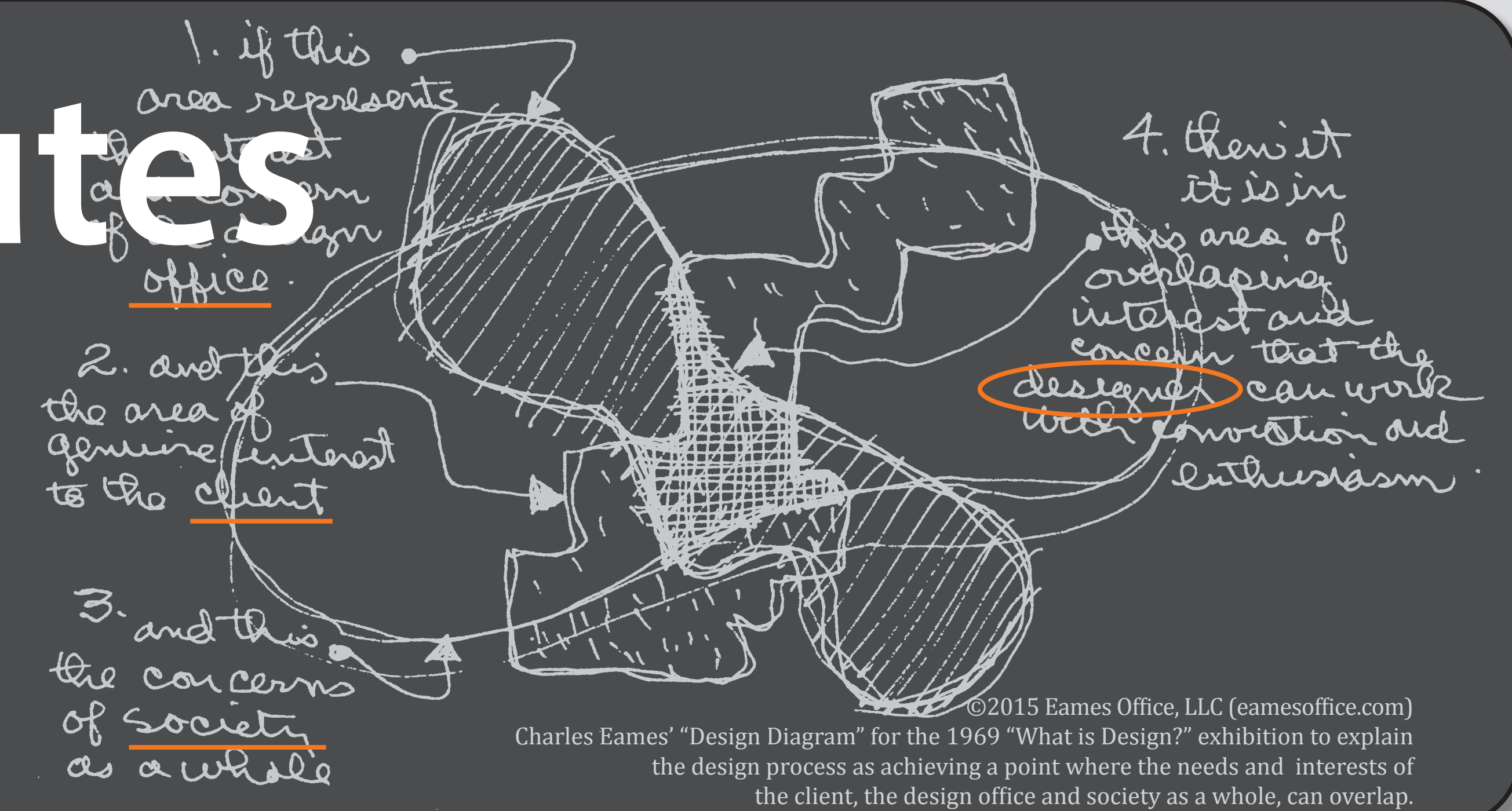


designing + (dis)assembling disputes

an ethnography of disputes & lawyers in the construction industry

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The Starting Point:

A lawyer's first gaze upon the dispute

The construction lawyer, Mr Jack Hunter, swoops into the conference room:

The Lawyer: Good morning - good to finally meet you in person.

