

ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Charles W. Abdalla et al., *Community Conflicts Over Intensive Livestock Operations: How and Why Do Such Conflicts Escalate?*, 7 DRAKE J. AGRIC. L. 7 (2002).

While reviewing the results of a research project funded by the Pennsylvania Department of Agriculture that studied community conflicts over intensive livestock operations, the authors focus on conflict development and escalation. The authors conclude that, in order to prevent conflict, the government must educate the public, foster the perception of control by stakeholders, listen to the concerns of all sides, provide a fair process, nurture the growth of trust among all stakeholders, and diffuse the tension.

{1} NEGOTIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY
{86} SUBJ MATTER: FARM
{87} SUBJ MATTER: GOV'T

Robert M. Ackerman, *Disputing Together: Conflict Resolution and the Search for Community*, 18 OHIO ST. J. ON DISP. RESOL. 27 (2002).

Both alternative dispute resolution (ADR) processes and litigation can be conducive to community building according to the author. ADR's collaborative nature often benefits the community more than adversarial techniques; however, difficulties arriving at collaboration during mediation lead to mediations that resemble adversarial litigation. The author also notes that adjudicative litigation benefits society by providing force to the ideals of justice and order.

{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Roger Alford, *The Claims Resolution Tribunal and Holocaust Claims against Swiss Banks*, 20 BERKELEY J. INT'L L. 250 (2002).

The author overviews the implementation of settlement mechanisms against Swiss banks for Holocaust reparation claims. The author examines the use of the Claims Resolution Tribunal for Dormant Accounts in Switzerland as an arbitration mechanism to settle Holocaust-era dormant Swiss bank accounts. The author discusses issues related to the tribunal process (e.g., burden of proof, applicable law, and the definition of Holocaust account) as well as potential moral implications.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L
{121} SETTLEMENT: AUTHORITY

Cynthia Alkon, *The Cookie Cutter Syndrome: Legal Reform Assistance Under Post-Communist Democratization Programs*, 2002 J. DISP. RESOL. 327.

Recognizing the lack of litigation forums for resolving disputes in some post communist societies, Alkon evaluates the use of non-litigation alternatives during a period of reformation in these countries. Alkon notes the inadequacies of the "cookie cutter" assistance provided to the emerging legal systems and explores the potential for alternative dispute resolution processes in the reformation of legal systems.

{92} SUBJ MATTER: INT'L
{133} COURT REFORMS

Linda Alle-Murphy, Comment, *Are Compulsory Arbitration Clauses in Consumer Contracts Enforceable? A Contractual Analysis*, 75 TEMP. L. REV. 125 (2002).

Consumers often enter into agreements where the contract contains a compulsory arbitration clause. The author traces the history of such consumer contracts and notes the unfairness of provisions requiring arbitration in distant forums and prohibitive costs on the consumer. The author suggests that consumers utilize the common law defenses available under the Federal Arbitration Act to invalidate unfair compulsory arbitration clauses and advocates that courts review arbitration agreements for validity.

{44} ARBITRATION
{79} SUBJ MATTER: CONSUMER
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Edward C. Anderson & Timothy S. Cole, *The UDRP—A Model for Dispute Resolution in E-Commerce?*, 6 J. SMALL & EMERGING BUS. L. 235 (2002).

The authors address the application of the Uniform Domain Name Dispute Resolution Policy (UDRP) system to electronic-commerce (e-commerce) disputes. By examining the UDRP and the issues that arise in e-commerce, the authors conclude that obstacles such as cost and lack of enforceability limit the application of the UDRP.

{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{146} ORGANIZATION POLICIES & RULES

2002 BIBLIOGRAPHY: ARTICLES

James R. Antes & Judith A. Saul, *What Works in Transformative Mediator Coaching: Field Test Findings*, 3 PEPP. DISP. RESOL. L.J. 97 (2002).

The authors discuss field research data assessing transformative mediators. Through the coaching processes, evaluators stop mediators, who are role-playing, and provide information beneficial for developing mediation skills. Along with their findings, the authors include guidelines for the effective training of mediators through the coaching process.

{21} MEDIATION—GENERAL

{155} TEACHING

Matt Arbaugh, Note, *Making Peace the Old Fashioned Way: Infusing Traditional Tribal Practices into Modern ADR*, 2 PEPP. DISP. RESOL. L.J. 303 (2002).

The author proposes that the use of alternative dispute resolution (ADR) may be particularly useful in settling disputes between governments and Native American tribes over issues such as land and water rights and casino gambling. The author examines methods of resolving disputes traditionally used by Native Americans and concludes that they closely resemble mediation. Maintaining the preferability of mediation to litigation, the author highlights mediation's successful application to a land dispute in Washington State.

{21} MEDIATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{127} REQUIREMENTS: MANDATE TO USE

Donna E. Arzt, *The Lockerbie "Extradition by Analogy" Agreement: "Exceptional Measure" or Template for Transnational Criminal Justice?*, 18 AM. U. INT'L L. REV. 163 (2002).

The Lockerbie trial attracted a significant amount of attention. Several bilateral and multilateral negotiations regarding Lockerbie's extradition were conducted to bring about this trial. This article discusses the pivotal role of the United Nations Secretary-General, Koffi Annan, in bringing countries together for pre-trial negotiations, focusing on his letter to Colonel Muammar Qadhafi. The article examines whether these measures should serve as precedent for future trials in international criminal law concluding with a comparison to the Slobodon Milosevic case.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Asian-Pacific Law and Policy Journal, *International ADR Conference Mediation Simulation and Panel Discussion*, 3 ASIAN-PAC. L. & POL'Y J. 9 (2002).

This article presents the transcripts from the Asian-Pacific Law and Policy Journal's April 2002 conference on International Alternative Dispute Resolution (IADR) entitled, "New Paradigms in Conflict Resolution: Dispute Resolution in the International Environment." The first transcript, from a mediation simulation/discussion, centers on a hypothetical vehicle accident in Shanghai involving multinational parties. The second transcript, from a question and answer session, focuses on IADR in general. Executives from the Federal Mediation and Conciliation Service hosted the panel discussion and the speakers included John Barkai, David Day, and Roy Tjioe.

{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL
{155} TEACHING

Micheal H. Bagot, Jr. & Dana A. Henderson, *Not Party, Not Bound? Not Necessarily: Binding Third Parties to Maritime Arbitration*, 26 TU. MAR. L.J. 413 (2002).

The authors discuss the practice of binding third-party contract beneficiaries to arbitration agreements. Finding the practice "shocking and unconscionable," the authors review the Federal Arbitration Act as well as other state and federal laws that impact arbitration. The authors also evaluate the requirements necessary for binding parties to arbitration agreements. Additionally, the authors discuss the five theories of agency and contract law, which provide the exceptions to the signature requirement. The authors conclude that while courts frequently bind non-signatory parties to arbitration agreements, it is not always the appropriate approach.

{44} ARBITRATION—GENERAL
{97} SUBJ MATTER: MARITIME

C. Mark Baker & Arif Hyder Ali, *A Cross-Comparison of Institutional Mediation Rules*, DISP. RESOL. J., May–July 2002, at 72.

Directed toward practitioners, this review of procedural mediation and conciliation rules facilitates an understanding of the subtle differences in the methods used by various institutions. The authors assess seven national and international mediation providers and institutions, including the American Arbitration Association and the International Commission for the Settlement of Investment Disputes.

{21} MEDIATION—GENERAL

- {21} MEDIATION—GENERAL
- {146} ORGANIZATION POLICIES & RULES

Allison Balc, *Making It Work at Work: Mediation's Impact on Employee/Employer Relationships and Mediator Neutrality*, 2 PEPP. DISP. RESOL. L.J. 241 (2002).

Recognizing the rise in employment discrimination litigation, the author discusses the use of mediation in the employment setting. Because of the recognized benefits of mediation to the relationships between employers and employees, the author discusses ideas for achieving mediator neutrality, and concludes that mediation provides an effective alternative to litigation in the area of employment disputes.

- {21} MEDIATION—GENERAL
- {94} SUBJ MATTER: LABOR—DISCRIMINATION

Richard Barnes, *FMCS on the Cutting Edge*, 2 PEPP. DISP. RESOL. L.J. 321 (2002).

As the current director of the Federal Mediation and Conciliation Service (FMCS), the author highlights the evolving role of the federal mediator beyond the traditional labor-management arena. For example, the FMCS involvement increasingly extends to federal agencies as well as state and local governments. The author also discusses new programs such as regulatory negotiation for federal agencies, peer mediation programs in schools, and workplace grief management programs.

- {21} MEDIATION—GENERAL
- {95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)
- {87} SUBJ MATTER: GOV'T
- {104} SUBJ MATTER: REGULATORY

Paula A. Barran & Todd A. Hanchett, *Public Policy Challenges to Labor Arbitration Awards: Still a Safe Harbor for Silly Fact Finding?*, 38 WILLAMETTE L. REV. 233 (2002).

Recognizing that the design of labor arbitration theoretically offers a speedy, inexpensive forum for dispute resolution, the authors examine the effects and limitations of public policy challenges to labor arbitration awards. The authors assert that a growing body of public policy challenges could threaten the structure of labor arbitration. The authors also discuss the limitations placed upon public policy challenges in the recent United States Supreme Court case, *Coal Corp. v. Mine Workers of America, District 17*.

- {44} ARBITRATION—GENERAL
- {93} SUBJ MATTER: LABOR—GENERAL

Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL'Y & L. 5 (2002).

This article seeks to address significant changes, in the past decade, regarding custody law reform such as the expanded view of parental autonomy, the broader definition of parent, the establishment of custody standards, and the increased protection for domestic violence victims. Focusing on procedural modifications designed to improve parent-child relationships during divorce proceedings and substantive developments impacting custody disputes, this article evaluates custody law reforms under principles established by the American Law Institute.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Rosemary Batt et al., *Employee Voice, Human Resource Practices, and Quit Rates: Evidence from the Telecommunications Industry*, 55 INDUS. & LAB. REL. REV. 573 (2002).

The authors present a study examining a comprehensive set of voice and human resource practices that are likely to influence employee quit rates. The authors draw on strategic human resource and industrial relations theories to identify the sets of employee voice mechanisms and human resource practices that are likely to predict firm-level quit rates. Among those factors predicting lower quit rates are union representation, employee participation in offline problem solving groups, and self-directed teams, higher relative wages, and internal promotion policies.

{73} SUBJ MATTER: GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Keith A. Becker & Dianne R. LaRocca, Case Comment, *Divided Court Crosses Wires Over Circuit City Decision: Holding Casts Doubt on Ninth Circuit's Duffield Decision*, 7 HARV. NEGOT. L. REV. 403 (2002).

This case comment begins with an examination of the five-four Supreme Court decision in *Circuit City Stores Inc. v. Adams*. The authors then turn to the confusing effect of *Circuit City* on the Ninth Circuit's *Duffield v. Robertson Stephens & Co.* decision, which held that an employer cannot force an employee to arbitrate certain statutory claims. The authors discuss the split over *Duffield's* current applicability and suggest several possible interpretations. Finally, the authors suggest that voluntary agreements to arbitrate should replace compulsory agreements, effectively allowing the Ninth Circuit to adhere to precedent while still preserving employees' Title VII rights.

{44} ARBITRATION—GENERAL

2002 BIBLIOGRAPHY: ARTICLES

Michele Bertran, *Judiciary Ombudsman: Solving Problems in the Courts*, 29 FORDHAM URB. L.J. 2099 (2002).

The author describes the New Jersey ombudsman program created to help court users effectively participate in the system and redress problems when they occur. The ombudsman investigates and resolves complaints about the functioning of the court in an effort to improve court administration. The New Jersey courts created the ombudsman program in response to negative experiences of women and minorities in the courts.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{73} SUBJ MATTER: GENERAL
{145} OMBUDSPERSON

Lisa B. Bingham, *Why Suppose? Let's Find Out: A Public Policy Research Program on Dispute Resolution*, 2002 J. DISP. RESOL. 101.

This commentary looks at an essay by Professor Hensler that addresses the problem of unequal control over the design of a dispute system. This article suggests the necessity of a broader research agenda to address the problem. After reviewing field research on mediation, the article proposes that the judiciary build data collection systems to facilitate research on the effectiveness of different alternative dispute resolution processes within the court setting.

{21} MEDIATION—GENERAL
{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Lisa B. Bingham et al., *Exploring the Role of Representation in Employment Mediation at the USPS*, 17 OHIO ST. J. ON DISP. RESOL. 341 (2002).

Recognizing that many unionized organizations traditionally use arbitration as a tool to address disputes, the authors explore the role that representation plays in mediation programs. After evaluating data collected on the United States Postal Service's program Resolve Employment Disputes Reach Equitable Solutions Swiftly (REDRESS) program, the authors conclude that representation plays a constructive role in employment mediation programs.

{21} MEDIATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Andrew S. Bishop, *The Second Legal Revolution in International Trade Law: Ecuador Goes Ape in Banana Trade War with European Union*, 12 INT'L LEGAL PERSP. 1 (2002).

