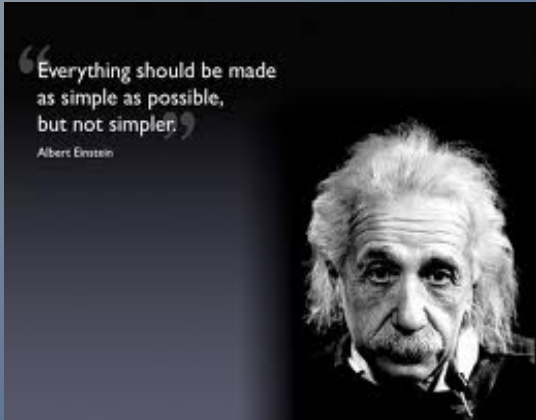


# Why ODR for Small Claims?



Simpler Problems



Lower \$ at risk



Courts Overloaded



Simple Remedies

## What about TFR?

“Just as some cases might be so important and complex that human review is warranted, surely the reverse is true: some disputes must be so routine and trivial that elevation to a human would be a waste of time.”

– Nick Crews

# Questions

- How do we evaluate DR systems?
- How do we know if ODR and TFR is better or worse than offline DR?
- If the justice gap means no access to courts for many, should we enforce ODR/TFR systems if the quality is worse than human DR?
- Examples of nothing vs. something:
  - bad wills vs. probate
  - bad contracts vs. UCC defaults
  - no one pays vs. wrong party pays

# Examples

- Canada – rolling out
- Michigan's Cyber Court– failed for lack of funding
- Singapore: “e@dr” (eADR)
- Australia: eCourt
- UK: Money/Possession Claim Online (\$100K)

# Legal Technology Framework

- When/where to use
- Legal and user requirements, design
- How to evaluate, compare to non-tech method
- Impact on the legal system
- Examples:
  - ODR, TFR
  - e-discovery doc review
  - document automation
  - e-lawyering, online legal services

# When to Use ODR – Factors

- Complexity
  - number of participants
  - straightforward and predictable remedy
  - no injunctions or interlocutory actions
  - nature of the (physical) evidence
- Amount at risk
- Physical/temporal distance
- Choice of law and/or adhesion lockin
- No alternative (too many D's, court unavailable)
- Should these matter? ODR vs. TFR

# Legal Requirements – Best Practice

- Transparency
- Independence
- Impartiality
- Effectiveness (e.g. enforceable)
- Fairness and Integrity (i.e. due process)
- Accessibility (e.g. low cost, fast, informative)
- Flexibility of process
- Legitimacy: accreditation, clearinghouse, appealable



# ODR Evaluation – Divorce

- I used to say:

“The only thing worse than divorce is a bad marriage.”

- In the future:

“ODR is so fun, I can't wait to get divorced again!”



# Evaluation – Beyond Coin Tosses

- Goals:
  - efficiency
  - fairness (process, outcome)
  - accuracy
  - accessibility
- How much fairness is efficiency worth?

# ODR Evaluation

- Literature:
  - Outcome, process
  - Alternative systems
  - % settling
  - Cost (time, \$) to participants and system
- Problems
  - Comparing online with offline
    - measured offline? (legal tech generally)
    - we can't send same case through both
  - Subjective vs. objective criteria

# ODR Evaluation

- DMR: # MSA's
- eBay:
  - 80% (of 60M!) resolved via automation
  - closed ecosystem amenable to optimization
  - implementing feedback is within eBay's control
  - *lower # disputes per transaction (via feedback)*
- DSD – Dispute Systems Design – prevention!
  - negotiating interests, rights, or power

# Impact On The Legal System

- How to apply feedback to the legal system?
- Which metrics to optimize – reduce # disputes?
  - less incarceration? (death penalty for tickets)
  - less lawsuits? (shut down the judiciary)
  - less divorces? (outlaw marriage – the cause of the problem is outside the institution that has to deal with it)

# Impact On The Legal System

- Raz – “institutionalized norms”
  - difficult to communicate between branches
  - how to move data without risking privacy
  - 4 legal tech goals can be in conflict
  - government is not an isolated ecosystem
- “Default” law as backdrop
  - When is doing nothing better than doing something poorly? When the default is better.
  - When should TFR in the public sector be mandatory (e.g. only 1-side wants it)?