

Book Review

CONTEMPORARY ISSUES IN MEDIATION VOL 1

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Joel Lee & Marcus Lim

*Review by Stephen Walker**

"*Why would I as a busy practitioner want to read a collection of essays written by students?*" you ask yourself. This book is a collection of essays by students who did well in the Annual Essay Competition run by SIMI (The Singapore International Mediation Institute. "*What could I learn?*" Well there are several reasons why you should read this book.

Any book from Joel Lee, even if not actually written by him, is worth looking at. He is a Professor in the Faculty of Law at the National University of Singapore. Many of you will be familiar with his insightful, original and relevant posts for the Kluwer Mediation Blog. His co-editor is Marcus Lim, a mediator and the Executive Director of SIMI.

Singapore is a dynamic centre for dispute resolution including mediation. SIAC the (Singapore International Arbitration Centre) and SIMC (the Singapore International Mediation Centre) have been innovative in developing new processes particularly their arb- med- arb model.

We can all learn from each other. And in a time of increasing conflicts and disputes involving participants from different cultures, comments and insights from thoughtful practitioners and commentators are invaluable to any practitioner. Also, as Joel Lee and Marcus Lim say in their Editors' Note, their premise is that "*wisdom is not necessarily a function of age or experience and pieces that can meaningfully contribute to the development of the field can come from students.*"

The 10 chapters cover relevant topics in mediation from power imbalance, good faith, neutrality, ODR, facilitative v evaluative models to manipulation and two very informative chapters on mediation from an Eastern rather than Western perspective.

You have to accept that these are student essays written for an academic competition. The format therefore is not one that busy practitioners would adopt themselves. There is the usual academic etiquette of full citation, literature review, stating of intentions and propositions before coming to conclusions. In short each of the pieces could be streamlined but you would be missing out if you were put off by the format. There are some real nuggets.

One thing that is not traditionally academic is the vocabulary. This is a welcome change from the coagulated prose that many academics use to express their insights. Here students say it as they see it: "*the area of power imbalance in mediation is a tricky one...*"(p11) ; "*the truth is: law is an industry and law firms are businesses.*"(p 19) ; facilitative purists actually largely agree with the pragmatists in substance, yet quibble over the form" (p 40). And they are prepared to come to conclusions and say what they think.

The prizes have already been awarded for the best essays so there is no point in re-marking them according to the quality of their academic exposition. But of particular interest and relevance were:

Chapter 1 on **power imbalance** by Ng Wan Qing who makes two general observations. "*We must draw distinction between the mirror existence of a power disparity between the parties and its exercise in an abusive manner. Where the power imbalance remains merely "potential", the problem of injustice does not manifest.*"(p 6). Remarking that the Confucian tradition may reinforce inherent power imbalances the author concludes that "*intervention, even in an Asian culture, must be acceptable when the situation is an exploitative one.*" Hear! Hear!

Valencia Soh Ywee Xian concludes after a perceptive and full examination of the **role of the mediation advocate** that "*Counsel must be prepared to depart from his client's expectations or desires.*"(p 28). Again Hear! Hear!

Although Bill Marsh has described **the facilitative v evaluative debate** as the most boring conversation in mediation, Javier Yeo examines it with energy and realism and his critique of the literature at p 40-42 is entertaining. I could not agree more with his conclusion: " *To harp on terminology in order to conceptualise an ideal model of mediation is to miss the point completely. We have lost sight of what is important.* " (p 44)

I have not been to Singapore and found the chapters by Jamie Lye on **Mediating the ASEAN way** (p 47) and by Joey Lim Yue Tow on **Faces of Singapore & Mediation** (p 59) and by Chng Teck Kian Desmond on the **SIAC-SIMI Arb-Med-Arb Protocol** (p 85) exceptionally informative. Take a look at the table on p 64 for a useful checklist or cultural differences and p 89-94 for a clear examination of the practical issues in arb-med hybrids.

The prize for the best title goes to Phua Jun Han's chapter on ODR entitled "**Shall We Medi@?**" But it's not just the title that is good. Anyone interested in ODR should read this chapter wherever you are based.

Other writers deal with some conceptually more difficult issues Koh Zhen Yang on **Manipulation in Mediation** (p73), Chan Min Hi on **Good Faith Participation** (p121) and Tan Ting Wei Kelly on **Neutrality** (141). They are all worth reading even if only to remind yourself of the key issues both practical and theoretical.

Should you buy and read this book? Yes -you will not be wasting either your time or your money. I look forward to reading volume 2.

*Stephen Walker is an expert civil and commercial mediator and is the author of *Mediation Advocacy: Representing Clients in Mediation* (Bloomsbury 2015) and several other publications. For more information, visit: <http://swalkermediation.com>.

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