

Online Dispute Resolution - introducing Asset Divider

Creating priority based
solutions to mediation

Dr. Emilia Bellucci

Professor John Zeleznikow



Dispute resolution and electronic support



Dispute resolution is a complex process. It involves:

- a dispute which needs to be resolved (a task)
- a dispute often resulting from a negative emotional (or financial, trust etc) situation, say a e-commerce or family law dispute

Traditionally, human communication has been central to resolving a dispute if parties are prepared to look at a dispute objectively.

- Human communication allows flexibility and creative decision which explains why face to face is the most preferred method of negotiation.
- However it also allows for ineffective 'noise' such as lack of clarity in the substantive issues and priority setting.

So computers can help to identify the facts and remove emotions arising from past experiences with the parties and with dispute resolution in general, whether the parties actually like each other etc.

Our view on ODR



Many definitions exist on what typifies an ODR tool, usually relating to the amount and type of support offered by technology to aid dispute resolution processes.

The most common example is where an ODR tool supports the full process of dispute resolution – allows for the intake of issues and preferences and alternative solutions, usually optimized, are presented.

- Commercial examples include Smartsettle (fully electronic support) and Modria (where the technology is used to facilitate communication).
- These are often complete platforms which fully support the dispute resolution process from intake to resolution.

Our research in ODR



In contrast, our research aims to *support and not replace face to face negotiation* using electronic means.

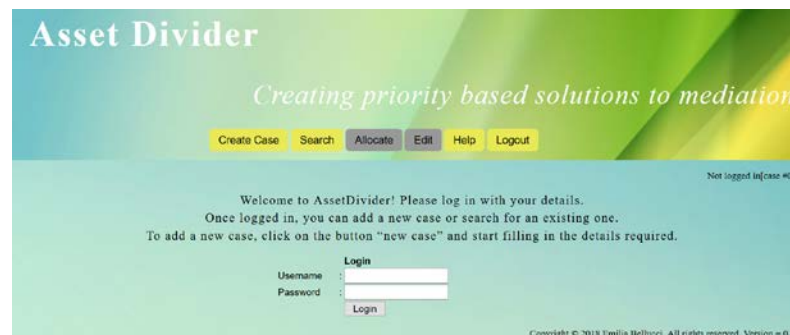
Empowering people with the facts before and during a negotiation is a way by which emotions do not influence and hid the substantive issues in dispute.

Asset Divider allows parties to clearly identify the issues and priorities by entering them into the program, and then provides them with a 'solution' based on their inputs.

Asset Divider



- Initially Asset Divider was designed for family law mediators to ‘reality test’ the financial situation for clients
- It focused upon providing disputants and mediators with advice about suitable trade-offs
- It is also useful in preparing for the negotiation – to clearly articulate your positions, understand what tradeoffs you may be willing to make and what do you really want!



How does Asset Divider work?



1) People enter the issues in dispute and the importance they place on being allocated or given the issue.

- The issue is usually an asset (with a corresponding dollar value), but the software may be used for negotiations with less tangible issues.

2) An 'allocation' is made, ie parties are given items from the list provided in 1) and a financial payout is calculated based on the percentage split set

The program uses a system of internal trade-offs to simulate human negotiation.

How can Asset Divider be used?



Two different negotiation cases:

1) Family Law property dispute. Typical dispute where there are tangible items to be allocated, each with a financial value.

2) Workplace dispute. Employee dissatisfaction and governance failures are the main themes.

Family Law property dispute



Item in dispute	Party H	Party W	Financial value
Rental - City Apartment	35	55	\$900,000
Holiday house	6	1	\$700,000
Family home	8	1	\$1,200,000
Cash	8	1	\$200,000
Toyota car	5	6	\$20,000
Mazda car	18	17	\$45,000
Paintings	15	15	\$2,000
Jewellery	5	4	\$1,500

Percentage split: 50/50

Family Law property dispute and Asset Divider



Case #6, Party A: H Husband, Party B: W Wife

Assets

Issue Description	Party A Rating	Party B Rating	Dollar Value	Party A Rating	Party B Rating
Rental - City Apartment	35	55	\$900,000		
Holiday house	6	1	\$700,000		
Family home	8	1	\$1,200,000		
Cash	8	1	\$200,000		
Toyota car	5	6	\$20,000		
Mazda car	18	17	\$45,000		
	100	100	\$3068500		

Change Update Mode: **discrete** Change Balance Mode: **none**

Allocation

Issue Description	Allocate...	Dollar Value	Rating A	Rating B
Rental - City Apart...	Party B	\$900,000	35.0	55.0
Holiday house	Party A	\$700,000	7.1	1.2
Family home	Party A	\$1,200,000	8.6	1.0
Cash	Party A	\$200,000	8.6	1.1

Asset Divider - Print out



File Edit View History Bookmarks Tools Help

Asset Divider x Print x +

https://assetdivider.com/assets/ff/print.php

Case description:

Family Law Case

Party A: H Husband is allocated the following items:

Item	\$ Value	Item's contribution
Holiday house	\$700,000	22.8%
Family home	\$1,200,000	39.1%
Cash	\$200,000	6.5%
Mazda car	\$45,000	1.5%
Jewellery	\$1,500	0.0%
Payout	-\$612,250	-20.0%
Totals	\$1,534,250	50%

Party B: W Wife is allocated the following items:

Item	\$ Value	Item's contribution
Rental - City Apartment	\$900,000	29.3%
Toyota car	\$20,000	0.7%
Paintings	\$2,000	0.1%
Payout	\$612,250	20.0%
Totals	\$1,534,250	50%

Windows search bar: Type here to search

Taskbar icons: File Explorer, Microsoft Edge, Firefox

Workplace narrative



E (Employee) has been working at NGO, a counselling agency for six years. During that period she has received excellent performance reviews.

