Prefac	te to the Fourth Edition	xxvii
Prefac	te to the Third Edition	xxxi
Prefac	te to the Second Edition	XXXV
Prefac	te to the First Edition	xxxix
Ackno	owledgments	xlv
PAR	T I. INTRODUCTION	1
Chap	oter 1. Introducing the Fields of Conflict and Dispute Resolution	1 3
A.	Theoretical Underpinnings of Conflict and Dispute Resolution	6
	Carrie Menkel-Meadow, Conflict Theory	6
	Problem 1-1	8
	Mary Parker Follett, Constructive Conflict	9
	Deborah Tannen, The Argument Culture: Moving	
	from Debate to Dialogue	10
	Carrie Menkel-Meadow, The Trouble with the Adversary System in a	
	Postmodern, Multicultural World	11
	Problem 1-2	11
	Problem 1-3	12
В.	Frameworks for Handling Conflicts and Disputes	12
	Carrie Menkel-Meadow, Mothers and Fathers of Invention:	
	The Intellectual Founders of ADR	16
	Lon L. Fuller, The Forms and Limits of Adjudication	17
	Martin Shapiro, Courts: A Comparative and Political Analysis	18
	Problem 1-4	20

xii

C.	Institutions of Conflict and Dispute Resolution	20
	Frank E.A. Sander, Varieties of Dispute Processing Center for Public Resources, The ABC's of ADR: A Dispute	22
	Resolution Glossary	27
D.	Animating Values for Conflict and Dispute Resolution:	
	Of Peace and Justice	34
	Carrie Menkel-Meadow, Whose Dispute Is It Anyway?	
	A Philosophical and Democratic Defense of Settlement (In Some Cases)	35
	Owen M. Fiss, Against Settlement	36
	Michael Moffitt, Three Things to be Against	
	("Settlement" Not Included)	39
	Carrie Menkel-Meadow, Practicing "In the Interests	
	of Justice" in the Twenty-First Century: Pursuing	41
	Peace and Justice Further Reading	41 43
_	ter 2. The Lawyer as Problem Solver	45
A.	The Client/Lawyer Relationship	46
	Jeffrey Z. Rubin & Frank E.A. Sander, When Should We	47
	Use Agents? Direct vs. Representative Negotiation Problem 2-1	47 48
	Scott R. Peppet, Six Principles for Using Negotiating Agents	10
	To Maximum Advantage	49
	Problem 2-2	53
	Problem 2-3	53
	Jean R. Sternlight, Lawyerless Dispute Resolution:	5 4
	Rethinking a Paradigm Michael Moffitt, Settlement Melprestice	54 56
	Michael Moffitt, Settlement Malpractice Problem 2-4	57
В.	Client-Centered and Problem-Solving Approaches	57
ъ.	Katherine R. Kruse, Beyond Cardboard Clients in Legal Ethics	58
	Problem 2-5	59
C.	Discovering the Clients' Interests Through Interviewing	60
	Jean R. Sternlight & Jennifer Robbennolt, Good Lawyers	
	Should Be Good Psychologists: Insights for Interviewing	
	and Counseling Clients	61
	Marjorie C. Aaron, Client Science: Advice for Lawyers on Initial Client Interviews	64
	Stefan H. Krieger & Richard K. Neumann, Jr., Essential Lawyering	04
	Skills: Interviewing, Counseling, Negotiation, and Persuasive	
	Fact Analysis	68
	Heather Heavin & Michaela Keet, Client-Centered	
	Communication: How Effective Lawyering Requires	
	Emotional Intelligence, Active Listening, and Client Choice	70

