediator who was conducting a shuttle mediation between an employer and an employee at the time of the discussions. There were extensive conversations with MLPAI staff regarding the methods of dispute resolution employed at the MLPAI and students were impressed by the combination of mediation and arbitration approaches employed at the MLPAI.<sup>58</sup> Arbitral awards made under the auspice of MLPAI are then able to be enforced through the co-located Minhang District People's Court. The Court has established a dedicated office within the MLPAI which is responsible for the implementation of arbitral decisions on behalf of the successful party. MLPAI's ethos to provide a comprehensive platform for the resolution of labour and personnel disputes was also demonstrated by its

---

<sup>49</sup> David Chavkin, 'Experience is the Only Teacher: Meeting the Challenge of the Carnegie Foundation Report' (2007) 15(3) *Legal Education Digest* 48.

<sup>50</sup> Ibid.

<sup>51</sup> John Anderson, 'Identification Evidence – Proof and Doubt: An Experiential Teaching and Learning Strategy to Promote Deep Analytical Understanding Combined with Incremental Development of Practical Legal Skills' (2008) 1 *Journal of the Australasian Law Teachers Association*, 2008 123,127 citing David Chavkin, 'Experience is the Only Teacher: Meeting the Challenge of the Carnegie Foundation Report' (2007) 15(3) *Legal Education Digest* 48.

<sup>52</sup> C. K Günsaius and Steven Beckett, 'Playing Doctor, Playing Lawyer: Interdisciplinary Simulations' (2008) 14 *Clinical Law Review* 444. See also Robert Park, 'Appropriate Methods for the Teaching of Legal Skills in Practical Training Courses' (1990) 8(2) *Journal of Professional Legal Education* 177.

<sup>53</sup> Available at

<http://www.shwmcj.cn/wmdwfc/second/mien/homePage/homePageDesc.jsp?OWNER=23811&COMPANYTYPE=0>, accessed on 12 October 2018 ('SHWMCJ').

<sup>54</sup> Personal communication with Ms. Yang, director of MLPAI, on 1 December 2017. ('Yang')

<sup>55</sup> SHWMCJ (n 53).

<sup>56</sup> Ibid.

<sup>57</sup> Yang (n 54).

<sup>58</sup> In this regard, please see the last section of the paper where students' reflections are referred to.

provision of an allocated office where psychological counselling was offered free of charge by health care professionals to parties who may be distressed by the dispute resolution processes.

The legal clinic of Shanghai Jiaotong University KoGuan Law School<sup>59</sup> conducts an outreach clinic at MLPAI to assist clients seeking legal aid, and to provide advice on their employment disputes. This student assistance was strongly supported by MLPAI with students drafting legal documents for clients which are then used for case management purposes, reducing the workload of the Filing Division at MLPAI.

### ***Students' Reflection on China Clinical Legal Education Externship***

A student in her reflective journal referred to the China clinical legal education experience as never failing to challenge her expectations in all aspects. The student wrote that prior to the trip she had very low expectations in terms of the role that dispute resolution processes would play in the Chinese legal system. This perception was proven to be wrong when the student learned from Chinese law students and at Haidian District Court in Beijing that in China there is a compulsory mediation process before any marital relationship dispute can proceed to the litigation stage. The student also referred to the important role that mediation and arbitration has in dealing with labour and employment disputes as observed at MLPAI, where such disputes can be addressed through either mediation or arbitration. Further, all students were strongly impressed by the comprehensive nature of MLPAI as a platform to settle employment cases, particularly the existence within MLPAI of a psychological counselling office, and the co-location of a local court office responsible for enforcing arbitral awards rendered by the MLPAI. Students also noted that at both Haidian District Court in Beijing and at MLPAI in Shanghai, there were Chinese law schools who collaborated with these institutions with the setting-up of a clinic and provision of office space for students to assist the disputing parties in need of legal support. Newcastle students noted that such clinics were not readily available in Australian courts.

Apart from their specific reflection on their exposure to alternative dispute resolution processes in China, a student commented that he had truly underestimated the power of a short-term study program. The student reflected that he had gained a wealth of socio-legal knowledge, and developed cross cultural communication skills and cultural sensitivity. The student also observed that such skills were a result of being immersed in a different legal system for an intensive period of time which provided deep opportunities to conduct a comparative reflection of the Chinese and Australian legal systems.

### **III CONCLUSION**

The pilot clinical legal education externship program in China provided deep learning opportunities for Australian law students to reflect on their professional roles as aspiring lawyers, and the vital importance of dispute resolution in legal practice. Students had multiple opportunities to enhance their dispute resolution skills and techniques through simulated negotiation and mediation activities and gain insights as to how Australian and Chinese students and lawyers approach the resolution of civil disputes. The intensive learning experience in China heightened students' awareness of the power of clinical legal education by observing the collaborations between Chinese law schools and the courts and arbitration institutes. Student reflections on the international clinical legal education externship indicated a strong desire to be exposed to dispute resolution learning opportunities set within an international context.

---

<sup>59</sup> See Koguan School of Law, Shanghai Jiao Tong University <<http://law.sjtu.edu.cn/En/>>, accessed on 3 March 2019. After visiting MLPAI in the morning on 1 December 2017, Newcastle students visited Koguan School of Law that afternoon as part of the pilot project. Australian students demonstrated negotiations and mediations based on simulated scenarios in the Australian context to Chinese students and vice versa. These activities were designed to deepen students' understanding of Australian and Chinese legal practice in the area of negotiation and mediation and enhance their awareness of the significance of comparative studies.