The author examines a World Trade Organization (WTO) arbitration ruling that allowed a developing country member to retaliate against the European Union by suspending intellectual property rights. The purpose of the WTO includes promoting international trade growth in developing countries. The author concludes that the arbitration decision furthers this goal by implementing an effective enforcement procedure to induce compliance with trade obligations, regardless of the wealth of the member nation.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

William Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002).

In response to Leonard L. Riskin's concept of mindful meditation, the author argues that meditation fails to provide the most effective method of developing emotional intelligence and meditation should not be so easily severed from religion. Criticizing the evidence showing the success of mindful meditation at creating emotional intelligence, the author argues that the effectiveness of meditation depends upon the involvement of a "faith factor" or a motivating religious intention.

{73} SUBJ MATTER: GENERAL

George W. Bohlander, *AFL-CIO's Internal Dispute Plan*, DISP. RESOL. J., Feb.–Apr. 2002, at 21.

In 1962, the AFL-CIO adopted an Internal Dispute Plan to reduce and resolve jurisdictional and representational disputes among the Federation's affiliates. In this article, Bohlander presents the findings of his study based upon 279 raiding arbitration cases conducted between 1989 and 1998. From this research, Bohlander concludes that the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) Internal Dispute Plan greatly reduces the incidents of raiding and provides great stability for the Federation.

{44} ARBITRATION—GENERAL

{21} MEDIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Mathew E. Braun, Recent Development, *The Revised Uniform Arbitration Act*, 18 OHIO ST. J. ON DISP. RESOL. 237 (2002).

The author evaluates the charge that civil justice processes use resources inefficiently and that alternative dispute resolution is a solution to the high

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costs of litigation. The author contends that procedural reforms to litigation fail to yield more efficient results because litigants are already taking opportunities to avoid waste through the use of arbitration and settlement.

- {44} ARBITRATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {136} ECONOMIC ADVANTAGES OF ADR

Wayne D. Brazil, *Court ADR 25 Years After Pound: Have We Found a Better Way?*, 18 OHIO ST. J. ON DISP. RESOL. 93 (2002).

The author addresses the progress of court connected alternative dispute resolution (ADR), since the watershed Pound conference of 1976. After discussing developments in court-annexed ADR that have increased the public's confidence in the integrity and quality of the justice system, the author posits that the future challenge, within the ADR field, includes increasing the quantity and quality of ADR programs available through the courts.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
HISTORICAL

Carolyn Brommer et al., *Cooperative Bargaining Styles at FMCS: A Movement Toward Choices*, 2 PEPP. DISP. RESOL. L.J. 465 (2002).

The mission of the Federal Mediation and Conciliation Service (FMCS) includes assisting in the settlement of labor and management disputes through mediation. In solving such disputes, the FMCS transforms from an adversarial labor management model to an interest-based bargaining model. The authors comment on the development of emerging techniques such as modified traditional bargaining and enhanced cooperative negotiation by the FMCS.

- {21} MEDIATION—GENERAL
- {95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

James J. Brudney, *The Uniform State Law Process: Will the UMA and RUAA be Adopted by the States*, DISP. RESOL. MAG., Summer 2002, at 3.

The author explores, in general, the process of uniform law enactment and revision. In particular, the article focuses on the Uniform Mediation Act (UMA) and the Revised Uniform Arbitration Act (RUAA). The author provides a guideline for evaluating the success of the UMA and RUAA. In conclusion, the author suggests that success can be gauged not only through

complete adoption of these acts, but also through partial adoptions by state legislatures and implementation in legal education.

- {21} MEDIATION—GENERAL
- {44} ARBITRATION—GENERAL
- {144} LEGISLATION

Edward Brunet, *Seeking Optimal Dispute Resolution Clauses in High Stakes Employment Contracts*, 23 BERKELEY J. EMP. & LAB. L. 107 (2002).

Burnet questions the underlying assumption that alternative dispute resolution mechanisms provide greater efficiency than litigation. Burnet finds that the assumption of efficiency leads to increased use of pre-dispute arbitration and mediation clauses in employment contracts between highly skilled employees and their employers. The article supports the use of pre-dispute mediation clauses, but challenges whether standard arbitration clauses, in high stakes employment contracts, proves to be optimal for either the employee or the employer. The article concludes that employees and employers who want low risk and predictable results may be disappointed in arbitration and attracted to litigation or judicialized arbitration.

- {1} NEGOTIATION—GENERAL
- {44} ARBITRATION—GENERAL
- {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Stacy L. Brustin, *Legal Services Provision Through Multidisciplinary Practice—Encouraging Holistic Advocacy While Protecting Ethical Interests*, 73 U. COLO. L. REV. 787 (2002).

The author explains the utility of multidisciplinary service centers for clients who face multiple problems including medical, legal, or social problems. For people using community services as their primary source for resolving multiple problems, the central location of all these services provides cost-efficient and optimal assistance.

- {38} NON-BINDING RECOMMENDATION PROC—GENERAL
- {77} SUBJ MATTER: COMMUNITY
- {138} ETHICS: GENERAL

Anne Burr, *Confidentiality in Mediation Communications: A Privilege Worth Protecting*, DISP. RESOL. J., Feb.–Apr. 2002, at 66.

This article discusses the need for the mediation privilege of confidentiality. Burr analyzes the costs and benefits of the mediation privilege along with the treatment of the privilege by the Uniform Mediation Act (UMA). The author recommends the adoption of the UMA by the American Bar Association and state governments in order to protect confidential mediation communications

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and build the trust necessary for parties to effectively participate in mediation.

- {21} MEDIATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {104} SUBJ MATTER: REGULATORY
- {132} CONFIDENTIALITY

Robert Baruch Bush & Sally Ganong Pope, *Changing the Quality of Conflict Interaction: The Principles and Practice of Transformative Mediation*, 3 PEPP. DISP. RESOL. L.J. 67 (2002).

Providing a general overview of transformative mediation in theory and practice, this article endeavors to give mediators insights into the unique nature of transformative mediation. The authors evaluate three questions: (1) why parties request transformative mediation, (2) what is the basic format of the mediation, and (3) how mediators work with parties in transformative mediation.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Robert Baruch Bush, *Substituting Mediation For Arbitration: The Growing Market for Evaluative Mediation, and What it Means for the ADR Field*, 3 PEPP. DISP. RESOL. L.J. 111 (2002).

The author contends that mediation should not be a substitute for arbitration, but rather an alternative to arbitration. Mediation provides a bottom-up, communication-oriented, party-driven process that serves a distinct market.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Jaime Dodge Byrnes & Alison Berkowitz Prout, Comment, *Major League Baseball Players Association v. Garvey: Revisiting the Standard for Arbitral Review*, 7 HARV. NEGOT. L. REV. 389 (2002).

The authors suggest that the recent decision of the United States Supreme Court in *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504 (2001), raises several post-decision complications for lower courts. The authors review the holding of the case and suggest several solutions concerning the standard of review for arbitration awards such as clarifying the standard and expanding the categories of arbitration beyond “mandatory” and “voluntary” to limit due process concerns.

- {44} ARBITRATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Suzanne Byron et al., *ADR Solutions for Academic Workplace Conflicts*, DISP. RESOL. J., May–July 2002, at 56.

The authors highlight the complex disputes that arise in the unique world of colleges and universities. Recognizing the advantages of alternative dispute resolution (ADR), particularly within the context of higher education, the authors discuss examples of conflict resolution in the academic workplace. The authors use five case studies to demonstrate how ADR mechanisms help resolve various types of disputes in academia.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Roger L. Carter, *Oh, Ye of Little (Good) Faith: Questions, Concerns and Commentary on Efforts to Regulate Participant Conduct in Mediations*, 2002 J. DISP. RESOL. 367.

The Good Faith Participation Standard, which requires parties to a mediation to behave in good faith, fails to provide a sufficient standard for preventing the abuse of the process. In this article, Carter analyzes the current approaches debated for resolving the problem of bad faith parties to a mediation. Going beyond the pro-sanction/anti-sanction discussion, Carter offers a framework for mediation to encourage good faith participation and to discourage abuse of the system.

{21} MEDIATION—GENERAL

{138} ETHICS: GENERAL

Kathy L. Cerminara, Comment, *Contextualizing ADR in Managed Care: A Proposal Aimed at Easing Tensions and Resolving Conflict*, 33 LOY. U. CHI. L.J. 547 (2002).

Healthcare access and coverage disputes are wrought with controversy. The author discusses the pros and cons of arbitration, mediation, and early neutral evaluation in this context. The author also discusses the combination of adjudicatory and consensual alternative dispute resolution (ADR) processes such as “arb-med” and “med-arb.” The author postulates that current ADR processes in the managed care context are inadequate and inconsistent, and suggests a broad-based contextualized approach rather than the current ad hoc incorporation of ADR processes.

{73} SUBJ MATTER: GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{136} ECONOMIC ADVANTAGES OF ADR

{147} POWER IMBALANCE

2002 BIBLIOGRAPHY: ARTICLES

Warren B. Chik, *U.S. Jurisdictional Rules of Adjudication over Business Conducted via the Internet—Guidelines and a Checklist for the E-Commerce Merchant*, 10 TUL. J. INT'L & COMP. L. 243 (2002).

Recognizing the fact that the current tests for personal jurisdiction are flexible, the author discusses the ways in which the current tests could be applied to decide personal jurisdiction for businesses engaged in electronic commerce (e-commerce). One of the ways listed by the author to avoid the problem of being amenable to service in a foreign court is to use a mandatory alternative dispute resolution clause in the purchase contract.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

John Chu, *The Art of War and East Asian Negotiating Styles*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 161 (2002).

Explaining that much of East Asian negotiating style emanates from the book, *The Art of War* by Sun Tzu, the author provides a brief overview of the specific elements of *The Art of War* evident in East Asian negotiation styles. The author provides examples and a checklist for negotiating in the East Asian context. The article proposes to serve as a guide for Westerners engaging in negotiations with East Asians.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Matthew P. Clagett, Comment, *Environmental ADR and Negotiated Rule and Policy Making: Criticisms of the Institute for Environmental Conflict Resolution and the Environmental Protection Agency*, 15 TUL. ENVTL. L.J. 409 (2002).

Lawyers have increasingly turned to the broad field of alternative dispute resolution (ADR), encompassing mediation, arbitration, and negotiation, thereby giving credence to environmental dispute resolution (EDR). Criticisms of EDR center on its widespread use and ethical and practical dilemmas. This comment illustrates problems with EDR, gives an overview of the roots of EDR, discusses EDR in the context of agency, summarizes important events, and concludes that usage should address problems of incorporating EDR in rulemaking and policymaking.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{102} SUBJ MATTER: PUBLIC POLICY

{144} LEGISLATION

Kevin Clark, *The Philosophical Underpinning and General Workings of Chinese Mediation Systems: What Lessons Can American Mediators Learn?*, 2 PEPP. DISP. RESOL. L.J. 117 (2002).

Clark proposes that Americans can learn from Chinese mediation. Chinese mediation has been used consistently for two-thousand years, is commonly used today, and is based on three philosophies: Legalism, Confucianism, and Maoism. The greatest lesson to learn from Chinese mediation is that morality has its place in mediation with respect to helping the parties understand each other. Other lessons for mediators include helping the parties overcome counterproductive self-interests, educating mediators about mediation, and using conciliation.

{21} MEDIATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {124} COMPARISONS: CROSS-CULTURAL
 {155} TEACHING

Mauricio J. Claver-Carone, Note, *Post-Handover Recognition and Enforcement of Arbitral Awards between Mainland China and Hong Kong Sar: 1999 Agreement vs. New York Convention*, 33 LAW & POL'Y INT'L BUS. 369 (2002).

The author examines the impact of Hong Kong's semi-autonomous status on arbitral awards. Based on both the language of the New York Convention and a 1999 agreement between Hong Kong and Mainland China, the author concludes that the characterization of Hong Kong as domestic effectively impairs its status as a venue for China-related arbitration disputes.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT'L

James Coben, *Building a Bridge: Lessons Learned From Family Mediation Training for the Hmong Community of Minnesota*, 40 FAM. CT. REV. 338 (2002).

The article examines the use of family mediation training to bridge cultural and legal norms and to smooth the assimilation process for the Hmong peoples in their move from the mountains of Laos to industrialized life in Minnesota. The Hmong were brought to America as refugees after aiding Central Intelligence Agency (CIA) attempts to cut the Ho Chi Minh Trail supply line during the Vietnam War. Organized in patrilineal clans, the Hmong cultural norms and American law are vastly different. The author

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explores the process of training Hmong mediators to aid in the inevitable disputes arising from the clash between Hmong values and American laws.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {77} SUBJ MATTER: COMMUNITY
- {124} COMPARISONS: CROSS-CULTURAL

Douglas A. Codiga, *Mindfulness in the Law and ADR: Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109 (2002).

Alternative dispute resolution (ADR) lawyers may be more receptive to the use of meditation to increase their effectiveness. However, the author suggests that the potential use of “mindfulness meditation” for lawyers and law students may be limited in scope and duration unless several misconceptions of such meditation are corrected. The author shows that the benefits of meditation reach all aspects life, not merely those work-related.