		em 2-6 er Reading	73 74
PAR	T II.	THE BASIC PROCESSES: NEGOTIATION, MEDIATION, AND ARBITRATION	75
Chap	ter 3.	Negotiation: Concepts and Models	77 80
		m 3-2	81
	Proble	rm 3-3	82
A.	Carrie	sing Among Negotiation Approaches Menkel-Meadow, Toward Another View of Legal	83
D		egotiation: The Structure of Problem Solving	83
В.	_	tiation Approaches em 3-4	85 86
		Competitive Approaches to Negotiation	87
		ary Goodpaster, A Primer on Competitive Bargaining	87
	2.	Accommodating Approaches to Negotiation	87
	De	onald G. Gifford, A Context-Based Theory of Strategy Selection	
	-	in Legal Negotiation	88
		oblem 3-5	89
		Integrative or Problem-Solving Approaches to Negotiation	90
	Ci	arrie Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving	90
	R	oger Fisher, William Ury & Bruce Patton, Getting To YES	94
		oblem 3-6	97
C.	Choos	sing in Context	97
		ndrea Kupfer Schneider & David Kupfer, Smart & Savvy:	
		Negotiation Strategies in Academia	97
	Aı	ndrea Kupfer Schneider, Shattering Negotiation Myths: Empirical	
	-	Evidence on the Effectiveness of Negotiation Style	102
		oblem 3-7	104
	Jo	nathan R. Cohen, Adversaries? Partners? How About Counterparts? On Metaphors in the Practice and Teaching	
		of Negotiation and Dispute Resolution	104
	Pr	oblem 3-8	105
		er Reading	106
Chap	ter 4.	Negotiation: Skills and Practices	107
A.	Asser	tiveness	107
	1. Se	et Your Parameters—Goals & Limits	108
	a.		108
		G. Richard Shell, Bargaining for Advantage:	400
		Negotiation Strategies for Reasonable People	108

xiv

		Problem 4-1	110
	b.	Set Your Limits	111
		Russell Korobkin, A Positive Theory of Legal Negotiation	112
		Problem 4-2	113
	2. Sp	eak Persuasively	114
	a.	Appeals to Justice and Fairness	114
		Cecilia Albin, The Role of Fairness in Negotiations	114
		Problem 4-3	117
	b.	Framing, Narrative, and Talking to Help Others Listen	118
		Problem 4-4	120
		Douglas Stone, Bruce Patton & Sheila Heen, Difficult	
		Conversations: How to Discuss What Matters Most	120
	3. Av	void Getting Stuck	122
		Problem 4-5	122
		Problem 4-6	123
		Problem 4-7	123
B.	Work	ing with the Other Side	123
	Andre	a Kupfer Schneider & David Kupfer, Smart & Savvy:	
	No	egotiation Strategies in Academia	124
		Fisher, Elizabeth Kopelman & Andrea Schneider, Beyond	
	M	achiavelli: Tools for Coping with Conflict	125
C.	Creati	ivity and Flexibility	127
	Carrie	Menkel-Meadow, Aha? Is Creativity Possible in Legal	
	Pr	oblem Solving and Teachable in Legal Education?	128
	Jennife	er Gerarda Brown, Creativity and Problem-Solving	129
	Rober	t C. Bordone & Michael Moffitt, Create Value Out	
	Ot	f Conflict	133
	Proble	m 4-8	135
D.	Social	Intuition	137
	Andre	a Kupfer Schneider & Noam Ebner, Social Intuition	137
	Proble	m 4-9	139
	Andrea	a Kupfer Schneider & Sean McCarthy, Modes of Communication	139
E.	Cultu	re	142
	Jeffrey	Z. Rubin & Frank E.A. Sander, Culture, Negotiation, and	
	the	e Eye of the Beholder	142
	Proble	m 4-10	144
	Andre	a Kupfer Schneider, Negotiating While Female	144
	Furthe	er Reading	148
Chap	ter 5.	Negotiation: Law and Ethics	151
A.	How	to Build a Reputation	151
	G. Rio	chard Shell, Bargaining for Advantage: Negotiation Strategies	
	for	Reasonable People	151
		Menkel-Meadow, What's Fair in Negotiation? What Is	
	Et	hics in Negotiation?	156