The Client: Jack, thank you for meeting me on such short notice.

The Lawyer: No problem. So, how can I help?

The Client: You've seen the bundle of papers I sent over yesterday?

The Lawyer: Yes, thank you.

The Client: Well, I am a small construction company. I simply cannot take the risk of spending any more money on this dispute. I had hoped to carry on without the use of lawyers, but this is now out of my depth. I need this over and done with as quickly as possible.

The Lawyer: I completely understand. If this runs the course, you quickly could run up huge costs. We need to find a balance. At the end of the day, you might be better off walking away frustrated, than continuing with this. But let's see - it is too early to say.

Now, I have read the documents you sent me, but it would be helpful if you could take me through this, in detail, starting from the beginning.

What happens hereafter is the focus of this research....

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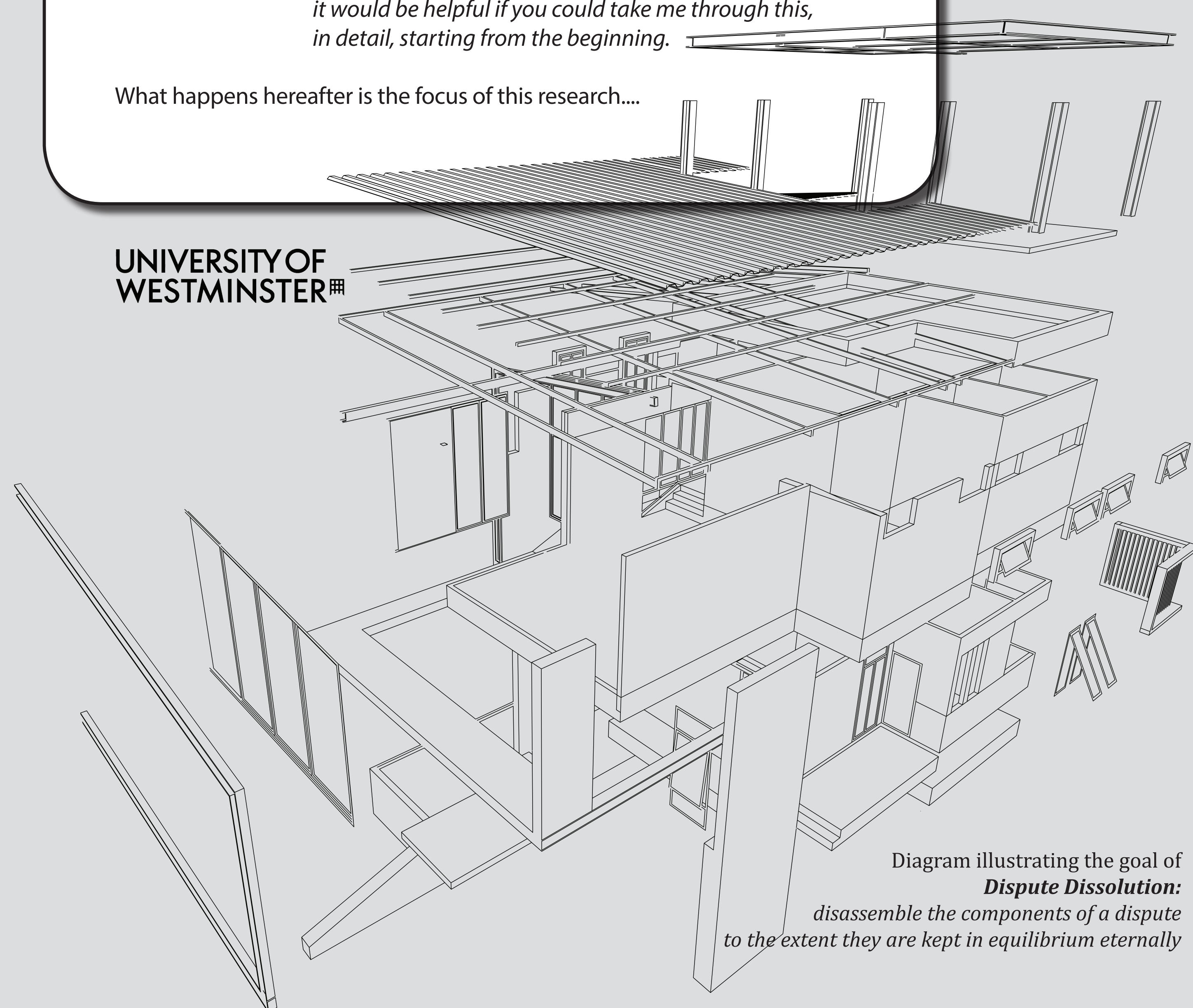