- {73} SUBJ MATTER: GENERAL

Jack J. Coe, Jr., *Pre-Hearing Techniques to Promote Speed and Cost-Effectiveness—Some Thoughts Concerning Arbitral Process Design*, 2 PEPP. DISP. RESOL. L.J. 53 (2002).

Within the context of international arbitration hearings, the author discusses several pre-hearing techniques that facilitate speed and efficiency in the arbitral process. Although most of these techniques commence after the formation of the tribunal and prior to the start of the hearing, some of the tools described by the author can be employed before a dispute arises as a part of business planning. The author provides a broad overview of the influences that affect efficiency in international arbitration hearings.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT’L

Jack J. Coe, Jr., *Arbitration and Litigation: The Serviceable Texts of International Commercial Arbitration: An Embarrassment of Riches*, 10 WILLAMETTE J. INT’L L. & DISP. RESOL. 143 (2002).

The article introduced various formulae to avoid allowing international tribunals wide discretion in setting the bounds of an arbitration proceeding. Such boundaries are necessary if disputants are to maintain possession of broad autonomy central to international commercial arbitrations.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT’L
- {75} SUBJ MATTER: COMMERCIAL

John Alan Cohan, Note, *Environmental Rights of Indigenous Peoples Under the Alien Torts Claim Act, the Public Trust Doctrine and Corporate Ethics, and Environmental Dispute Resolution*, 20 UCLA J. ENVTL. L. & POL'Y 133 (2002).

The author examines the environmental rights of indigenous peoples in the modern, globalized world. Particularly, the author explores the use of environmental dispute resolution. The use of dispute resolution to mediate problems arising from oil and mining projects has increased lately, as larger, more wealthy countries recognize the environmental impact of projects on local populations. Mediation in this context allows both corporations and indigenous peoples to come face-to-face with the other's concerns and goals.

- {1} NEGOTIATION—GENERAL
- {21} MEDIATION—GENERAL
- {84} SUBJ MATTER: ENVIRONMENT
- {92} SUBJ MATTER: INT'L

Cynthia F. Cohen & Murray E. Cohen, *Relative Satisfaction with ADR: Some Empirical Evidence*, DISP. RESOL. J., Nov.–Jan. 2002–2003, at 37.

This article contains data from a study on participant satisfaction with alternative dispute resolution (ADR). The study consisted of students role-playing disputes in different ADR processes. Noting the limitations of their study, the authors conclude that participants gauge the success of alternative dispute resolution in terms of how much control they have over the process. The authors suggest avenues for further research.

- {73} SUBJ MATTER: GENERAL

Sara Rudolph Cole, *The Revised Uniform Arbitration Act: Is it the Wrong Cure?*, DISP. RESOL. MAG., Summer 2002, at 10.

After a brief review of the Revised Uniform Arbitration Act (RUAA), the author examines its benefits and disadvantages. In particular, the author focuses on the enforceability of mandatory arbitration provisions in employment contracts and on the effect of increased procedural protections under the RUAA. The author suggests that the RUAA does not provide sufficient safeguards for employees, and places increased costs on repeat players.

- {44} ARBITRATION—GENERAL
- {144} LEGISLATION

John W. Cooley, *A Dose of ADR for the Health Care Industry*, DISP. RESOL. J., Feb.–Apr. 2002, at 16.

As litigation costs and jury awards skyrocket, a new solution is needed for health care disputes. In 1998, the American Bar Association, American

Medical Association, and American Arbitration Association issued a joint resolution encouraging the use of alternative dispute resolution (ADR) to resolve health care disputes. The author discusses five broad categories of disputes where resolution through ADR provides optimal results. The inclusion of a practical example, an Illinois hospital that instituted a co-mediation program, enhances the discussion.

{21} MEDIATION—GENERAL

William R. Corbett, *Waiting for the Labor Law of the Twenty-First Century: Everything Old is New Again*, 23 BERKELEY J. EMP. & LAB. L. 259 (2002).

This article primarily examines the rights of nonunion workers protected by the National Labor Relations Association (NLRA) and suggests minor changes to the law that will make these rights more widely known and more broadly asserted. In discussing these rights, the article touches on concerns that arise when employment cases are channeled into mandatory mediation. In the mediation context, the author argues that an unfair advantage, in favor of employers, deprives employees of an adequate opportunity to vindicate their rights. While collective action may alleviate some of the employer's advantages, the question remains whether an efficient and fair forum exists for adjudication of employment claims.

{21} MEDIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{127} REQUIREMENTS: MANDATE TO USE

Daniel M. Creekman, *A Helpless America? An Examination of the Legal Options Available to the United States in Response to Varying Types of Cyber-Attacks from China*, 17 AM. U. INT'L L. REV. 641 (2002).

The author discusses cyber-attacks on the United States and the range of available legal responses. Because current legal responses are inadequate, the author suggests several improvements to better regulate and guard against computer crimes. Improvements would include an international agreement to submit claims to a neutral arbitration body. Such an agreement would be a pro-active measure designed to provide a forum for the prosecution of hackers.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{92} SUBJ MATTER: INT'L

Bernardo M. Cremades, *Managing Discovery in International Arbitration*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 72.

The author discusses the differences between discovery in international arbitration and litigation. Topics of discussion include: differences in common and civil law, discovery conflicts, methods for resolving an impasse, and practical tips.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Mark Richard Cummisford, *Resolving Fee Disputes and Legal Malpractice Claims Using ADR*, 85 MARQ. L. REV. 975 (2002).

The author explores the different methods for resolving fee disputes between attorneys and clients, and discusses why and when clients do not pay their attorneys. The author then discusses the options available for the parties involved in fee disputes, and considers whether alternative dispute resolution (ADR) processes offer a viable means to resolve fee disputes. Lastly, the author proposes that the parties get to choose the process by which they resolve a dispute, and that any formal process should assist, rather than inhibit, the parties in resolving disputes.

{73} SUBJ MATTER: GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

{124} COMARISONS: CROSS-CULTURAL

{136} ECONOMIC ADVANTAGES OF ADR

Michael K. Daming, *To Sever or Destroy? The Eighth Circuit Allows Invalid Provisions To Be Severed From Otherwise Enforceable Arbitration Agreements*, 2002 J. DISP. RESOL. 425.

In *Gannon v. Circuit City Stores, Inc.*, the Eighth Circuit concluded that invalid provisions could be severed from otherwise valid arbitration agreements. The circuits are divided on this issue, as they attempt to balance the public interest in protecting statutory rights with the interest in advancing the principles of arbitration. The sophistication of the parties and the ease with which an illegal provision can be severed will continue to influence the courts that address this issue.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Christine R. Davis, Comment, *Approaching Reform: The Future of Multijurisdictional Practice in Today's Legal Profession*, 29 FLA. ST. U. L. REV. 1339 (2002).

Technology enables lawyers to practice in many states. However, the author argues that state Unlicensed Practice Laws (UPL) should be updated to accommodate the advent of technology. Since UPL rules vary from state to state, uncertainty persists as to what constitutes unlicensed practice. Lawyers who participate in alternative dispute resolution may be deemed to be practicing law if they do not have a license in that state, and may face sanctions.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Benjamin G. Davis, Note, *New Intellectual Property, Information Technology, and Security in Borderless Commerce: Building the Seamless Dispute Resolution Web: A Status Report on the American Bar Association Task Force on E-Commerce and Alternative Dispute Resolution*, 8 TEX. WESLEYAN L. REV. 529 (2002).

In this article, the author discusses the progress of the American Bar Association's Task Force on E-Commerce (electronic commerce) and Alternative Dispute Resolution (ADR). The discussion contains an explanation of online dispute resolution (ODR) processes, as well as an analysis of key concepts and goals contained in the draft preliminary report and concept paper prepared by the Task Force. The author arrives at the conclusion that a merger of terrestrial ADR and online ODR activities appears inevitable, and that future tasks will focus on efforts to build a truly seamless dispute resolution web.

{73} SUBJ MATTER: GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Ellen E. Deason, *Predictable Mediation Confidentiality in the U.S. Federal System*, 17 OHIO ST. J. ON DISP. RESOL. 239 (2002).

The author discusses the process by which a federal court decides whether a state or federal law governs mediation confidentiality. In this article, Deason notes how mediators and mediation programs could encourage party agreements regarding mediation confidentiality or choice of law.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Ellen E. Deason, *Uniform Mediation Act: Law Ensures Confidentiality, Neutrality of Process*, DISP. RESOL. MAG., Summer 2002, at 7.

The author discusses the drafting of the Uniform Mediation Act. In particular, the article focuses on the confidentiality provisions and their impact on mediation. The author also examines conflicting principals at issue when discussing confidentiality, such as the tension between furthering communication within mediation and providing sufficient information to judges adjudicating issues arising from mediation.

{21} MEDIATION—GENERAL

{144} LEGISLATION

Dorothy J. Della Noce, *Mediation Theory and Policy: The Legacy of the Pound Conference*, 17 OHIO ST. J. ON DISP. RESOL. 545 (2002).

Even though the Pound Conference had many goals for mediation, it is the promise of improved case management that has created interest and support for court-connected mediation. The author suggests that now is the time to review the history of court-connected mediation programs and face the challenges of dealing with the differences in mediation practice in order to find creative ways to build a profession.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{127} REQUIREMENTS: MANDATE TO USE

Dorothy J. Della Noce et al., *Assimilative, Autonomous, or Synergistic Visions: How Mediation Programs in Florida Address the Dilemma of Court Connection*, 3 PEPP. DISP. RESOL. L.J. 11 (2002).

In this article, the authors review studies conducted on the Florida court-connected mediation program. The authors focus on the insights and the findings found at the macro level of the study. The authors discuss the value-dilemma of court-connected mediation programs, the approaches that a state may use to create a court-connected mediation program, and the implications that arise from the use of mediation in place of adjudication.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{127} REQUIREMENTS: MANDATE TO USE

{133} COURT REFORMS

Dorothy J. Della Noce & Robert Baruch Bush, *Clarifying the Theoretical Underpinnings of Mediation: Implications for Practice and Policy*, 3 PEPP. DISP. RESOL. L.J. 39 (2002).

The authors closely examine the history and understanding of mediation theory and practice. From the “lay theories” that have informed much of the mediation field, the article moves to the more formal theoretical frameworks

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developed by Bush & Folger. Additionally, the authors examine the development of transformative mediation and the effect of increased theoretical clarity on the mediation field. In conclusion, the authors provide a recommendation for a theoretically informed approach to mediation policy.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

R. Bruce Dickson, *Alternative Dispute Resolution in the Advertising Industry: The Role of Government Regulation in the National Review Council Ad Review Process*, 57 FOOD DRUG L.J. 177 (2002).

This article deals with the dispute process created by the advertising industry and administered by the National Advertising Review Council (NARC). Problems have arisen with NARC, in that some advertisers feel that once an advertisement has been reviewed and approved by another governmental agency, such as the Food and Drug Administration, NARC should defer to that judgment. The author then discusses the NARC rules of procedure with respect to the general principles of deference toward the decisions of administrative agencies. Next, the author describes specific instances of administrative deference practiced by the NARC. In conclusion, the author states that the success of NARC can be traced to its general deference rules mandated by its rules of procedure.

{75} SUBJ MATTER: COMMERCIAL

{104} SUBJ MATTER: REGULATORY

{136} ECONOMIC ADVANTAGES OF ADR

Dispute Resolution Journal, *How to Save Time & Money in Arbitration—Users Speak Up*, DISP. RESOL. J., Aug.–Oct. 2002, at 27.

Participants of mediation and arbitration share their insights in a series of roundtable discussions sponsored by the American Arbitration Association. This article is a transcript of the New York roundtable where participants compared presentation techniques for appearing before an expert arbitrator, experiences in using technology at an arbitration hearing, and advantages of requesting a reasoned arbitration award over a one-line award.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Carrie Donald & John D. Ralson, *Training Day: Mediation of ADA Disputes*, DISP. RESOL. J., Aug.–Oct. 2002, at 56.

This article provides an overview of the Americans with Disabilities Act of 1990 (ADA) and the skills necessary to successfully mediate under the ADA.

Various alternative dispute resolution (ADR) processes are reviewed as well, such as the Institute for ADA Mediation training program.

- {21} MEDIATION—GENERAL
- {76} SUBJ MATTER: CIVIL RIGHTS
- {83} SUBJ MATTER: EDUCATION

Isaak Dore & Michael T. Carper, *Multiculturalism, Pluralism, and Pragmatism: Political Gridlock or Philosophical Impasse?*, 10 WILLAMETTE J. INT'L L. DISP. 71 (2002).

Problems of multicultural disputes within the Western liberal democratic sphere are examined in this article. The definition of Multiculturalism, in this article, refers to the coexistence and conflict between cultural, religious, or ethnic groups within a single political community, whereas Pluralism refers to conflicts between various cultural, religious or ethnic values. This article postulates that confusion of the two categories leads to irreconcilable differences over the management of multicultural disputes, and proposes approaches to managing the tension within each category.