	in Negotiation: Procedural Fairness, Outcome Acceptance,	
	and Integrative Potential	157
	Peter Reilly, Was Machiavelli Right? Lying In Negotiation And The Art Of Defensive Self-Help	158
D		
В.	Why Does Unethical Behavior Happen (Anyway)?	160
	James J. White, Machiavelli and the Bar: Ethical Limitations on	161
	Lying in Negotiation	
	Problem 5-1	161
	Art Hinshaw, Peter Reilly & Andrea Kupfer Schneider, Attorneys	162
	and Negotiation Ethics: A Material Misunderstanding?	102
	Taya R. Cohen, Erik G. Helzer, and Robert A. Creo, Honesty Among	
	Lawyers: Moral Character, Game Framing, and Honest Disclosures in Negotiation	167
	Patrick J. Schlitz, On Being a Happy, Healthy and Ethical Member	107
	of an Unhappy, Unhealthy, and Unethical Profession	169
	Problem 5-2	171
_		
C.	Ethical Rules	172
	Carrie Menkel-Meadow, Ethics, Morality and Professional	47
	Responsibility in Negotiation	174
	Problem 5-3	177
_	Problem 5-4	178
D.	The Common Law of Ethics	178
	1. Misrepresentation	179
	Stare v. Tate	180
	Problem 5-5	181
	2. Omissions	182
	G. Richard Shell, Bargaining for Advantage: Negotiation	400
	Strategies for Reasonable People	182
	Problem 5-6	183
	3. Material Facts	184
	Vulcan Metals Co. v. Simmons Manufacturing Co.	184
	Problem 5-7	185
	Beavers v. Lamplighters Realty	186
	Problem 5-8	187
E.	Additional Law Regarding Settlements	187
	1. Duty to Inform and Gain Approval of Settlements	187
	2. Keeping the Terms of Settlements Confidential	188
	Problem 5-9	189
	3. Enforcement of Settlements	189
	Further Reading	190
Chap	ter 6. Mediation: Concepts and Models	191
A.	Introduction to Mediation	191
	1 What Is Mediation?	191

xvi

	2.	Comparing Adjudication and Consensus-based Processes	192
	3.	The Advantages of Mediation	193
		a. Settlement: Avoiding the Expense, Delay, Adversarial	
		Dynamic, and Risks of Adjudication; Benefits to Courts	194
		b. Participation and Self-Determination: Giving Parties	
		Voice and Choice	195
		c. Better Outcomes: Generating Creative Problem Solving	195
		d. Relationship, Community, and Harmony: Building	
		Bridges Between People	196
		Problem 6-1	197
		Problem 6-2	197
	4.	The History of the U.S. Mediation Movement	197
		a. Roots	197
		b. Labor	198
		c. Community	198
		d. Family	199
		e. Civil Cases	199
		f. Online Mediation	199
		g. Other Arenas	200
	4	Mediation's Core Values	200
	т.	Carrie Menkel-Meadow, Introduction	200
		Problem 6-3	200
		Lon L. Fuller, Mediation—Its Forms and Functions	202
		Problem 6-4	
		Problem 6-5	204
			204
	_	Problem 6-6	205
	5.	Mediation's Place in the Justice System	205
		Lela P. Love, Images of Justice	205
		Robert A. Baruch Bush, Mediation and Adjudication, Dispute	205
		Resolution and Ideology: An Imaginary Conversation	207
		Problem 6-7	211
		Problem 6-8	211
B.	Ex	amples of Mediations	212
	1.	Sisters of the Precious Blood and Bristol-Myers	212
		Frank J. Scardilli, Sisters of the Precious Blood v. Bristol-Myers	
		Co.: A Shareholder-Management Dispute	212
		Problem 6-9	215
	2.	Glen Cove	216
		Lela P. Love, Glen Cove: Mediation Achieves What	
		Litigation Cannot	216
		Problem 6-10	218
C.	Αr	proaches to Mediation	219
٠.	1.	Narrow or Broad Problem Definition, Evaluative	217
	1.	or Facilitative	219

