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DISPUTE RESOLUTION
Negotiation, Mediation,
and Other Processes

*Fifth
Edition*



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DISPUTE RESOLUTION

Negotiation, Mediation, and
Other Processes

Fifth Edition

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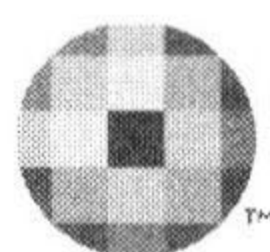
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With undisputed gratitude

Preface

This fifth edition appears only four years after the fourth, reflecting the rapid pace of developments in this burgeoning field. Our goal has been to reflect these new developments, both legal and empirical. We have refined the strong points of the prior edition. Chapter 1 provides a broad overview of the dispute resolution landscape, followed by a thorough exploration of each of the primary processes (negotiation, mediation, and arbitration). Next comes a chapter that deals with some hybrids and that challenges the reader to assimilate and apply the information learned to a variety of settings, ranging from representing parties in mediation to designing effective systems for resolving disputes. To the existing areas of subject matter application (courts, family, public policy, and international) we have added a new chapter that deals with the emerging subject of exporting some of our most successful techniques to other countries, and in turn importing some of their proven institutions to help solve our own disputes. A concluding chapter focuses on the future of ADR from a policy perspective, and responds to a question that our students frequently ask: “Can I earn a living in ADR?”

We have also expanded the number of simulations and questions because of our conviction that these represent excellent ways for students to gain an understanding of the various processes. A number of the simulations are keyed to available videotapes, so that students can first do the simulations themselves and then see how they are handled by experienced dispute resolvers—a sequence that we have found particularly instructive.

There are various ways in which this book can be employed in teaching ADR. It can be used in a basic course—first, by looking to the text and excerpts as a basis for a conceptual discussion of the legal and policy issues. A second approach would be to organize class discussion around the questions that are sprinkled through each chapter. Quite obviously, these two approaches can be combined.

A considerably different approach looks to the book as background reading for simulations. Such simulations are used to acquaint the student with various dispute resolution processes by having the student watch or engage in the simulations as, for example, a negotiator, a mediator, or an arbitrator. This approach, too, can be combined with any of the others. The Teacher’s Manual contains our suggestions for various ways of presenting such a basic overview course.

Of course, the book can also be used for more specialized offerings, such as an advanced seminar in conflict resolution.

We begin each chapter with an introductory note designed to orient the student to the main themes of the text and excerpts that follow. The excerpts have been selected from what we view as the most interesting and important materials in each area of dispute resolution; they are supplemented by extensive Notes and comments.

In general, footnotes and other references have been omitted from the excerpts; footnotes that have not been omitted retain their original numbering. Our own footnotes are indicated by asterisks. Most chapters also contain a series of questions designed to raise some of the important issues suggested by the materials and conclude with a list of references. Included in these lists are the books and articles cited in the chapter, as well as materials that we recommend for additional reading. Items from which excerpts are drawn are not necessarily included in these lists. A cumulative compendium of references is found in the back of the book.

We have followed standard conventions in the use of ellipses. In excerpts that use an outline format, we have not included ellipses where an interruption of the numbered or lettered sequence of material indicates an omission.

This book is primarily intended for law students and lawyers. We hope that others will also find it useful, but it seems important to stress that is not intended as a book on the philosophical or sociological aspects of conflict. Others have performed this task far better than we could.

We gratefully acknowledge the receipt of funding for the work that led to this book from the Ohio State University Moritz College of Law.

We also wish to record our appreciation to the many people who have provided valuable assistance, most particularly Chris Carlson, Sonya Cook, Melissa Cryder, Sharon Flower, Robika Garner, Eric Grasha, Art Greenbaum, Philip Harter, Emily Haynes, Deborah Laufer, Trina Lott, Craig McEwen, Kristen Noga, Mary Ellen O'Connell, Gene Orza, Jeff Senger, Deborah Smith, Erik Stock, Lawrence Susskind, Peter Swire, Cathy Thompson, Barbara Underwood, Marilyn Uzuner, and Detlev Vagts. In addition, we are especially grateful to Melody Davies and her Aspen colleagues without whom this book would not have appeared when it did. Last but not least, we want to acknowledge our gratitude to the countless students who have helped to sharpen our thinking about ADR.

S.B.G.
F.E.A.S.
N.H.R.
S.R.C.

January 2007

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Summary of Contents

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxi</i>
<i>Acknowledgments</i>	<i>xxiii</i>
PART I OVERVIEW	1
1. Disputing Procedures	3
PART II PROCESSES	15
2. Negotiation	17
3. Mediation	107
4. Arbitration	213
5. Combining and Applying the Basic Processes	301
PART III DISPUTE RESOLUTION AND THE JUSTICE SYSTEM	387
6. Courts and ADR	389
7. Confidentiality	441
PART IV SELECTED APPLICATIONS	477
8. Family Disputes	479
9. Public Disputes	513
10. International Disputes	531
11. Learning from Other Cultures	571
PART V THE FUTURE OF ADR	589
12. The Future of ADR	591
PART VI DISPUTE RESOLUTION PROBLEMS	611
13. Dispute Resolution Problems	613
Appendix A. Dispute Resolution Clauses	629
Appendix B. Federal Arbitration Act	631
Appendix C. Uniform Arbitration Act	637
Appendix D. Revised Uniform Arbitration Act	645
	ix

Appendix E.	Uniform Mediation Act	663
Appendix F.	National Standards for Court-Connected Mediation Programs	693
Appendix G.	Model Standards of Practice for Family and Divorce Mediation	703
Appendix H.	Model Standards of Conduct for Mediators	713
Appendix I.	Dispute Resolution: An Annotated Guide to Selected Resources	721
<i>Table of Cases</i>		787
<i>Collected References</i>		789
<i>Index</i>		815

Contents

<i>Preface</i>	<i>xxi</i>
<i>Acknowledgments</i>	<i>xxiii</i>

PART I OVERVIEW	1
Chapter 1 Disputing Procedures	3
A. The Processes	3
B. Sources and Goals of the Alternative Dispute Resolution Movement	6
C. Applications	9
D. Concerns	11
References	12

PART II PROCESSES	15
Chapter 2 Negotiation	17
M. Meltsner and P. Schrag, Negotiating Tactics for Legal Services Lawyers	17
H. Raiffa, The Art and Science of Negotiation	22
Questions	32
Note: Principled Negotiation	33
Question	34
W. Ury, Getting Past No	34
J. White, The Pros and Cons of “Getting to Yes”	40
R. Fisher, W. Ury, and B. Patton, Getting to Yes	42
D. Lax and J. Sebenius, The Manager as Negotiator	43
Question	53
R. Mnookin, S. Peppet, and A. Tulumello, The Tension Between Empathy and Assertiveness	54
D. Lax and J. Sebenius, The Manager as Negotiator	58
Questions	61
Note: The Janus Quality of Negotiation — Deal-Making and Dispute Settlement	62
J. Rubin and F. Sander, When Should We Use Agents? Direct vs. Representative Negotiation	64
Questions	67
J. White, Machiavelli and the Bar: Ethical Limitations on Lying in Negotiation	70