

The title of this book, *Resolving Disputes*, reflects the active role of lawyers in representing clients who retain us to conclude their disputes favorably. This text is based on three key assumptions: First, in order to represent clients effectively and craft successful outcomes, the next generation of lawyers must be able to use the full spectrum of dispute resolution options and match the appropriate process to the dispute. Second, new lawyers are much more likely to encounter dispute resolution processes as advocates or advisors to clients rather than as professional neutrals. Finally, a textbook on dispute resolution should be interesting to read, should bring together the latest and best writing on the use and limits of alternative dispute resolution (ADR), and should lend itself to interactive and experiential learning.

Our book has a different emphasis from most other ADR texts. We wrote the book primarily from the perspective of a lawyer representing clients, rather than focusing on the reader's personal needs or on the role of a neutral. The text is practical while grounded in theory. The material is oriented to lawyers, but enriched by interdisciplinary knowledge. The readings are current, but they do not neglect the historical roots of ADR. Importantly, this new edition recognizes how technology has had an impact on dispute resolution in recent years, accelerated by the recent pandemic.

In this fourth edition, we are joined by two prominent new co-authors who have contributed fresh perspectives based upon their ADR teaching and practice experience. Together, we have updated each chapter, adding new insights and examples in place of some of the older material. Many of the excerpts have been shortened or summarized. Real-life disputes and literary examples are provided to illustrate vividly the readings and pique interest. Questions and problems are posed throughout the book to provoke critical thinking about the readings and stimulate class discussion. The exercises and role-plays provided in the accompanying Teachers Manual allow students to apply the readings and narratives to bring the material to life. Most of the exercises and role-plays are based on the types of disputes in which lawyers are likely to find themselves—significant legal disputes.

In an important new feature, students can now access videos on a special Web platform that show different aspects of negotiation and mediation processes. As students read, they will find multiple references to short videos that illustrate specific stages, techniques, and issues.

This edition has been reorganized in that the first section, which focuses on conflict and disputes, has been enlarged and has applicability to all the sections. We want to be sure that students and teachers have an opportunity to think about conflict and disputes more carefully before moving into the major forms of dispute resolution. So, the first chapter presents a schematic of the basic types of conflicts, then discusses how conflicts become disputes and how disputes become matters

involving attorneys. New to this edition is how the landscape of conflict is changing, including the roles of technology, social trends, historical inequities, and climate. Next in the introductory section is a chapter on the basic forms of dispute resolution and their evolution, leading to a chart and discussion of modern dispute resolution alternatives. Following an orientation to the full spectrum of dispute resolution and its context for lawyers, we introduce the lawyer's role in the four major categories of alternatives to trial—negotiation, mediation, arbitration, and stepped or hybrid processes. Finally, we explore a client-centered approach to matching the dispute resolution method to client goals. The introductory materials conclude with the roles of perceptions, emotions, and psychological factors, as these are relevant in all forms of conflict management and resolution.

After the first section, we follow the same organization as before, with successive parts providing in-depth discussions of the major forms of dispute resolution: negotiation, mediation, and arbitration. In each part we cover theory, techniques, policy, ethics, and law.

The negotiation section analyzes both competitive and cooperative styles, with a step-by-step explanation and comparison. The negotiation process and outcome-enhancing skills are covered from preparation to writing the agreement. Students are guided to explore issues of style and identity, with special emphasis on gender, culture, and race. A rich selection of readings is provided, and new notes and problems enhance the coverage of negotiation theory and approaches.

The mediation section begins with an inside look at the mediation of a prominent student death case and the Microsoft litigation. Readings and exercises highlight how lawyers can shape the mediation process to their clients' advantage. We focus on caucus-based mediation because that is the format most students will encounter in law practice, but also discuss alternative formats. In doing so we emphasize the lawyer's role representing clients and ways in which attorneys can take advantage of the mediator's presence to advance their clients' interests.

In the expanded arbitration section, we provide hands-on exercises that involve scenarios often encountered by new lawyers and narratives on what a lawyer needs to know to maximize clients' interests when drafting agreements to arbitrate, choosing arbitrators, and advocating for a client. Students also have the opportunity to deliberate on and draft arbitration awards. This practice-oriented treatment includes many recent developments, including Supreme Court cases and legislation, and insights from surveys of arbitrators and counsel. The section also includes an overview of different forms and applications of arbitration; comparisons with litigation and other dispute resolution processes; and coverage of the legal framework for arbitration. Special attention is given to problems of fairness in adhesion contracts, recent Supreme Court cases, and legislation. The emergence of online arbitration (OArb) and virtual hearings is also addressed.

The last part of the text presents ways in which multiple conflict resolution approaches have been integrated in multifaceted court programs or "mixed mode" approaches that include stepped dispute resolution processes and hybrid roles for neutrals, conflict management systems that help prevent and resolve conflicts before they ripen into litigation, and designed into systems for more efficiently resolving a flow of cases. Finally, we conclude by presenting three expanding directions in ADR practice: dispute systems design (DSD), online dispute resolution

(ODR), and human rights applications. These emergent areas are shaping the field in exciting ways, and it is our hope that students who are interested in ADR continue studying these and other areas.

Throughout the book, we are taking more advantage of technology, recognizing students' increasing preference for electronic and video formats. Items that have traditionally gone into the course book's appendix now appear on this book's Web site, including a list of references. This makes this book easier to carry without sacrificing depth and allows readers to download specific codes or standards for discussion. We are also pleased to now provide to students and professors the streaming videos of negotiations and mediations previously mentioned. In addition, there are "Arbitration Conversations" (interviews with top minds in arbitration), new arbitration games, and lively exercises on the Web site to enhance the arbitration material.

A note about form: In order to focus discussion and conserve space, we have substantially edited the readings and have converted all in-line citations of articles to endnotes. Deletions of material are shown by three dots, but omitted footnotes and other references are not indicated.

This book is the culmination of our combined decades of teaching, practicing, and shaping dispute resolution in legal contexts. Although our acknowledgments follow, we are especially grateful to the many students and lawyers we have had the pleasure of teaching. They have inspired us and guided what we have selected here to present to the next generation of lawyers.

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