- {77} SUBJ MATTER: COMMUNITY
- {92} SUBJ MATTER: INT'L

Christopher Drahozal, *In Defense of Southland: Reexamining the Legislative History of the Federal Arbitration Act*, 78 NOTRE DAME L. REV. 101 (2002).

This article discusses *Southland Corp. v. Keating*, which held that the Federal Arbitration Act (FAA) applies in state courts and preempts conflicting state law. The author examines the views of many commentators who consider *Southland* illegitimate judicial lawmaking, wholly unsupported by the legislative history of the FAA. However, the author concludes that interpreting the FAA to apply in state courts is consistent with its legislative history.

- {44} ARBITRATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {128} REQUIREMENTS: STATUTORY OR RULES
- {144} LEGISLATION

Mark A. Drumbl, *Poverty, Wealth and Obligation in International Environmental Law*, 76 TUL. L. REV. 843 (2002).

Analyzing the relationships and responsibilities of both developed and developing nations in international environmental law, the article explores

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the connection between environmental regulation and economic development.

- {1} NEGOTIATION—GENERAL
- {84} SUBJ MATTER: ENVIRONMENT
- {92} SUBJ MATTER: INT’LL
- {102} SUBJ MATTER: PUBLIC POLICY

Nancy Dubler, *Mediating Disputes in Managed Care: Resolving Conflicts Over Covered Services*, 5 J. HEALTH CARE L. & POL’Y 479 (2002).

Explores the use of mediation in bioethics conflicts in hospitals. Previously resolved disputes were analyzed retrospectively to determine whether mediation at an early stage in the conflict would have provided beneficial assistance. The article examines the power differential between patients and staff inherent in such disputes, as well as the use of alternative dispute resolution mechanisms, and specific managed care organization plans. It concludes with an overview of the benefits mediation provides in such settings.

- {21} MEDIATION—GENERAL
- {89} SUBJ MATTER: HOSPITALS

Adriana Dulic, *First Options of Chicago, Inc. v. Kaplan and The Kompetenz-Kompetenz Principle*, 2 PEPP. DISP. RESOL. L.J. 77 (2002).

This article analyzes the United States Supreme Court decision in *First Options of Chicago, Inc. v. Kaplan*, which grants authority to lower courts to determine whether parties agreed to arbitrate and gives appellate courts de novo review over this issue. The German Kompetenz-Kompetenz principle grants arbitral tribunals authority to determine their own jurisdiction. The *First Options* court’s use of the term arbitrability resulted in conflicting interpretations leading to uncertainty and unfairness. The article concludes by offering as a solution clearer guidelines from the Federal Arbitration Act.

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {92} SUBJ MATTER: INT’L
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lisa M. Eaton, Note, *Arbitration Agreements in Labor and Employment Contracts: Well Within the Reach of the FAA*, 2002 J. DISP. RESOL. 193.

The author discusses the scope of the Federal Arbitration Act (FAA) coverage and exemption provisions. The controversy centers on whether the FAA covers all employment contracts except those of employees who transport people or goods in interstate commerce or whether the FAA exempts all employment contracts. The author concludes that the Supreme

Court's decision in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), resolves a split in the circuits. The author finds the holding in *Circuit City* to be a product of a broad interpretation of the FAA coverage provision and a narrow interpretation of its exemption provision.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Paul Edenfield, Note, *No More the Independent and Virtuous Judiciary?: Triaging Antidiscrimination Policy in a Post-Gilmer World*, 54 STAN. L. REV. 1321 (2002).

Against the backdrop of the United State Supreme Court's *Gilmer* decision, the author argues that arbitration provides an inappropriate mechanism for resolving employment discrimination claims. Particularly, the author states that the Supreme Court failed to recognize statutory antidiscrimination rights that benefit employees, such as Title VII. In doing so, the author discusses such topics as unequal bargaining power in employment contracts, contracts that do not secure the public good, and the notion that arbitrators are ill-prepared to handle Title VII claims. Because of the alleged shortcomings of the arbitral process in regard to employment discrimination suites, the author argues that expanded opportunity for judicial review of arbitral decisions should be granted.

{44} ARBITRATION

{93} SUBJ MATTER: LABOR—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Markus Ehrmann, *Procedures of Compliance Control in International Environmental Treaties*, 13 COLO. J. INT'L ENVTL. L. & POL'Y 377 (2002).

Attention in international environmental law has shifted from lawmaking to questions of implementation, compliance, and effectiveness. These treaty commitments, negotiated at the international level, must be translated by governments in the domestic sphere. Compliance is determined by whether or not the targets of a treaty are met by the state parties.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

Rachel Engle, Comment, *Party Autonomy in International Arbitration: Where Uniformity Gives Way to Predictability*, 15 TRANSNAT'L LAW. 323 (2002).

Engle discusses the role of choice of law provisions in international arbitration. The article elaborates on issues including when contractual

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choice of law provisions govern and how much discretion should be given to arbitrators.

{44} ARBITRATION

{73} SUBJ MATTER: GENERAL—ADR

David M. Engstrom, *Civil Rights Paradox? Lawyer and Educational Equity*, 10 J.L. & POL'Y 387 (2002).

The author reviews Jay Heubert's *Law & School Reform: Six Strategies for Promoting Educational Opportunity*. The author commends the informative nature of Heubert's work, while addressing the shortcomings of law-driven school reform efforts. The author concludes that lawyers will continue to play an important role in law-driven schooling, arguing that lawyers must focus on developing future legal strategies, and determining what types of educational equity are worth pursuing.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Madelaine Eppenstein, *International Investors' Rights and Remedies in the Adjudication of Disputes with U.S. Securities and Commodities Firms in the Context of U.S. Arbitral Forum Selection*, 27 BROOK. J. INT'L L. 443 (2002).

The author focuses on the practical considerations of potential claims and remedies available to international customers in disputes against overseas offices of major American brokerage houses. Disputes arising under United States securities laws are usually subject to compulsory arbitration. Arbitration provides an alternative forum in addition to court and reparation proceedings. Even the foreign offices of United States brokerage houses are subject to arbitration procedures. The author warns that it is very important to investigate thoroughly the merits of your claim in order to choose the appropriate process.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{106} SUBJ MATTER: SECURITIES

Julain Epstein, *The Other Side of Harmony: Can Trade and Competition Laws Work Together in an International Marketplace?*, 17 AM. U. INT'L L. REV. 343 (2002).

In this article, the author argues that international negotiators should recognize that domestic competition laws and international trade laws cannot be reconciled. In order to solve this problem, the author suggests that a minimal code of international competition laws should be developed and mandated on all World Trade Organization (WTO) members similar to per se violations of antitrust law found in the United States. In doing so, the author

traces the evolution of United States international trade policy and discusses how competition laws can work with international trade laws.

{1} NEGOTIATION—GENERAL
{92} SUBJ MATTER: INT'L
{144} LEGISLATION

Samuel Estreicher & Matt Ballard, *Affordable Justice Through Arbitration: A Critique of Public Citizen's Jeremiad on the "Costs of Arbitration,"* DISP. RESOL. J., Nov.–Jan. 2002–03, at 8.

The authors evaluate a report on the costs of arbitration published by Public Citizen, a consumer group. The authors question the findings of the report and emphasize the necessity for further research on the effects of arbitration on consumers.

{44} ARBITRATION—GENERAL

Sean P. Feeney, *The Dispute Settlement Understanding of the WTO Agreement: An Inadequate Mechanism for the Resolution of International Trade Disputes*, 2 PEPP. DISP. RESOL. L.J. 99 (2002).

Although the World Trade Organization's Dispute Settlement Understanding (DSU) improve upon the General Agreement on Tariffs and Trade (GATT), it still has a myriad of problems. This article discusses six major problems of the DSU, including: lack of clarity, lack of transparency in proceedings, and disproportionate bargaining power among participants. The author offers several solutions to counter each of these problems and concludes that by using regional trade agreements parties can avoid disputes.

{1} NEGOTIATION—GENERAL
{21} MEDIATION—GENERAL
{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

John D. Feerick, *The 1977 Code of Ethics for Arbitrators: An Outside Perspective*, 18 GA. ST. U. L. REV. 907 (2002).

The article provides an overview of the 1977 Code of Ethics (Code) and analyzes recent revisions and proposed enhancements. Currently, an ongoing effort by the American Bar Association exists to revise certain aspects of the Code. Proposals include revisions dealing with integrity, fairness, disclosure, and party-appointed arbitrators. The author makes suggestions and stresses the importance of an ethical foundation for alternative dispute resolution.

{44} ARBITRATION—GENERAL

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- {73} SUBJ MATTER: GENERAL
- {138} ETHICS: GENERAL

Russell D. Feingold, *Mandatory Arbitration: What Process is Due?*, 39 HARV. J. ON LEGIS. 281 (2002).

The author explores the benefits of arbitration and the history of the Federal Arbitration Act (FAA). Reviewing the case law under the FAA, the author determines that the current implementation of arbitration negates an individual's constitutional right to pursue dispute resolution in court. The author calls for changes through either legislative action or an arbitration bill of rights to ensure the use of arbitration only when freely and voluntarily agreed to by the disputants.

- {44} ARBITRATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES
- {128} REQUIREMENTS: STATUTORY OR RULES

Gregory Firestone, *An Analysis of Principled Advocacy in the Development of the Uniform Mediation Act*, 22 N. ILL. U. L. REV. 265 (2002).

This article discusses the role of professional mediation association advocacy involved in the drafting of the Uniform Mediation Act (UMA). The eleven principals of advocacy of the UMA are outlined, and the Act is discussed on these principals.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Jay Folberg, *Arbitration Ethics: Winds of Reform Blowing from the West*, DISP. RESOL. MAG., Fall 2002, at 5.

The author discusses arbitration reforms initiated in California. In particular, the author explores the determinations of the California Judicial Council (CJC) with regard to alternative dispute resolution in the judicial system. Recent legislation required the CJC to initiate ethics standards for arbitrators. The author evaluates the council's adoption of minimum requirements and arbitrator disclosures. Finally, the author summarizes legal challenges to the ethical standards.

- {44} ARBITRATION—GENERAL
- {133} COURT REFORMS
- {138} ETHICS: GENERAL

Rosemary Ford, Note, *The Beef Hormone Dispute and Carousel Sanctions: A Roundabout Way of Forcing Compliance with World Trade Organizations Decisions*, 27 BROOK. J. INT'L L. 543 (2002).

The author argues that carousel sanctions may offer an attractive short-term political gain when applied to a dispute, such as that regarding beef hormone, which has carried on for fifteen years without a good faith resolution. The Note goes on to show that sanctions on a carousel rotation simply redistribute the harm so as to minimize the impact. The author attempts to show that sanctions are not in the United States' best interest because the trade-restrictive nature of the sanctions undermines the U.S.'s commitment to free trade. It is argued that all might be better served if these disputes were the topic of trade talks and negotiations aimed at settling the matter short of litigation.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{136} ECONOMIC ADVANTAGES OF ADR

Fordham Urban Law Journal, *The Changing Face of Justice: Alternative Approaches to Problem Solving*, 29 FORDHAM URB. L.J. 1981 (2002).

This is a transcript of a panel discussion focusing on problem solving courts. Several topics are discussed including, the effectiveness and processes of a problem-solving court in one of Minneapolis, Minnesota's high crime precincts. The need for problem-solving courts and suggestions that educators focus on problem-solving in legal education are also discussed.

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

Fordham Urban Law Journal, *The Changing Face of Justice: How Does the Community Feel About Problem Solving Courts?*, 29 FORDHAM URB. L.J. 2041 (2002).

Panelists report on the generally positive attitude of the community toward problem-solving courts. One panelist notes that problem-solving courts allow for people to be looked at as individuals, as opposed to criminals. Another panelist indicates that problem-solving courts are favored because they address specific problems that traditional courts are not prepared to address. In general, the community enjoyed contributing to the outcome of their disputes.

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

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Sheila Foster, *Environmental Justice in an Era of Devolved Collaboration*, 26 HARV. ENVTL. L. REV. 459 (2002).

The author discusses “devolved collaboration” for decision making in the environmental context. This method replaces the traditional “command-and-control” methods used by governmental agencies such as the Environmental Protection Agency. The author explains how “devolved collaboration” works by including local groups in decision-making processes, but cautions that poor environmental decisions can still occur when various decision makers suffer from power and equity imbalances.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

Mathew M. Franckiewicz, *The Rules of Evidence and Labor Arbitration*, DISP. RESOL. J., Aug.–Oct. 2002, at 43.

Although the rules of evidence used in arbitration and litigation settings vary, this article evaluates the Federal Rules of Evidence in arbitration settings. The author offers a detailed list of evidence rules particularly applicable in the labor arbitration setting.

{44} ARBITRATION
{93} SUBJ MATTER: LABOR—GENERAL

Jonathan A. Franklin & Roberta J. Morris, *International Jurisdiction and Enforcement of Judgments in the Era of Global Networks: Irrelevance of Goals for, and Comments on the Current Proposals*, 77 CHI.-KENT L. REV. 1213 (2002).