Diagram illustrating the goal of **Dispute Dissolution:** disassemble the components of a dispute to the extent they are kept in equilibrium eternally

The Conceptual Framework



Background & Contribution to Knowledge

- The UK construction industry is notorious for the sheer amount of disputes which are likely to arise on each building and engineering project. Indeed the judiciary view construction projects as being "pregnant with disputes" (Linden Gardens v Lenesta Sludge, 1994).
- Considering the construction industry's importance within the UK economy, it is imperative that research efforts are focused on advancing our understanding of these disputes, how to minimise their existence and how to deal with them quickly, proportionately, justly and at minimal cost.
- Accordingly, this research aims to advance and contribute to the knowledge and studies of lawyers, lawyering and disputes:
 - What happens when the lawyer's gaze falls upon the dispute, behind the office door? How does the agency of construction lawyers impact the dispute trajectory and to what extent do they shape and transform these disputes?
- With the rise of the 'vanishing trial' and the increased use of ADR, society has less of an opportunity to see and learn from these disputes. This research offers an:
 - 'up close and personal' glimpse into the life of these disputes and the lawyers that deal with them.

The Research Questions

- What influences the outcome of a construction dispute and to what extent do construction lawyers control/direct this outcome?
- What is the nature of a construction dispute?

The Method

- Ethnographic fieldwork: construction law firm in London for 18 months
- Participant observation: in all of the firm's activities
- Compilation of a database for quantitative analysis: 50 cases