		Leonard L. Riskin, Mediator Orientations, Strategies	
		and Techniques	219
		Problem 6-11	222
	2.	Facilitative Mediation: Problem-Solving, Understanding-Based,	
		or Transformative	222
		a. Problem-Solving Approach	222
		b. Understanding-Based Model	222
		Gary Friedman & Jack Himmelstein, Challenging Conflict:	
		Mediation Through Understanding	222
		c. Transformative Model	223
		Robert A. Baruch Bush & Joseph P. Folger, The Promise of	
		Mediation: The Transformative Approach to Conflict	223
	3.	Directive and Evaluative Mediation	225
		a. Trashing and Bashing	225
		b. Norm-educating and Norm-advocating	225
		c. Community-enhancing and Community-enabling	226
		Problem 6-12	226
	4	Transparency About Approaches	226
D		1 , 11	
D.		ends: The Future of Mediation in the Legal Arena	228 228
	1.	0	220
		a. The Demise of Party Participation and a Broad Problem-Definition in Court Contexts	220
		b. Mediator Conduct	228
	2	The Promise of Mediation	228
	۷.		229
		Problem 6-13	229 229
		Further Reading	229
Chap	ter	7. Mediation: Skills and Practices	231
A.	Th	ne Mediator	232
	1.	Mediator Traits	232
	2.	Mediator Tasks	232
	3.	Who Can Be a Mediator?	233
	4.	Mediator Strategies and Skills for Stages in the Mediation Process	234
		a. Getting Started	234
		i. Who Should Participate in the Mediation?	234
		Problem 7-1	235
		ii. What Procedural Issues Must Be Addressed?	236
		Joseph B. Stulberg & Lela P. Love, The Middle Voice	236
		iii. How Is the Stage Set?	237
		Problem 7-2	238
		iv. How Does the Mediator Open the Session?	238
		Problem 7-3	239
		b. Listening to Understand the Conflict	240
		i. "Looping"	240
		Gary Friedman & Jack Himmelstein, The Loop	
		of Understanding	240

xviii

		ii. Reframing	242
		Lela P. Love, Training Mediators to Listen:	
		Deconstructing Dialogue and Constructing	
		Understanding, Agendas, and Agreements	243
		Problem 7-4	247
	C.	Organizing the Conversation	247
		Joseph B. Stulberg, The Theory and Practice of Mediation:	
		A Reply to Professor Susskind	247
		Problem 7-5	248
	d.	Encouraging Movement Towards Options and Agreements	249
		Lela P. Love & Joseph B. Stulberg, Targets and Techniques	
		to Generate Movement	250
		Problem 7-6	252
	e.	Using the Caucus	252
		i. Never Caucus	253
		ii. Caucus Selectively	253
		iii. Mostly Caucus	253
		iv. Always Caucus	254
		Problem 7-7	254
	f.	Drafting Agreements and Closing the Session	254
		Problem 7-8	256
	5. O	ther Mediator Approaches	256
В.		Attorney Representative	257
ъ.		ne Problem-Solving Perspective	258
	1. 1.	Leonard L. Riskin, Mediation and Lawyers	258
	2. St	rategies and Skills of the Attorney Representative	259
	2. st a.	Prescriptions for the Attorney	259
	α.	Lawrence M. Watson, Jr., Effective Advocacy in Mediation:	237
		A Planning Guide to Prepare for a Civil Trial Mediation	259
		Problem 7-9	263
		Jean R. Sternlight, Lawyers' Representation of Clients in	203
		Mediation: Using Economics and Psychology to Structure	
		Advocacy in a Nonadversarial Setting	263
	h	Avoiding Mistakes as a Representative in Mediation	264
	υ.	Tom Arnold, 20 Common Errors in Mediation Advocacy	264
C	The I	mpact of Differences and Diversity	266
C.		m 7-10	268
		er Reading	268
	1 urtin	1 Reading	200
Chap	ter 8.	Mediation: Law, Policy, and Ethics	271
A.	Media	ation and the Law	271
	1. Tl	ne Relationship Between Law and Mediation	271
	a.	The Law's Long Shadow	271
		Problem 8-1	272
	b.	Informed Consent	272
		Problem 8-2	273