Five years ago, she was involved in a breach of security. One of her clients took a file documenting the relationship between the client and his ex-partner. The client claimed he had taken the file by mistake, and returned it. NGO sent out one of their HR (A) officers to the Footscray branch. A wrote E a letter outlining her duty of care, indicated that although the incident was worrying, it was an accident and suggested the letter be removed from E's work file following twelve months of incident free work.

Three months ago, X was preparing a counselling plan for family Z, when there was a power blackout in Footscray. E's PC crashed. But unbeknown to E, the Z's plan was automatically saved. E created a new file for Family Z, and saved the file. The admin officer at NGO in Footscray was asked to send both partners in Z, a letter of recommended outcomes. E, who was not aware of the early, incomplete and inaccurate saved file, looked for the document and gave it to the admin officer who sent it to the parties.

The admin officer sent it to the parties who complained about being sent the wrong file. The admin officer apologised and promised to send out the correct file. She sent out a new letter, with the wrong file again.

M (manager) at the NGO office in Footscray interviewed E and then sent her a final letter. That letter said E had breached security twice and hence deserved a final warning – if a further incident occurred she would be sacked.

E became very stressed and ill. She saw a psychologist who whilst helping her, also issued an unfit to work certificate.

Workplace dispute



Issues in dispute	Party E	Party M
Relevancy of previous incident	0	20
Relevancy of incident whereby wrong plan was sent to clients (due to IT failure)	10	20
Relevancy of formal warning to fire E if another breach occurred	10	40
Relevancy of E becoming stressed and ill	40	0
Relevancy of E previously receiving excellent performance reviews	40	0

Workplace dispute and AssetDivider



File Edit View History Bookmarks Tools Help

Asset Divider

https://assetdivider.com/assets/ff/allocation.php

Case #10, Party A: E Employee, Party B: M Manager

Assets

Issue Description	Party A Rating	Party B Rating	Dollar Value	Party A Rating
Relevancy of previous incident	0	20	\$100	
Relevancy of incident whereby wrong plan was sent to clients (due to IT failure)	10	40	\$100	
Relevancy of formal warning to fire E if another breach occurred	10	40	\$100	
Relevancy of E becoming stressed and ill	40	0	\$100	
Relevancy of E previously receiving excellent performance reviews	40	0	\$100	
	100	100	\$500	

Change Update Mode **discrete** Change Balance Mode **none**

Allocation

Issue Description	Allocate...	Dollar Value	Rating A	Rating B
Relevancy of E becoming stressed and ill	Party A	\$100	40.0	0.0
Relevancy of E previously receiving exc...	Party A	\$100	40.0	0.0
Payout	Party A	\$50	0.0	0.0
		\$500.00	100.50	108.32

Windows Taskbar: Type here to search, 4:46 PM, 12/11/2018

File Edit View History Bookmarks Tools Help

Asset Divider x Print x +

https://assetdivider.com/assets/ff/print.php

Summary allocations from Asset Divider

Case #:10 % split: 50.0/50.0

Case description:

Workplace dispute

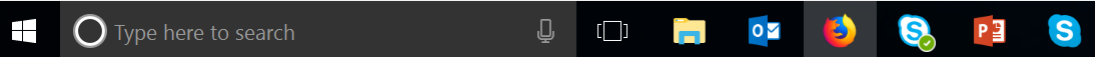
Party A: E Employee is allocated the following items:

Item	\$ Value	Item's contribution
Relevancy of E becoming stressed and ill	\$100	20.0%
Relevancy of E previously receiving excellent performance reviews	\$100	20.0%
Payout	\$50	10.0%
Totals	\$250	50%

Party B: M Manager is allocated the following items:

Item	\$ Value	Item's contribution
Relevancy of previous incident	\$100	20.0%
Relevancy of incident whereby wrong plan was sent to clients (due to IT failure)	\$100	20.0%
Relevancy of formal warning to fire E if another breach occurred	\$100	20.0%
Payout	-\$50	-10.0%
Totals	\$250	50%

Type here to search



What are the Pros/Cons to AssetDivider?



Pros:

- Reality testing of possible solutions to a case - where assets and dollar values can be (at least) estimated
- Converting a narrative into facts and numbers – aids in clarifying the facts of the case

What are the pros/cons to Asset Divider?



Cons:

- Not a complete solution to online negotiations
- Could be used in shuttle negotiations to clarify positions
- Requires a relatively complete understanding (from all sides) of the issues and priorities in the negotiation

- Varying forms of ODR, we focused on supporting human interaction and communication.
- The ‘answers’ given in the software are not meant to be definitive – should be used to inform disputants of their options and empower people to obtain the best outcome.
- In the workplace dispute, it was the lack of facts identified that led to the negative reactions and consequences.



- To continue to empower people
- Further work on how to determine a disputants goals from their narratives
- Continue to build tools to support human decision making and collaboration
- Research and industry collaboration is welcome!