The authors discuss Conventions regarding jurisdiction and enforcement of international litigation and recognize that the use of alternative dispute resolution leads to a decrease in their significance. In light of this fact, the authors examine the weaknesses of arbitration. Particularly, repeat players may be able to manipulate the arbitration process. The authors proceed with the assumption that international conventions will remain at least somewhat significant and suggest guidelines for their further development.

{44} ARBITRATION—GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{92} SUBJ MATTER: INT’L
{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Clark Freshman et al., *Mindfulness in the Law and ADR: Adapting Meditation to Promote Negotiation Success: A Guide to Varieties and Scientific Support*, 7 HARV. NEGOT. L. REV. 67 (2002).

The authors evaluate meditation techniques to determine if and how they could improve the practice of legal negotiation. They draw heavily on

Leonard Riskin's mindfulness theory and examine other forms of meditation. The authors provide empirical support regarding benefits of various types of meditation and find that methods other than Riskin's mindfulness approach still promote better moods, enhance awareness, and lead to more successful negotiations.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL. GENERAL

Clark Freshman et al., *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Relates to Successful Negotiation*, 2002 J. DISP. RESOL. 1.

By analyzing scientific research relating to mood and emotions, the authors offer practical suggestions for becoming a successful negotiator. The authors recommend both short-term and long-term strategies to assist lawyers in correcting the negative effects of certain moods, or possibly to change moods, in order to improve negotiation results. The authors also emphasize the need for further study regarding mood training for negotiators and the effects of personality and context on moods.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Markus Frick, *When Foreign Arbitral Awards Are Late . . . Should U.S. Courts Enforce Them?*, DISP. RESOL. J., Feb.–Apr. 2002, at 43.

This article discusses the ramifications of late arbitration awards. The author discusses practices in England, Thailand, and France relevant to the issue of delayed arbitration awards. For example, the author highlights a French case, *Dubois et Vanderwalle v. Boots Frites BV*, which held that the contractual time limit belonged to international public policy, and therefore, the arbitrators in the case, by disrespecting the time limit, violated the international public policy.

{44} ARBITRATION—GENERAL

{102} PUBLIC POLICY

{124} CROSS-CULTURAL

Lisa I. Fried-Grodin, Note, *Disciplining Sexual Harassers in the Unionized Workplace: Judicial Precedent is Influencing Arbitrator Attitudes, Awards*, 77 CHI.-KENT L. REV. 823 (2002).

In sexual harassment cases, disciplinary arbitrators typically are not required to determine the unlawfulness of the conduct by the employee. Conversely, they are also not required to take into account an employer's legal obligations to educate its workers on sexual harassment. However, the author argues that

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many arbitrators consider these factors and use judicial precedent, as well as the arguments presented by the parties, in order to make reasoned decisions.

{44} ARBITRATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Michael Froomkin, *ICANN's "Uniform Dispute Resolution"—Causes and (Partial) Cures*, 67 BROOK. L. REV. 605 (2002).

The Internet Corporation for Assigned Names and Numbers (ICANN) adopted the Uniform Dispute Resolution Policy (UDRP), similar to mandatory arbitration, for settling disputes over domain names involving “cybersquatters.” The author argues that the UDRP, a popular solution to electronic commerce (e-commerce) disputes used in twenty-one countries, tilts against registrants because complainants select the arbitral panel, the notice requirement is weak, and there are formidable time and procedural restrictions on access to courts.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Cheri Ganeles, Comment, *Cybermediation: A New Twist on an Old Concept*, 12 ALB. L.J. SCI. & TECH. 715 (2002).

This Comment begins with a discussion of the characteristics of mediation and what separates it from other dispute resolution mechanisms. The comment includes a brief history of mediation, its use around the world, and the advantages and disadvantages of the mediation process. The discussion, turning to online mediation, examines the developments in various countries with regard to the benefits and drawbacks of online mediation. A discussion of other online dispute resolution systems concludes the piece.

{21} MEDIATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Lingyun Gao, *What Makes A Lawyer in China? The Chinese Legal Education System After China's Entry into the WTO*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 197 (2002).

Noting the general preference for alternative dispute resolution in China, the author provides an overview of the Chinese legal system. The overview contains insights into the development of the rule of law and legal education in China. In conclusion, the author suggests potential avenues of education reform. The author emphasizes the necessity of reforming the legal education system since China's entry into the World Trade Organization(WTO), because WTO membership has forced the country to focus more on legal construction.

{83} SUBJ MATTER: EDUCATION

{92} SUBJ MATTER: INT'L

Daveed Gartenstein-Ross, Note, *Resolving Outstanding Judgments Under the Terrorism Exception to the Foreign Sovereign Immunities Act*, 77 N.Y.U. L. REV. 496 (2002).

This Note proposes using ad hoc international tribunals to resolve disputes brought under the Foreign Sovereign Immunities Act (FSIA). The author proposes that these tribunals would be modeled after the Iran-United States Claims Tribunals. The Note addresses a possible conflict with the takings clause for those plaintiffs who may have already been awarded a judgment under the FSIA terrorism exception and offers reasons why the tribunals should not give effect to previously awarded judgments.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

Bryant G. Garth, *Tilting the Justice System: From ADR as Idealistic Movement to a Segmented Market in Dispute Resolution*, 18 GA. ST. U. L. REV. 927 (2002).

The author states that the stratification of the alternative dispute resolution (ADR) system—one informal for the masses and one “tailor-made” for the elite—has been lost in the critique and call for reform of ADR. The author discusses critiques of arbitration and mediation, including the mandatory nature of some processes and the players involved. Before reforming the system, the author calls for research focusing on the mediator, the arbitrator, and the development of ADR.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{127} REQUIREMENTS: MANDATE TO USE

Karen M. Gebbia-Pinetti, *Small Business Reorganization and the Sabre Proposals*, 7 FORDHAM J. CORP. & FIN. L. 253 (2002).

The author describes the use of facilitated negotiation in conjunction with small business reorganization under Chapter 11 bankruptcy. The author indicates that facilitated negotiation provides all the benefits of mediation, but with an added incentive, it includes the filing of a small business plan by the facilitator. The author proposes that established bankruptcy lawyers, who receive mediation training, should serve as bankruptcy experts.

{1} NEGOTIATION—GENERAL

Michael Geist, *Fair.com?: An Examination of the Allegations of Systemic Unfairness in the ICANN UDRP*, 27 BROOK. J. INT'L L. 903 (2002).

After reviewing over 4000 cases, the author posits that the critical issue in resolving disputes over Internet domain names turns on the method for choosing the panelists and not the roster of panelists in the arbitration. The statistical evidence shows that when a provider picks the arbitrator for a one-person panel the complainant prevails far more often than with a three-person panel. This statistic troubles the author as well as the fact that despite 135 panel members and supposed random selection, the majority of disputes are decided by relatively few panelists. The author argues that forum shopping has become an integral part of the Uniform Domain Name Dispute Resolution Policy (UDRP) and bias exists in favor of trademark holders. A three-member panel as the default is the solution put forward by the author.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Joyce J. George, *The Advantages of Administered Arbitration When Going It Alone Just Won't Do*, DISP. RESOL. J., Aug.–Oct. 2002, at 66.

This article compares administered arbitration with ad hoc arbitration. Concluding that parties are decidedly better off engaging the services of a reputable alternative dispute resolution services provider to assist in the management of the arbitration proceeding, the author suggests that parties should not “wing it” on their own. The road to successful arbitration can be hazardous to inexperienced parties without case management support and guidance. Therefore, the author provides the rules of the American Arbitration Association as an illustration of the advantages in administered arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Michael B. Getty, *The Process of Drafting the Uniform Mediation Act*, 22 N. ILL. U. L. REV. 157 (2002).

This article about the drafting of the Uniform Mediation Act (UMA) describes the paradigm example of a major effort to bring uniformity to the mediation field. The author, the chair of the National Conference of Commissioners on Uniform State Laws UMA Drafting Committee, and a member of the American Bar Association Dispute Resolution Section UMA Drafting Committee, explains the creation of the UMA and shares insight about the goals of the UMA.

{21} MEDIATION—GENERAL

{132} CONFIDENTIALITY

Witek Gierulski, Note, *Quantitative and Qualitative Tendencies as a Key to the Appropriate Facilitation of Dispute Resolution*, 65 SASK. L. REV. 181 (2002).

Many disputes are driven by a claim expressed in the form “plaintiff claims x quantity of quality y, where y = money.” The author argues that x or y can stand for many different options, in addition to money, and that dispute resolution facilitators must properly identify these variables in order to appropriately match them to issues and generate solutions. The choice of a dispute resolution process should be contingent upon the identification of these variables, issues, and solutions.

{73} SUBJ MATTER: GENERAL

{155} TEACHING

Dwight Golan, *Is Legal Mediation a Process of Repair—or Separation? An Empirical Study, and Its Implications*, 7 HARV. NEGOT. L. REV. 301 (2002).

The author points to two very different views of mediation’s ability to repair the parties’ relationships, suggesting that law schools teach an idealistic relationship-mending theory of mediation while litigators seriously doubt the ability of mediation to foster improved relations. Providing the first empirical study on the issue, the author samples several mediations between parties with prior relationships, and comments on the uncommon event of actual relationship repair in the observed mediations.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Adam Goldstein, Note, *ICANNSucks.biz (And Why You Can’t Say that): How Fair Use of Trademarks in Domain Names is Being Restrained*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1151 (2002).

The author proposes that the Uniform Dispute Resolution Policy (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) should allow third-parties to join existing arbitration proceedings or bring separate arbitration proceedings in Internet trademark disputes. Granting this opportunity would provide an efficient resolution of such disputes. The author also suggests the creation of an appellate level of review in order to generate precedent for future Internet trademark disputes.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

2002 BIBLIOGRAPHY: ARTICLES

Philip D. Gould & Patricia H. Murrell, *Therapeutic Jurisprudence and Cognitive Complexity: An Overview*, 29 *FORDHAM URB. L.J.* 2117 (2002).

The authors discuss the therapeutic jurisprudence movement which recognizes the limitations of existing legal practice, including over-reliance on precedent and other traditions of normative litigation. Therapeutic jurisprudence augments current rigid legal processes by taking into account the emotional states of the parties while resolving disputes. The article examines the expanded role of judges in the therapeutic jurisprudence context, including actively listening to the parties, actually considering their stories, and encouraging communication between the parties.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Adam W. Graves, Note, *Does An Employee's Binding Arbitration Agreement Limit The Powers of The EEOC?: The Supreme Court Rules That It Does Not*, 2002 *J. DISP. RESOL.* 439.

The author discusses the impact of the *EEOC v. Waffle House* case, which resolved the friction between the Federal Arbitration Act and Title VII of the Civil Rights Act of 1964. In *Waffle House*, the United States Supreme Court held that a private arbitration agreement did not foreclose the EEOC from bringing a private right of action seeking victim specific relief. The author concludes that this holding was consistent with the purpose of the FAA as well as the Court's prior decision, and suggests that future cases may seek to limit the EEOC's power.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

James A. Gross, *Worker Rights as Human Rights: Wagner Act Values and Moral Choices*, 4 *U. PA. J. LAB. & EMP. L.* 479 (2002).

The author suggests a reexamination of United States domestic labor law and policy within a framework of internationally accepted human rights principles. The values underlying the original National Labor Relations Act, according to the author, are most consistent with human rights values. Therefore, rights such as freedom of association and, by extension, collective bargaining should take precedence over the property and speech rights of the employer in the workplace.

{1} NEGOTIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Chris Guthrie, *Procedural Justice Research and the Paucity of Trials*, 2002 J. DISP. RESOL. 127.

The author comments on Deborah Hensler's article, which challenges mediation theory. Noting the necessity of further research in the area of mandatory court mediation, the author argues that current procedural justice studies are inadequate. The author also suggests new avenues of research.

{21} MEDIATION—GENERAL

{127} REQUIREMENTS: MANDATE TO USE

Gillian K. Hadfield, *Privatizing Commercial Law: Lessons from ICANN*, 6 J. SMALL & EMERGING BUS. L. 257 (2002).

Recognizing the strengths of the privatization of commercial law, the author examines how the Internet Corporation for Assigned Names and Numbers (ICANN) utilizes legal rulemaking power and dispute resolution to enhance the efficiency of commercial relationships. The author concludes that several factors limit the success of ICANN, including the ability to restrict resolutions to the particular disputes from which they arise.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{146} ORGANIZATION POLICIES & RULES

M. Susan Hale, Note, *Charge Me, Pay Me, but Don't Even Think of Litigating Me: The Dominance of Arbitration in Truth-in-Lending Claims*, 2 PEPP. DISP. RESOL. L.J. 263 (2002).

Focusing on the enforcement of arbitration agreements in Truth-in-Lending Act (TILA) claims, the author analyzes the impact of arbitration on individuals and on class action procedures. The author discusses the purposes and goals of the TILA and then explains the impact of enforcing mandatory arbitration clauses. Concluding that mandatory arbitration provides a useful method of resolving disputes, the author suggests the necessity of oversight to ensure that consumers receive adequate TILA protection.

{44} ARBITRATION

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

John O. Haley, *Arbitration and Litigation: Litigation in Japan: A New Look at Old Problems*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 121 (2002).