		c. Sources of Law and Justice	2/3
		Problem 8-3	274
	2.	Litigation About Mediation	274
		a. The Effect of a Duty to Mediate	275
		b. The Enforceability of Mediated Agreements	275
		c. Special Requirements of Mediated Agreements	276
	3.	Confidentiality in Mediation	277
		a. Sources of Confidentiality	278
		i. Common Law and Evidentiary Exclusions	278
		ii. Discovery Limitations	279
		iii. Contracts	279
		iv. Statutory and Judicially Created Privileges	280
		v. Ethical Norms	281
		b. Exceptions to Confidentiality	281
		i. Criminal or Quasi-Criminal Cases	282
		ii. Mediation Documents	283
		iii. Contract Defenses	283
		Olam v. Congress Mortgage Co.	285
		iv. The Terms of Settlement Agreements	287
		v. Mediator Misconduct	288
		vi. Other Issues Surrounding Exceptions to Confidentiality	288
		c. The Uniform Mediation Act	289
		Problem 8-4	291
		Problem 8-5	291
		d. Sanctions for Breach of Confidentiality	291
В.	Fo	ur Policy Questions at the Intersection of Law, Justice,	
	an	d Mediation	292
	1.	Mandatory Mediation	292
		Roselle L. Wissler, The Effects of Mandatory Mediation:	
		Empirical Research on the Experience of Small Claims	
		and Common Pleas Courts	293
		Trina Grillo, The Mediation Alternative: Process Dangers for Women	294
		Problem 8-6	295
	2.	A "Good Faith" Requirement	295
		a. Tests for Good Faith	296
		b. Corporate Representatives and Good Faith	297
		c. Is Attendance by Telephone in Good Faith?	297
		d. Sanctions for Bad Faith	298
		Problem 8-7	298
	3.	Mediator Evaluation and Assessment	299
		Murray S. Levin, The Propriety of Evaluative Mediation: Concerns	
		About the Nature and Quality of an Evaluative Opinion	300
		Problem 8-8	301
		Problem 8-9	302
	4.	Mediator Responsibility for the Quality of the Parties' Agreement	302

xx Contents

	Lawrence Susskind, Environmental Mediation and	
	the Accountability Problem	302
	Joseph B. Stulberg, The Theory and Practice of Mediation:	
	A Reply to Professor Susskind	303
	Problem 8-10	306
	Problem 8-11	307
C.	Ethics in Mediation	307
	Michael Moffitt, Ten Ways to Get Sued: A Guide for Mediators	308
	Problem 8-12	310
	Further Reading	311
Chap	oter 9. Arbitration: Concepts and Models	315
A.	Arbitration as a Dispute Resolution Method	317
	1. Comparing Methods of Dispute Resolution	317
	2. Arbitration as a "Creature of Contract"	318
	Hiro N. Aragaki, Arbitration: Creature of Contract, Pillar	
	of Procedure	319
	3. Arbitration Timeline(s)	321
В.	Models of Arbitration	321
	1. Labor Arbitration	322
	a. Grievance Arbitration	322
	Eastern Associated Coal Corp. v. United Mine Workers	
	of America	322
	Vulcan Iron Works, Inc., and Intl. Association of Machinists and	
	Aerospace Workers, AFL-CIO, Success Lodge No. 56	323
	b. Interest Arbitration	324
	Martin H. Malin, Two Models of Interest Arbitration	324
	Teamsters Local 726 v. City of Markham Police Dept.	325
	Problem 9-1	327
	2. Commercial Arbitration	327
	Hall Street Associates, LLC v. Mattel, Inc.	327
	3. International Arbitration	328
	BG Group PLC v. Republic of Argentina	329
	4. Sports Arbitration	331
	5. Adhesion Contracts	332
	Jeff Sovern, Consumer Understanding of Arbitration Clauses	
	in Contracts: "Whimsy Little Contracts" with Unexpected	
	Consequences	333
	Problem 9-2	334
	6. Nonbinding Arbitration	335
C.	Arbitrators' Powers	335
	Lon L. Fuller, Collective Bargaining and the Arbitrator	336
	1. Arbitrators' Power to Determine the Meaning and Validity	
	of Contracts and Arbitration Clauses	337
	a. Who Decides Whether a Contract that Contains an	
	Arbitration Clause Is Valid?	337

