

This book is based on three key assumptions: First, to represent clients effectively lawyers must be able to mediate effectively. Second, new lawyers are much more likely to encounter mediation as advocates or advisers than as professional neutrals. Finally, a textbook should be interesting to read, bring together the best writing on the process, be fully integrated with video, and support interactive learning.

Our book has a different emphasis than some other texts. It focuses on *legal* mediation—substantial disputes involving legal claims, in which lawyers are likely to be engaged. It also looks at mediation from the perspective of a lawyer representing a client as well as a mediator dealing with conflict.

We use examples drawn from actual disputes to illustrate the readings and pique students' interest. The introductory chapter on mediation, for example, features the comments of practicing lawyers about how they use the process in a wide variety of settings. It also includes accounts of how two high-profile disputes were mediated, one involving the death of a university student and the other a major antitrust case. The readings on mediation techniques and ethical issues are also interspersed with provocative examples drawn from our practice as mediators.

The book includes questions designed to provoke critical thinking about the readings and stimulate class discussion. The text is practical while grounded in theory, and lawyer-focused but enriched by interdisciplinary knowledge. Roleplays allow students to apply concepts about which they have read and bring the text to life. These roleplays again center largely on disputes that involve lawyers—cases with significant legal claims, as opposed to neighborhood or personal conflicts.

This is the first mediation book to include video as an integral part of the teaching materials. The website gathers more than 60 video excerpts created by the authors for this book. The videos show some of the best mediators in America as well as leading neutrals in Asia and Africa. Instructors have access to additional video and other materials they can use to enhance their teaching on a password-protected site. The videos show experienced lawyers and neutrals negotiating and mediating the same cases featured in the teaching materials, allowing students to see how professionals deal with the challenges they have just faced.

We begin the book with an overview of the disputing universe. It shows that actual legal disputes, unlike the appellate cases that dominate many law school texts, are not neatly packaged but instead arise as aspects of a near-endless universe of human conflict. Because mediation is a process of assisted negotiation, we next explain the basic concepts of bargaining and present a framework for effective negotiation. Part I of the book concludes with a chapter devoted to the strategic, cognitive, and emotional barriers that often make settlement difficult.

Part II, on mediation technique, begins with examples of mediation in action and goes on to describe the forms of commercial mediation lawyers are likely to encounter, including both mixed and all-caucus formats. We go on to examine the

process itself in depth, focusing on the methods mediators use to deal with process, emotional/cognitive, and merits-based barriers.

Perhaps the most practical section of the book is Part III, which focuses on how lawyers can represent clients effectively in the process. This unit is based on our experience conducting commercial and family mediations. Contrary to the image presented in some texts, we begin from the premise that legal mediators commonly do in fact exercise “power.” We treat this as a challenge and an opportunity for lawyers, who can enhance their bargaining effectiveness by drawing on a neutral’s influence. We show how good lawyers can become active participants in mediation, enlisting mediators to overcome barriers to settlement and achieve their clients’ goals.

In Part IV we examine how mediation is applied in different settings, ranging from divorce cases to employment, high tech, public protest, and international disputes. We also analyze policy issues, including its use in situations where a disputant may be disadvantaged by culture, gender, or spousal violence. A separate chapter delves into ethical issues, presenting situations in which the profession’s model standards come into conflict with each other. We conclude with a look at how mediation may evolve in the future.

This fourth edition follows the organization of earlier editions, but we have updated our narrative, cases, and excerpts from writings. We also take advantage of students’ preference for electronic and video formats: Items that have traditionally gone into a paper appendix appear on the book’s website.

A note about form: To focus discussion and conserve space we have substantially edited the readings and have deleted almost all footnotes and case citations. Deletions of material are shown by three dots, but omissions of footnotes and references are not indicated.

This book is the culmination of our combined experience teaching, practicing, and shaping dispute resolution in legal contexts. Although formal acknowledgments follow, we are grateful to the students and lawyers we have had the pleasure of teaching and from whom we have learned a great deal.

D.G.
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