The relatively low litigation rates in Japan can be attributed, in part, to the preference for resolving disputes privately. Individuals avoid formal processes such as litigation and arbitration. However, legal rules still play a role in social ordering. The author argues that the Japanese still resolve their

2002 BIBLIOGRAPHY: ARTICLES

disputes with the law in mind. A minimum amount of litigation is required for society to guide their informal negotiations and dispute resolution.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL

Mark S. Hamilton, Comment, *Sailing the Seas of Obscurity: The Growing Importance of China's Maritime Arbitration Commission*, 3 *ASIAN-PAC. L. & POL'Y J.* 10 (2002).

This Comment argues that China's Maritime Arbitration Commission (CMAC) will assume an increasingly important role in resolving maritime disputes. Thus, it contends that CMAC's unique role in China's legal system merits closer scrutiny by legal scholars and practitioners hoping to understand the importance of Chinese maritime policies. The author examines China's Maritime Code and maritime court system as the framework for understanding CMAC's role in dispute resolution. After evaluating problems that practitioners may encounter, the author offers solutions and concludes that CMAC provides an appropriate forum for the resolution of maritime disputes.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {97} SUBJ MATTER: MARITIME
- {124} COMPARISONS: CROSS-CULTURAL

Neil D. Hamilton, *Broiler Contracting in the United States—a Current Contract Analysis Addressing Legal Issues and Grower Concerns*, 7 *DRAKE J. AGRIC. L.* 43 (2002).

After reviewing broiler chicken growing contracts, the author concludes that industry contracts vary—most biased against the grower. The author notes that many of the contracts contain provisions for arbitration, mediation, or peer review, but that arbitration usually follows an unsuccessful mediation or peer review. The author discusses concerns that growers do not know what method of dispute resolution their contracts provide and that many growers will not use the dispute resolution proceeding because they fear retaliation.

- {44} ARBITRATION—GENERAL
- {86} SUBJ MATTER: FARM
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES
- {147} POWER IMBALANCE

Roger A. Hanson & Richard Becker, *Appellate Mediation in New Mexico: An Evaluation*, 4 J. APP. PRAC. & PROC. 167 (2002).

The New Mexico Court of Appeals implemented a unique appellate-level mediation program. In this article, the authors rely on a recent independent evaluator assessment report and conclude that the New Mexico mediation program effectively saves time and money. The author indicates that other state appellate courts might consider adopting similar mediation programs in order to settle a greater number of cases and to conserve judicial resources.

{21} MEDIATION—GENERAL

{73} UBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Jenny Harbine, Note, *NAFTA Chapter 11 Arbitration: Deciding the Price of Free Trade*, 29 ECOLOGY L.Q. 371 (2002).

The author examines an arbitral panel's decision in *Metalclad Corp v. United Mexican States* finding that Mexico wrongfully blocked Metalclad from opening a hazardous waste facility in violation of the North American Free Trade Agreement (NAFTA). The author briefly discusses the binding arbitration provision in NAFTA's Chapter 11. The author suggests that the *Metalclad* decision may prompt companies to employ NAFTA's arbitration provision as an "offensive threat" against government decisionmakers rather than solely as a defense against government abuse.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

Philip J. Harter, *The Uniform Mediation Act: An Essential Framework for Self-Determination*, 22 N. ILL. U. L. REV. 251 (2002).

The author discusses several aspects of the Uniform Mediation Act (UMA). This description includes an analysis of several substantive and procedural issues and some deficiencies associated with the Act. The author notes that some questions surrounding provisions of the UMA can only be clarified as time passes and through the application of mediation processes. Despite the deficiencies, the author concludes that the UMA clarifies many ambiguities associated with the law governing the confidentiality of mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

2002 BIBLIOGRAPHY: ARTICLES

Kaja Harter-Uibopuu, Note, *Ancient Greek Approaches Towards Alternative Dispute Resolution*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 47 (2002).

The author examines the alternative dispute resolution techniques employed by Ancient Greek society. First, the author describes a scene in Homer's *Iliad* where a dispute arose over who finished second in a chariot race. The author describes the language used to resolve the dispute, and its context in Ancient Greek jurisprudence. Second, the author explores arbitration in Classical Athens. Finally, the author examines arbitration as used to solve disputes between the various city-states of Greece.

{44} ARBITRATION—GENERAL

{125} COMPARISONS: HISTORICAL

Steven Hartwell, *Legal Processes and Hierarchical Tangles*, 8 CLINICAL L. REV. 315 (2002).

Informational systems, such as litigation and negotiation, consist of stages within a hierarchical structure that work most efficiently when the rule of alternating sequential stages and the rule of nonrecursiveness are followed. The failure to follow these rules results in the crash of mechanical systems (such as computers and steam engines), and design errors in human systems (such as families and governments).

{1} NEGOTIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Harvard Law Review, Recent Case, *Arbitration—Standard of Review—Tenth Circuit Rejects Contractual Expansion of Judicial Review of Arbitration Awards*, 115 HARV. L. REV. 1267 (2002).

The article analyzes a Tenth Circuit Court of Appeals holding in *Bowen v. Amoco* that rejected the ability of private parties to contract around the procedural provisions of the Federal Arbitration Act (FAA), which limit judicial review of arbitration awards. The article concludes that the holding mischaracterized the FAA and its primary objective.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

Harvard Law Review, Note, *An Unnecessary Choice of Law: Volt, Mastrobuono, and Federal Arbitration Act Preemption*, 115 HARV. L. REV. 2250 (2002).

This Note addresses the question of contract construction raised by the generic choice-of-law clause and provides a solution that accommodates United States Supreme Court doctrine while respecting the balance between

federal and state interests. Two cases are thoroughly discussed, *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* and *Mastrobuono v. Shearson Lehman Hutton, Inc.*

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

Harvard Law Review, *The Supreme Court, 2001 Term—Leading Cases: Federal Statutes and Regulations: Federal Arbitration Act*, 116 HARV. L. REV. 382 (2002).

The article briefly discusses the decision of the United States Supreme Court in *EEOC v. Waffle House, Inc.* and concludes that the result correctly allows the Equal Employment Opportunity Commission to fulfill its obligation under the law. The article suggests that Congress address the ambiguities raised in *Waffle House*, namely, the conflict between the pro-arbitration policy of the Federal Arbitration Act and the need to enforce civil rights laws.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Adam Hasson, Note, *Domestic Implementation of International Obligations*, 25 B.C. INT'L & COMP. L. REV. 373 (2002).

The author examines the Trade Related Aspects of Intellectual Property Rights (TRIPs) and its relation to international patent protection. TRIPs provides for a binding dispute resolution mechanism missing from other international intellectual property conventions. The author investigates whether the United States has fulfilled its obligations under TRIPs. The author ends with an examination of the effectiveness of TRIPs with regard to world harmonization of patent laws.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Gary Richard Hattal & Cynthia Morrow Hattal, *Battling School Violence with Mediation Technology*, 2 PEPP. DISP. RESOL. L.J. 357 (2002).

The authors discuss various issues concerning school violence. They evaluate valuable mediation methods for battling school violence. Through the Technology Assisted Group Solutions (TAGS) system, students can enter an online chat room to discuss school violence. This provides unlimited, confidential, anonymous, and immediate access for children with problems at

2002 BIBLIOGRAPHY: ARTICLES

school. The authors observe that mediation through computer outreach offers an invaluable tool for resolving conflicts in schools.

- {21} MEDIATION—GENERAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {83} SUBJ MATTER: EDUCATION
- {134} DISPUTE PREVENTION

Roger S. Haydock & Jennifer D. Henderson, *Arbitration and Judicial Civil Justice: An American Historical Review and a Proposal for a Private/Arbitral and Public/Judicial Partnership*, 2 PEPP. DISP. RESOL. L.J. 141 (2002).

This article reviews the history of arbitration in the United States, including an overview of the Federal Arbitration Act. The authors propose a public and private partnership using an arbitration system with judicial review to offer a fair, accessible, enforceable, affordable, and predictable arbitral and judicial process based on due process rights.

- {44} ARBITRATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Stephen L. Hayford & Carroll E. Neesemann, *A Response to RUA Critiques: Codifying Modern Arbitration Law, Without Preemption*, DISP. RESOL. MAG., Summer 2002, at 15.

The authors evaluate the criticisms surrounding the Revised Uniform Arbitration Act (RUA). Recognizing the preemptive nature of the Federal Arbitration Act, the authors argue that the outright ban of mandatory arbitration provisions in employment contracts was not an option before the RUA. In general, the authors find that the procedural safeguards along with the state unconscionably defense and judicial review sufficiently counter the criticisms of the RUA.

- {44} ARBITRATION—GENERAL
- {144} LEGISLATION

L. Camille Hébert, *Introduction—The Impact of Mediation: 25 Years After the Pound Conference*, 17 OHIO ST. J. ON DISP. RESOL. 527 (2002).

This article relates the introductory remarks for the Ohio State Journal on Dispute Resolution Symposium on the impact of mediation resulting from the Pound Conference held over twenty-five years ago. The author comments on the Pound Conference and articulates the goals of the symposium, which include ascertaining the development of mediation over the past twenty-five

years. The article also serves as a roadmap for the articles that follow in the journal.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Timothy J. Heinsz et al., *Student Project: The Uniform Arbitration Act Update*, 2002 J. DISP. RESOL. 467 2002.

This article introduces several student notes, which overview recent developments in case law and practice, under the Uniform Arbitration Act. Topics discussed include adhesion contracts, judicial review of arbitral awards, and the scope of arbitration clauses.

{44} ARBITRATION—GENERAL

{144} LEGISLATION

Scott R. Helton, Comment, *The Legal Problems of Spent Nuclear Fuel Disposal*, 23 ENERGY L.J. 179 (2002).

Congress passed the Nuclear Waste Policy Act, in order to address the disposal of nuclear waste. The author discusses issues that arose under Department of Energy (DOE) contracts with the utility companies regarding waste disposal. These contracts included dispute resolution clauses. However, problems occurred when disposal did not take place on time and the utilities sought judicial intervention while the DOE sought to enforce the dispute resolution clauses.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

Deborah R. Hensler, *Suppose Its Not True: Challenging Mediation Ideology*, 2002 J. DISP. RESOL. 81.

While more civil disputes are being mediated, no clear evidence exists that Americans prefer mediation over traditional adversarial litigation. The author cites studies showing that most people value a fair process over a result in their favor. Based on this preference, the author suggests reforms for court alternative dispute resolution programs that include providing enough judicial resources to try cases quickly, and giving disputants options such as evaluative mediation, non-binding arbitration, and early neutral evaluation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Stanly S. Herr, *The Americans with Disabilities Act: Reforming Disability Nondiscrimination Laws: A Comparative Perspective*, 35 U. MICH. J.L. REFORM 305 (2001).

The author looks at the Americans with Disabilities Act (ADA) and similar statutes from Israel, the United Kingdom, and Sweden. The author finds that the use of alternative dispute resolution (ADR) methods can minimize disability discrimination. Recognizing the importance of litigation and administrative remedies in ending disability discrimination, the author notes the viability of ADR methods in ADA disputes in comparison to the drawbacks of litigation—namely low success rates and little Supreme Court backing.

{73} SUBJ MATTER: GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{124} COMPARISONS: CROSS-CULTURAL

Holger P. Hestermeyer, *The Invalidity of ICANN's UDRP Under National Law*, 3 MINN. INTELL. PROP. REV., N.1 2002, at 1.

This article discusses problems with the dispute resolution system of the Internet Corporation for Assigned Names and Numbers (ICANN). The Uniform Domain Name Dispute Resolution Policy (UDRP) was developed to deal with cybersquatting. The author describes the UDRP and then uses the French and German legal systems to demonstrate the UDRP's jurisdiction and forum problems. Finally the author recommends that the UDRP be translated into other languages besides English, and that the UDRP should be put into traditional legal form by passing it as a treaty.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{146} ORGANIZATION POLICIES & RULES

Emily J. Huitsing, Note, *The Ability of Native America Tribes to Waive Their Tribal Sovereign Immunity in Clear and Unequivocal Contracts to Arbitrate*, 2002 J. DISP. RESOL. 213.

The author discusses Native American tribal immunity from lawsuits on contracts made on or off a reservation. Because tribal immunity represents the principles of sovereignty and tribal economic development, a tribe must clearly waive its immunity to be subject to a lawsuit unless Congress expressly authorizes the suit. Although the United States Supreme Court has expressed its dissatisfaction with the doctrine in light of increased tribal economic self-sufficiency through successful business ventures, the author concludes that the Court has balanced the competing policy interests behind tribal sovereign immunity and the preservation of an express contract to

arbitrate a contract.

{44} ARBITRATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

Emily J. Huitsing, Note, *Retaining Bargained-For Finality and Judicial Review in Labor Arbitration Decisions: Dual Interests Preserved in Major League Baseball Players Ass'n. v. Garvey*, 2002 J. DISP. RESOL. 453.

The author evaluates the decision of the United States Supreme Court in *Major League Baseball Players Ass'n. v. Garvey*. After outlining the court's rationale, the author concludes that the decision lacks clear standards for determining when courts can overrule arbitration awards.