		b. Who Decides the Validity and Applicability of an	
		Arbitration Clause?	338
		c. Who Decides the Meaning of an Arbitration Clause?	339
		Problem 9-3	340
	2.	Discovery, Injunctive & Provisional Relief, and Dispositive Motions	340
		a. Discovery and Witnesses	340
		b. Provisional and Injunctive Relief	341
		McGill v. Citibank	341
	3.	Arbitrators' Awards	344
		Problem 9-4	345
D.	Ar	bitrator Selection and Identities	346
	1.	Number of Arbitrators	346
	2.	Selection Criteria for Arbitrators	348
		Chavarria v. Ralphs Grocery Co.	348
	3.	Arbitrator Identities	35 0
		Yves Dezaley & Bryant G. Garth, Dealing in Virtue: International	
		Commercial Arbitration and the Construction of a	
		Transnational Legal Order	351
		Problem 9-5	354
		Problem 9-6	354
		Further Reading	355
Chap	ter	10. Arbitration: Law and Policy	357
A.	En	forcing Arbitration Clauses	357
	1.		357
		Problem 10-1	359
	2.	The Evolution Toward "Favoring" Arbitration	359
		Wilko v. Swan	359
		a. The FAA, State Courts, Interstate Commerce, and Preemption	363
		Problem 10-2	364
		Problem 10-3	365
		Problem 10-4	365
		Problem 10-5	365
	3.	Arbitrating Statutory Claims	365
		Gilmer v. Interstate/Johnson Lane Corp.	365
	4.	Arbitration, Unconscionability, Public Policy, and Other	
		Grounds for Objections Based in State Law	369
		Marmet Health Care Center, Inc. et al. v. Clayton Brown et al.	369
	5.	Arbitration and the Special Case of Class Action Waivers	371
		AT&T Mobility LLC v. Concepcion	372
		Viking River Cruises, Inc. v. Moriana	375
	6.	Arbitration and Other Federal Laws	378
		Epic Systems, Inc. v. Lewis	379
		Problem 10-6	386
	7.	Preemption and Sovereign Immunity	386
		C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian	
		Tribe of Oklahoma	387

xxii

В.	Arbitration Policy	391
	Mandatory Pre-Dispute Arbitration Clauses	391
	Consumer Financial Protection Bureau	392
	2. Arbitration Confidentiality	393
	Richard Reuben, Confidentiality in Arbitration: Beyond the Myth	393
	Amy Schmitz, Untangling the Privacy Paradox in Arbitration	394
	Problem 10-7	396
	Problem 10-8	396
	Further Reading	396
Chap	ter 11. Arbitration: Practice and Ethics	399
A.	Arbitration Agreements	399
	1. Broad Scope Clauses	399
	Problem 11-1	400
	2. Defined or Narrow Scope Clauses	401
	Cummings v. FedEx Ground Package Systems, Inc.	401
	Hatemi v. M&T Bank	403
	Hatemi v. M&T Bank	404
	Problem 11-2	406
	3. Disputes over Scope Clauses	406
	4. Governing Law Clauses	407
	DIRECTV v. Imburgia	407
	Cape Flattery Ltd. v. Titan Maritime LLC	410
	Problem 11-3	415
	Problem 11-4	415
	Problem 11-5	415
B.	Arbitral Awards	415
	1. Drafting Arbitration Awards	415
	Problem 11-6	418
	Problem 11-7	418
	2. Enforcing Arbitral Awards	418
	3. Challenges to Awards and Appeals	421
	Problem 11-8	422
	Industrial Steel Constr., Inc. v. Lunda Constr. Co.	423
	Eastern Associated Coal Corp. v. United Mine Workers	
	of America	425
	Hall Street Associates, LLC v. Mattel, Inc.	428
	Problem 11-9	431
C.	Arbitration Ethics	431
	Carrie Menkel-Meadow, Ethics Issues in Arbitration and Related	
	Dispute Resolution Processes: What's Happening and What's Not	431
	1. Arbitral Bias and the Duty to Disclose	433
	Commonwealth Coatings Corp. v. Continental Casualty Co.	433
	Problem 11-10	435
	Problem 11-11	437
	2. Party-Appointed Non-Neutral Arbitrators	437
	3. Arbitral Provider Ethics	438