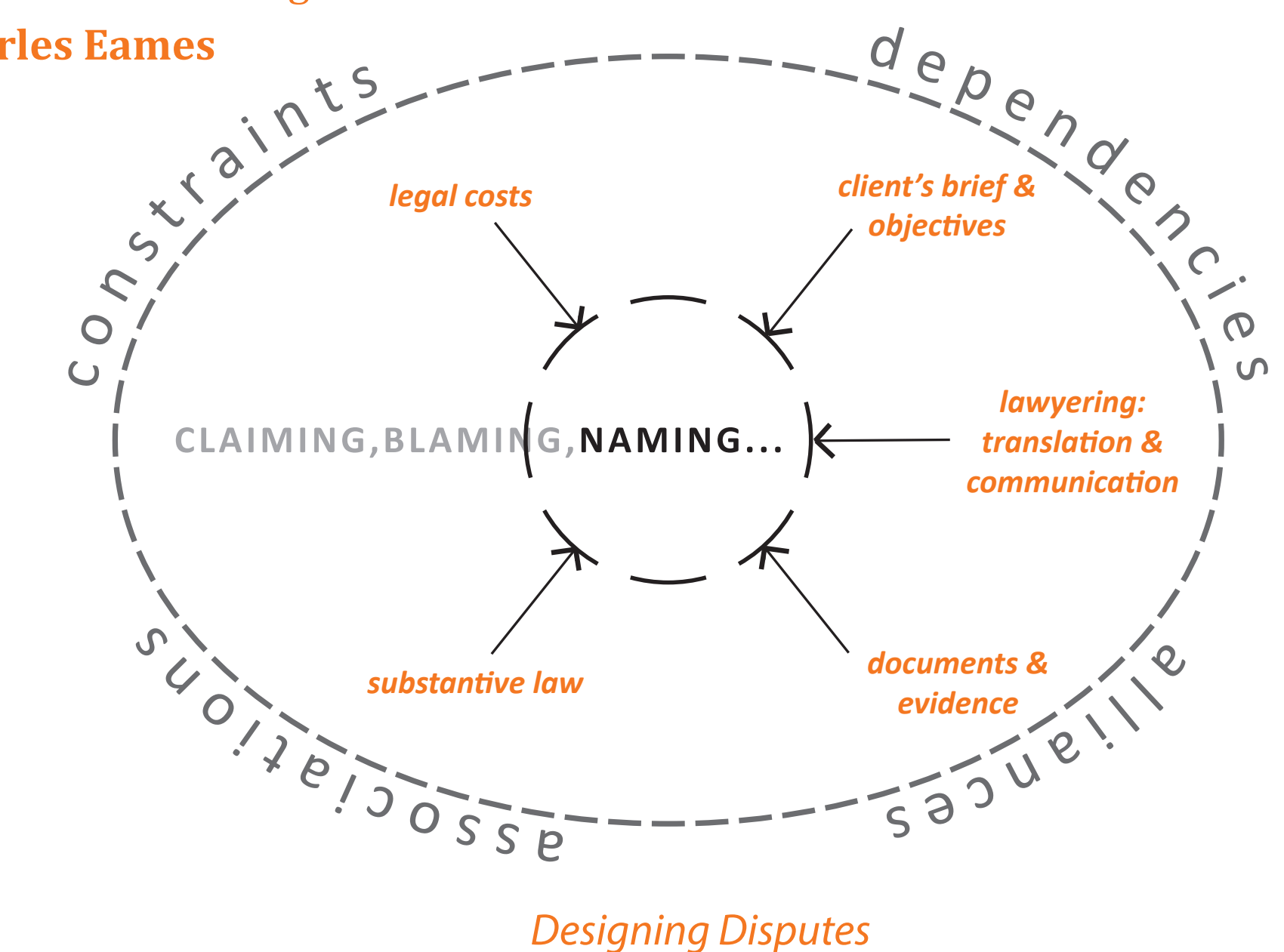
The Findings

Lawyer as Designer

The role of construction lawyers is to identify or name (or rename) the dispute in the best possible light for their client in order to achieve the desired outcome, the development of which is akin to the design process.

Any time one or more things are consciously put together in a way that they can accomplish something better than they could have accomplished individually, this is an act of design.

Charles Eames



The dispute: an assembly

The transformation of a dispute is not linear, but rather, iterative and spatial as it requires alliances, dependencies, associations and contingencies to assemble and take the shape it does.

The temporality of disputes

Some construction disputes dissipate completely in due course, either with the assistance of a lawyer or without, while others reach a state of hibernation for a period of time, only to pick up momentum and energy some years later.

Dispute Dissolution, NOT Dispute Resolution

The concept of 'dispute resolution' is flawed. Construction disputes are rarely ever completely 'resolved'. The ultimate goal should be 'dispute dissolution'.

Disassembling the relational dispute

The focus of the lawyer must now shift from the design and assemblage of the dispute to the 'disassembling' of the dispute.

The goal: the state of equilibrium

Provided the components of a dispute remain detached and their momentum is slowed to a halt, the dispute goes no further. The goal of the parties and their lawyers must therefore be to reach this state of equilibrium as quickly and as cost effectively as possible: *disassemble the components of a dispute to the extent they are kept in equilibrium eternally*