{44} ARBITRATION—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jonathan M. Hyman & Lela P. Love, *If Portia Were a Mediator: An Inquiry Into Justice in Mediation*, 9 CLINICAL L. REV. 157 (2002).

Critics of mediation claim that mediation rather than adjudication sacrifices justice. The article begins with a discussion of various approaches to justice. *The Merchant of Venice*, by Shakespeare, aids in exploring the limits of justice in adjudication and in evaluating mediation as a desirable alternative. Some actual mediations are presented to examine the interplay of justice in resolving specific issues, and the article concludes with an analysis of the effects of this research on clinical legal education.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Paul M. Janicke, *The Future of Patent Law: "Maybe We Shouldn't Arbitrate": Some Aspects of the Risk/Benefit Calculus of Agreeing to Binding Arbitration of Patent Disputes*, 39 HOUS. L. REV. 693 (2002).

The article analyzes the ramifications of submitting patent disputes to arbitration in light of three important factors. Specifically, the author addresses the following: (1) to what extent courts order arbitration and recognize arbitral awards based on the central issues of patent validity and patent scope, (2) to what extent an arbitrator can impose injunctive relief against ongoing patent infringement or breach of license agreements, and (3) to what extent arbitration creates situations of issue or claim preclusion.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

2002 BIBLIOGRAPHY: ARTICLES

Richard Jeydel, *Consolidation, Joinder and Class Actions: What Arbitrators and Courts May and May Not Do*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 24.

This article discusses the current state of the law with regard to consolidation, joinder, and class actions in the arbitration field. The author notes that the Federal Arbitration Act makes no mention of these issues, but that some states have either laws or precedent on point.

{44} ARBITRATION—GENERAL

Carl H. Johnson & Pete D.A. Petersen, *Is the Revised Uniform Arbitration Act a Good Fit for Alaska?*, 19 ALASKA L. REV. 339 (2002).

Alaska adopted the gap-filled Uniform Arbitration Act (UAA) in 1968, which the Revised Uniform Arbitration Act of 2000 (RUAA) sought to remedy. A discussion of these gaps and the codification of the RUAA begins the article. Specific RUAA provisions that clarify the original UAA are highlighted, many of which have been addressed by the Alaska Supreme Court. Comparing the court's precedent to possible solutions in the RUAA leads to the conclusion that the RUAA is consistent with Alaska case law and should therefore be adopted.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{144} LEGISLATION

Ray Jones, Note, *NAFTA Chapter 11 Investor-to-State Dispute Resolution: A Shield to be Embraced or a Sword to be Feared?*, 2002 BYU L. REV. 527.

The author argues that Chapter 11 allows foreign investors to attack North American Free Trade Agreement (NAFTA) countries. Recommendations for possible amendments focus on the dispute resolution regime within Chapter 11. The author suggests that the addition of procedural safeguards to the arbitration process of Chapter 11 would aid in the prevention of vexatious litigation and meritless claims.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{87} SUBJ MATTER: GOV'T

Susan L. Karamanian, *The Road to the Tribunal and Beyond: International Commercial Arbitration and United States Courts*, 34 GEO. WASH. INT'L L. REV. 17 (2002).

The article analyzes international commercial arbitration in the United States in light of the New York Convention. By acceding to the New York Convention, the United States took a giant step and joined the international

community in promoting international commercial arbitration. Arbitration provides prompt dispute resolution without requiring American businesses to deal with unfamiliar foreign judicial procedures. The author discusses the benefits of this step for the United States, as well as problematic issues in the international arbitration process.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Naomi Karp & Erica Wood, *MEDispute: Resolving Health Care Conflicts: Confidential from General Counsel to CEO: "I'm fed up, and we're not going to take this anymore!"*, 5 J. HEALTH CARE L. & POL'Y 283 (2002).

This article seeks to identify and assess the internal practices of health plans for resolving enrollee-plan disputes, in the private commercial arena, as well as in Medicare and Medicaid, and to evaluate workable options for improving the process. It highlights the selected results of an eighteen-month study by the American Bar Association Commission on Legal Problems of the Elderly in managed care internal dispute resolution practices. At its conclusion, the authors assess what they learned and translate their findings into practical guidance for the future. This article also covers selected cross-cutting themes that the authors identified and offers suggestions for strengthening health plan dispute resolution.

{1} NEGOTIATION—GENERAL

{91} SUBJ MATTER: INSURANCE

Bryan A. Kelley, Note, *The Right to Die: Definitional Inquiry and the Search for Truth*, 2 PEPP. DISP. RESOL. L.J. 285 (2002).

The author proposes that alternative dispute resolution techniques are particularly useful in the right-to-die debate because of the elusive definitions in medical ethics, such as "vegetative state," "terminally ill," and "life-sustaining." The author concludes that mediation techniques are most appropriate in this arena. A mediator who understands the interaction of law, medicine, and morality will be able to successfully pursue acceptable definitions without demanding that interested groups concede strongly held beliefs.

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{138} ETHICS: GENERAL

2002 BIBLIOGRAPHY: ARTICLES

Patrick D. Kelley, Note, *Emerging Patterns in Arbitration Under the Uniform Domain-Name Dispute-Resolution Policy*, 17 BERKELEY TECH. L.J. 181 (2002).

The author discusses the Uniform Domain-Name Dispute-Resolution Policy (UDRP), an alternative to litigation and arbitration for claims of trademark infringement against domain name owners. Two current criticisms of the UDRP are bias in favor of trademark holders resulting from forum shopping and problems with the processes and procedures of the UDRP. The author's recommendations include requiring the use of a three member panel and creating an UDRP-based appellate process.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Jeremy Kennedy, Comment, *The Supreme Court Swallows a Legal Fly: Consequences for Employees as the Scope of the Federal Arbitration Act Expands*, 33 TEX. TECH L. REV. 1137 (2002).

The author argues that the Federal Arbitration Act (FAA) was not designed to apply to employment contracts. After an analysis of the history of the passage of the FAA, the author focuses on the decision of the United States Supreme Court in *Circuit City Stores, Inc. v. Adams*. The author concludes that the negatives of arbitration, in the employment context, outweigh the positives, but that the current use of arbitration, absent Congressional action will remain intact.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Kressel Kenneth et al., *Managing Conflict in an Urban Health Care Setting: What do "Experts" Know?*, 5 J. HEALTH CARE L. & POL'Y 364 (2002).

This article reports the findings of a study analyzing the impact of informal health care "mediators" in an urban hospital setting. The three main issues analyzed are as follows: (1) what types of conflicts do informal hospital conflict managers attempt to resolve, (2) what do conflict managers perceive to be the causes of destructive conflict in the hospital, and (3) what strategies of intervention do conflict managers use and what concepts guide their interventions.

{21} MEDIATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

Kwang-Rok Kim, *How Do You Settle Business Disputes with Koreans?: The Advent of A New Amendment to the Korean Arbitration Act*, 15 TRANSNAT'L LAW. 227 (2002).

The author proposes that international commercial arbitration cannot fully function without an understanding of the opposing country's arbitration act. The author provides a detailed overview of the Korean Arbitration Act (KAA). The author concludes that although the KAA generally complies with the recommended clauses of the Model Law on Commercial Arbitration established by the United Nations Commission on International Trade Law (UNCITRAL), some aspects of the KAA need to be updated and amended.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Lisa A. Kloppenberg, *Implementation of Court-Annexed Environmental Mediation: The District of Oregon Pilot Project*, 17 OHIO ST. J. ON DISP. RESOL. 559 (2002).

The author, using the Oregon District Court as an example, discusses some important factors and shortcomings present mediation as it relates to environmental conflict resolution. The article explains the difficulties in providing public policy mediation for environmental cases because of the current structure of the courts and lack of knowledge of court personnel. The article also discusses the amenability of particular environmental issues to mediation.

{21} MEDIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{133} COURT REFORMS

Robert Kraemer, Comment, *Attorney Client Conundrum: The Use of Arbitration Agreements for Legal Malpractice in Texas*, 33 ST. MARY'S L.J. 909 (2002).

The author addresses the enforceability of pre-dispute arbitration clauses in attorney-client contracts. Texas courts have issued differing opinions on whether an attorney can compel arbitration of malpractice disputes through an arbitration clause in client contracts. In order to provide clearer guidance to Texas attorneys regarding attorney-client arbitration agreements, the author recommends the issuance of an ethics opinion by the Texas Bar, and a change to the Texas Disciplinary Rules of Professional Conduct.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

{127} REQUIREMENTS: MANDATE TO USE

2002 BIBLIOGRAPHY: ARTICLES

Jacob J. Kramer, Comment, *Waive Goodbye: Choice Clauses, the Internet, Consumer Protection, and Other Issues Concerning the Unwary Investor*, 16 EMORY INT'L L. REV. 227 (2002).

The author notes a shift within courts from a concern for protecting investors to a preference for private agreement and concludes the courts should return to their policy of protecting the unsophisticated investor. The author discusses several United States Supreme Court cases where the Court initially found an arbitration agreement improperly limited the investors right to select a forum and latter reversed this decision—holding that investors could waive procedural provisions such as the forum.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{106} SUBJ MATTER: SECURITIES

{125} COMPARISONS: HISTORICAL

Sarah Krieger, Note, *The Dangers of Mediation in Domestic Violence Cases*, 8 CARDOZO WOMEN'S L.J. 235 (2002).

The increasing tendency to resolve domestic violence cases through mediation results in a privatization of a problem that the battered women's movement fought for decades to publicize. The author argues that mediation negatively impacts the legislative battle to protect women from violence because it shields men domestic violence perpetrators from public view and public condemnation.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Timothy C. Krsul, *The Limits on Enforcement of Arbitral Third-Party Subpoenas: Should they be Loosened?*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 30.

The author discusses the ability of arbitrators to issue subpoenas for discovery. The lack of statutes authorizing arbitrators to issue subpoenas creates difficulties in conducting discovery because courts are reluctant to mandate discovery in arbitrations. The author evaluates the current state of the law, with regard to arbitral third-party subpoenas, and addresses potential changes to the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

Krzysztof Kuik, *Recent Developments in EU/US Trade Relations*, 79 U. DET. MERCY L. REV. 433 (2002).

Noting the interrelated nature of the United States and European Union economies, the author discusses how regulatory decisions can lead to conflicts and disagreements. The author argues that international trade law

fails to allow for legitimate policy choices or differing political approaches when resolving a dispute. The author briefly indicates that the dispute resolution system of the World Trade Organization could fill this gap.

- {1} NEGOTIATION—GENERAL
- {74} SUBJ MATTER: ANTITRUST
- {75} SUBJ MATTER: COMMERCIAL
- {87} SUBJ MATTER: GOV'T

D. Aaron Lacy, *Alternative Dispute Resolution or Appropriate Dispute Resolution: Will ADR Help or Hurt the EEO Complaint Process?*, 80 U. DET. MERCY L. REV. 31 (2002).

This article begins by describing the hardships with regard to filing an Equal Employment Opportunity (EEO) complaint in the 1990s. Due to a sharp rise in the number of complaints filed during the final decade of the twentieth century, the Equal Employment Opportunity Commission (EEOC) became backlogged and could not properly fulfill its duties. Therefore, new regulations were passed in 1999 that called for the use of alternative dispute resolution (ADR) in reviewing EEO complaints. With this as a backdrop, the author then provides a brief history of ADR in the federal government and the benefits gained by governmental agencies who utilize ADR processes. The author also notes that there are barriers to the use of ADR by governmental employers, such as lack of experience with ADR and inadequate funding for ADR programs. Finally, the author cites statistics prepared by the government stating that ADR costs less for both sides, takes less time to resolve the dispute, and provides higher settlement awards for complainants than that of traditional litigation.

- {44} ARBITRATION—GENERAL
- {87} SUBJ MATTER: GOV'T
- {94} SUBJ MATTER: LABOR—DISCRIMINATION
- {144} LEGISLATION

Jennifer LaFond, Note, *The Private Enforcement of Public Laws in Armendariz v. Foundation Health Psychcare Services*, 29 PEPP. L. REV. 401 (2002).

In *Armendariz v. Found. Health Psychcare Services, Inc.*, the California Supreme Court held that employers can mandate an agreement to arbitrate as a condition of employment, subject to certain conditions. These conditions make employment arbitration fairer, but more expensive, time intensive, and less final. This note discusses *Armendariz* and its influence on employment

arbitration in California

- {44} ARBITRATION—GENERAL
- {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
- {144} LEGISLATION
- {136} ECONOMIC ADVANTAGES OF ADR

John Lande, *Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs*, 50 UCLA L. REV. 69 (2002).

In this article, the author offers insight into good-faith participation in the mediation process. Specifically, the author argues that rules mandating good faith would not be particularly useful because of the difficulty in establishing a definition for good faith and the potential for frivolous claims of bad faith. In order to remedy bad faith in mediation, the author suggests that courts use dispute system design process in order to ensure good faith. The advantages of a dispute system design process insures consideration of each participants interests. The author then points out how a court would create a dispute system design process.

- {21} MEDIATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {133} COURT REFORMS

James K.L. Lawrence, *Collaborative Lawyering: A New Development in Conflict Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 431 (2002).