	4.	Ethics for Attorney Representatives in Arbitration	439
	5.	Non-Attorney Representatives	439
		Further Reading	440
PAR	ΤI	II. PROCESS PLURALISM: ADAPTATIONS	
		AND VARIATIONS OF PROCESSES	443
Chap	ter	12. Private and Public Hybrid Processes	445
A.	Pr	ivate Hybrids	446
	1.	Variations on Arbitration	446
		a. Binding Offer Arbitration	446
		b. Nonbinding Arbitration	448
		Problem 12-1	448
	2.	Med-Arb	449
		Lon L. Fuller, Collective Bargaining and the Arbitrator	450
		Problem 12-2	451
	3.	The Mini-Trial	451
	4.	Private Judges and Juries	452
		a. Private Judges	452
		b. Private Juries	453
		Problem 12-3	454
		Problem 12-4	454
	5.	Dispute Resolution and Large Organizations: Ombuds	454
		Problem 12-5	456
	6.	Online Dispute Resolution Mechanisms	457
		Carrie Menkel-Meadow, Is ODR ADR?: Reflections of an	
		ADR Founder from 15th ODR Conference at the Hague	458
		Problem 12-6	459
В.	Pu	blic Hybrids	459
	1.	Mandatory Judicial Settlement Conferences	460
		Carrie Menkel-Meadow, For and Against Settlement: Uses and	
		Abuses of the Mandatory Settlement Conference	461
		Problem 12-7	464
	2.	Special Masters	464
		Francis E. McGovern, Toward a Functional Approach for	
		Managing Complex Litigation	465
		Problem 12-8	467
	3.	Administrative Law Judges	469
	4.	Disputes Involving Groups: Aggregate Claims and Class Actions	469
		Deborah R. Hensler, A Glass Half Full, a Glass Half Empty:	
		The Use of Alternative Dispute Resolution in Mass	
		Personal Injury Litigation	470
		Problem 12-9	473
	_	Problem 12-10	474
	5.	The Summary Jury Trial	475
	6.	Early Neutral Evaluation	475

