

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.

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