xxiv

	7. Court-Connected Mediation and Nonbinding Arbitration	476		
	8. Restorative Justice: ADR in Criminal Contexts	479		
	Marty Price, Personalizing Crime: Mediation Produces			
	Restorative Justice for Victims and Offenders	480		
	Problem 12-11	483		
	9. Problem-Solving Courts	483		
C.	Concluding Thoughts on Hybrid Processes			
	Carrie Menkel-Meadow, Pursuing Settlement in an Adversary			
	Culture: A Tale of Innovation Co-opted or "The Law of ADR"	484		
	Problem 12-12	486		
	Further Reading	486		
Chap	oter 13. Multiparty Dispute Resolution and Dispute System Design	489		
A.	Multiparty Dispute Processes: How Are They Different	490		
	1. Negotiating with More Than Two Parties: Coalitions and Groups	490		
	Carrie Menkel-Meadow, Introduction	490		
	Robert H. Mnookin, Strategic Barriers to Dispute Resolution:			
	A Comparison of Bilateral and Multilateral Negotiations	494		
	Carrie Menkel-Meadow, Complex Multi-Party			
	Multi-Issue Negotiations	495		
	Cass R. Sunstein, Deliberative Trouble? Why Groups Go to Extremes	499		
	Problem 13-1	502		
	2. Organizing and Legitimizing Group Negotiations:			
	New Processes and Deliberative Democracy	502		
	Carrie Menkel-Meadow, The Lawyer's Role(s) in			
	Deliberative Democracy	503		
	Carrie Menkel-Meadow, Introduction: From Legal Disputes	- 0 4		
	to Conflict Resolution and Human Problem Solving	504		
В.	Structures, Skills, and Practices for Multi-party Processes			
	James K. Sebenius, Mapping Backward: Negotiating in the			
	Right Sequence?	505		
	Problem 13-2	509		
	Philip J. Harter, Negotiating Regulations: A Cure for Malaise	509		
	Problem 13-3	512		
	Lawrence Susskind, An Alternative to Robert's Rules of Order			
	for Groups, Organizations, and Ad Hoc Assemblies That Want			
	to Operate by Consensus	513		
	Problem 13-4	517		
C.	Dispute System Design: Planning and Structuring			
	Repeated Dispute Resolution			
	William L. Ury, Jeanne M. Brett & Stephen B. Goldberg,			
	Getting Disputes Resolved: Designing Systems to Cut the	=		
	Costs of Conflict	518		
	Problem 13-5	521		
	Stephanie Smith and Janet Martinez, An Analytic Framework	F.0.0		
	for Dispute System Design	522		

D.	Legal Issues in the Use of Consensus Building and		
	Group Negotiations	523	
	Dwight Golann & Eric E. Van Loon, Legal Issues in Consensus Building Further Reading	523 525	
CI			
Chap	oter 14. Choosing an Appropriate Process: For Your Clients and	F.25	
	the Future of ADR as Systems of Dispute Resolution	527	
A.	Choosing Among Dispute Resolution Processes: Private Interests	528	
	1. Comparing the Processes	528	
	Frank E.A. Sander & Stephen B. Goldberg, Fitting the Forum to the		
	Fuss: A User-Friendly Guide to Selecting an ADR Procedure	528	
	Problem 14-1	533	
	2. Assessing The Impact of Processes on Clients	533	
	Andrea Kupfer Schneider, Building a Pedagogy of	F2.4	
	Problem-Solving: Learning to Choose Among ADR Processes	534	
	Problem 14-2	537	
	3. Counseling Clients About Appropriate Processes Problem 14-3	537 538	
_			
В.	Evaluating and Assessing ADR Processes: Public Interests	538	
	Carrie Menkel-Meadow, Dispute Resolution	539	
	Bobbi McAdoo, Nancy A. Welsh & Roselle L. Wissler,		
	Institutionalization: What Do Empirical Studies Tell Us About Court Mediation	543	
	Problem 14-4	547	
0		317	
C.	1	E 45	
	Justice Redux Problem 14-5	547 549	
	Problem 14-6	550	
	Jean Sternlight, ADR Is Here: Preliminary Reflections on	330	
	Where It Fits in a System of Justice	551	
	Carrie Menkel-Meadow, Alternative and Appropriate Dispute	331	
	Resolution in Context: Formal, Informal, and Semiformal		
	Legal Processes	553	
	Carrie Menkel-Meadow, Peace and Justice: Notes on the Evolution		
	and Purposes of Legal Processes	554	
	Robert C. Bordone, Michael Moffitt & Frank Sander, The Next		
	Thirty Years: Directions and Challenges in Dispute Resolution	557	
	Problem 14-7	558	
	Further Reading	558	
Table	of Online Resources	561	
Table	Table of Principal Cases		
	Collected References		
Index		587	