The “collaborative lawyering” method developed by the Collaborative Law Center in Cincinnati provides a mediation tool that focuses the lawyer towards settlement instead of trial. A participation agreement covers the entire process, mandating that the scope of the involvement by the lawyer extends only to settlement purposes. The author discusses the benefits of “collaborative lawyering” as a problem-solving and client-focused method, including its unique diverging ethical implications for lawyer-advocates, and its potential uses outside of mediation.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {151} ROLE OF LAWYERS

Michael H. LeRoy & Peter Feuille, *When Is Cost an Unlawful Barrier to Alternative Dispute Resolution? The Ever Green Tree of Mandatory Employment Arbitration*, 50 UCLA L. Rev. 143 (2002).

This article explores the impact that money has on the interface between public and private forums of workplace dispute resolution. As a condition of employment, many employers require employees to sign mandatory

arbitration agreements, which at times require employees to pay for portions of the arbitration. Consequently, situations arise where individuals, who have no recourse to sue, cannot pay for alternative forms of dispute resolution. In response to these situations, courts have recently begun to closely scrutinize employment contracts. This article provides one of the first empirical studies of federal court decisions where employees asserted cost challenges to preclude enforcement of mandatory arbitration agreements.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{125} COMPARISONS: HISTORICAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Tracey I. Levy, *Collective Bargaining in the Elite Professions—Doctors' Application of the Labor Law Model to Negotiations with Health Plan Providers*, 13 U. FLA. J.L. & PUB. POL'Y 269 (2002).

Recently, there has been a movement among physicians to unionize in an effort to facilitate negotiations, with health care plan providers, regarding reimbursement and patient care. In order to unionize, physicians must overcome antitrust concerns, the National Labor Relations Act, and decisions of the National Labor Relations Board.

{1} NEGOTIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

John M. Livingood, *Reframing and Its Uses: A Close Look at "Reframing"—One of the Most Powerful Tools in a Conflict Resolution Practitioner's Tool Kit*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 42.

The author discusses the concept of "reframing" as used within the alternative dispute resolution community. Reframing involves the restructuring of a dispute in terms suitable for resolution. The author focuses on the use of "reframing" to restate comments made by disputing parties and provides several practical suggestions.

{21} MEDIATION—GENERAL

Jennifer J. Llewellyn, *Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice*, 52 U. TORONTO L.J. 253 (2002).

Residential school abuse cases involve complex relationships, a high interest level of non-parties, such as communities, and a lack of clear boundaries between victims and perpetrators. Because traditional alternative dispute resolution (ADR) procedures, such as mediation and negotiation, rely on the same adversarial principles as the trial system, these ADR practices are inadequate responses to the problem. The author advocates a restorative

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justice process, as an alternative to mainstream ADR, because of its focus on restoring relationships.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Ira B. Lobel & Brian L. Lobel, *Labor Negotiations and the International Arena*, DISP. RESOL. J., Feb.–Apr. 2002, at 56.

The authors compare and contrast basic rules of labor relations to those of international relations. They argue that many of the lessons that have been learned in the labor field may be applied to the international arena. For example, the authors examine the application of successful labor dispute negotiation tools to the Arab-Israeli conflict. They conclude that the dynamics, goals, and approaches in labor disputes may be successfully applied to international disputes.

{93} SUBJ MATTER: LABOR—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Tracie B. Loring, Comment, *An Analysis of the Informational Privacy Protection Afforded by the European Union and the United States*, 37 TEX. INT'L L.J. 421 (2002).

This comment supplies an overview of privacy law pertaining to information. It presents a historical account of the emergence of privacy law in the European Union and the United States. It provides an in-depth examination of the European Union Directive and a discussion of its ramifications in the marketplace. It also addresses the implications of Title V of the Gramm-Leach-Bliley Financial Modernization Act (GLBA). Finally, it outlines the United States Safe Harbor Principles and explains the reasons behind the limited acceptance of the safe harbor by companies in the United States.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{110} SUBJ MATTER: TORTS—OTHER

Lela Porter Love, *Twenty-Five Years Later with Promises to Keep: Legal Education in Dispute Resolution and Training of Mediators*, 17 OHIO ST. J. ON DISP. RESOL. 597 (2002).

Since the Pound Conference in 1976, legal education in dispute resolution and mediation training has changed immensely. The author describes many examples of progress in the field of alternative dispute resolution education. The author also outlines some of the potential dangers that this exponential

growth may pose to the field. The author concludes by offering suggestions for achieving continued positive growth in the field.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {125} COMPARISONS: HISTORICAL

William Lovett, *Reflections on the World Trade Organization WTO DOHA Ministerial: Bargaining Challenges and Conflicting Interests: Implementing the DOHA Round*, 17 AM. U. INT'L L. REV. 951 (2002).

This article focuses the World Trade Organization (WTO) and international trade in a post September 11th world. Particularly, the author focuses on how the United States can rebound from the international trade disadvantages brought about by terrorism within its own borders. The author emphasizes that the United States needs to proceed with caution in WTO negotiations, as the deck is stacked against American trade interests after the General Agreement on Tariffs and Trade (GATT). Finally, the author reflects on the struggles of the international finance regime, which much face the challenges of such negative factors as rouge states, deficits, and terrorism.

- {1} NEGOTIATION—GENERAL
- {92} SUBJ MATTER: INT'L

William P. Lynch, *Problems with Court-Annexed Mandatory Arbitration: Illustrations from the New Mexico Experience*, 32 N.M. L. REV. 181 (2002).

This article examines the ineffectiveness of court-annexed mandatory arbitration in New Mexico since adoption by local rule in the two largest judicial districts. The author suggests that court-annexed mandatory arbitration's good faith requirement and fee shifting provisions infringe upon litigants' constitutional rights, including the right to a jury trial, due process, and equal protection. Recognizing these problems, the author recommends easing docket congestion by voluntary court-annexed arbitration, mediation, early neutral evaluation, and other alternative dispute resolution processes.

- {44} ARBITRATION—GENERAL
- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {127} REQUIREMENTS: MANDATE TO USE
- {133} COURT REFORMS

Julie Macfarlane, *Culture Change? A Tale of Two Cities and Mandatory Court-Connected Mediation*, 2002 J. DISP. RESOL. 241.

This study focuses on the development of mandatory court-annexed mediation. Incorporating interviews with individuals possessing diverse theoretical insights into the role of mediation in the civil litigation setting, MacFarlane formulates five attitudes regarding mediation and draws on these

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attitudes to articulate how participants view mediation and evaluate the impact of mediation on the civil litigation process.

{21} MEDIATION—GENERAL

{127} REQUIREMENTS: MANDATE TO USE

Margaret M. Maggio & Richard A. Bales, *Contracting Around the FAA: The Enforceability of Private Agreements to Expand Judicial Review of Arbitration Awards*, 18 OHIO ST. J. ON DISP. RESOL. 151 (2002).

The United States Supreme Court has been silent on the subject of contractually expanding judicial review of arbitral awards. The Federal Arbitration Act (FAA) constrains judicial review. Typically courts interpret the FFA to allow judicial review of arbitral awards where both parties agree to the review. However, lower courts have split over whether parties may contract around FAA's provisions to provide more judicial review. The author argues that courts should enforce these contract provisions because judicial review is within the spirit and public policy of the FAA.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Allison Ma'luf, *A Mediation Nightmare?: the Effect of the North Carolina Supreme Court's Decision in Chappell v. Roth on the Enforceability and Integrity of Mediated Settlement Agreements*, 37 WAKE FOREST L. REV. 643 (2002).

The author examines mediation settlement agreements and their impact under contract law. The note focuses on the North Carolina Supreme Court's decision in *Chappell v. Roth*, which held a mediated settlement agreement unenforceable. The author concludes that the North Carolina Supreme Court's strict application of contract principles limits the overall effectiveness of the court-ordered mediation settlement program in North Carolina.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{127} REQUIREMENTS: MANDATE TO USE

Leonard J. Marcus, *"MEDispute: Resolving Health Care Conflicts": A Culture of Conflict: Lessons From Renegotiating Health Care*, 5 J. HEALTH CARE L. & POL'Y 447 (2002).

The author discusses the obstacles and successes of incorporating alternative dispute resolution methods into the health care system. The author gives an overview of a problem-solving method (the Walk in the Woods) which allows parties with common goals to focus on four types of interests to resolve disputes. The author concludes that improving the quality of the

negotiation process will improve the quality of the decisions made and actions taken in health care.

- {1} NEGOTIATION—GENERAL
- {91} SUBJ MATTER: INSURANCE

Carol J. Marshall, *Naming the Game: Should Mediation Wear the ADR Label?*, DISP. RESOL. J., May–July 2002, at 33.

Has mediation been misclassified as a form of alternative dispute resolution (ADR)? This is the question posed by Marshall. She answers by stating that mediation does not really resolve a conflict, but offers a chance to escape from the dispute, so it may not be properly classified as a form of ADR. However, she hypothesizes that no compelling reason exists for changing the classification, only a need for better education about the nature of mediation to the participants.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Mary Shannon Martin, Note, *Keep It Online: The Hague Convention and the Need for Online Alternative Dispute Resolution in International Business-to-Consumer E-Commerce*, 20 B.U. INT'L L.J. 125 (2002).

Recognizing the difficulty in determining jurisdiction in a dispute over international business-to-consumer (B2C) electronic commerce (e-commerce) contracts, this article examines the different approaches to the disputes by the United States and the European Union. The author proposes that by entering into an online contract, such as a B2C, an individual submits to a form of "online jurisdiction." This online jurisdiction would provide a convenient forum for all parties to utilize various methods of online alternative dispute resolution. The effectiveness of these solutions in dealing with the jurisdictional problems of e-commerce disputes is discussed, and the author posits the best situation would be to keep online problems online.

- {44} ARBITRATION—GENERAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {92} SUBJ MATTER: INT'L

Bobbi McAdoo, *A Report to the Minnesota Supreme Court: The Impact of Rule 114 on Civil Litigation Practice in Minnesota*, 25 HAMLIN L. REV. 401 (2002).

This article reports on the survey of Minnesota attorneys by the State's Alternative Dispute Resolution (ADR) Review Board. The survey resulted from a charge by the Minnesota Supreme Court to evaluate the effect of Rule 114, which requires mandatory consideration of the ADR statewide. The

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article provides an executive summary of the research and recommendations.

- {21} MEDIATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {128} REQUIREMENTS: STATUTORY OR RULES
- {133} COURT REFORMS

Craig A. McEwen & Roselle L. Wissler, *Finding Out If It Is True: Comparing Mediation and Negotiation through Research*, 2002 J. DISP. RESOL. 131.

The authors evaluate mediation as part of the litigation context by reviewing current research and proposing new questions for study. The authors suggest that, before determining whether or not participants view mediation in pre-trial litigation as increasing procedural fairness, research must be conducted evaluating the perceptions of parties involved in mediated pre-trial litigation compared to parties involved in pre-trial negotiation without a neutral mediator.

- {1} NEGOTIATION—GENERAL
- {21} MEDIATION—GENERAL
- {127} REQUIREMENTS: MANDATE TO USE

Charles L. Measter & Peter Skoufalos, *The Increasing Role of Mediation in Resolving Shipping Disputes*, 26 TUL. MAR. L.J. 515 (2002).

After a historical explanation of the use of alternative dispute resolution (ADR) in maritime disputes and the use of mediation in general, the authors delve into the increasing role mediation plays in maritime disputes. The authors argue that arbitration, which had become the primary form of ADR used in resolving maritime conflicts, has proven overly costly, time consuming, and inefficient. As an alternative, the authors encourage the use of mediation because it resolves problems quickly while focusing on finding solutions acceptable to disputants without confining them to the resolution of legal rights.

- {21} MEDIATION—GENERAL
- {97} SUBJ MATTER: MARITIME

Carrie Menkel-Meadow, *Access to Justice: The Social Responsibility of Lawyers: When Litigation is Not the Only Way: Consensus Building and Mediation as Public Interest Lawyering*, 10 WASH. U. J.L. & POL'Y 37 (2002).

In this article, Professor Menkel-Meadow argues that the traditional adversarial nature of the Anglo-Saxon legal system is not properly suited to further the public interest. Expanding on theories set forth by Stuart Hampshire, Professor Menkel-Meadow articulates that fair procedural

practices further justice by ensuring that all sides are heard. With these thoughts in mind, the author advocates that certain forms of conflict resolution are better than others in certain situations. In order to pursue the public interest in a world that has many gray areas, mediation and consensus building provide effective alternatives to traditional litigation.

{21} MEDIATION—GENERAL

Sally Engle Merry, Comment, *Commentary: Moving Beyond Ideology Critique to the Analysis of Practice*, 27 LAW & SOC. INQUIRY 609 (2002).

Globalization has caused an increase in the use of alternative dispute resolution (ADR) procedures worldwide. ADR reforms need to embody the principles of harmony and consensus based upon the structure of power relationships within which it operates. The author discusses several examples of social movements in specific countries, and the way ADR and Western influence has shaped the focus of these movements.

{73} SUBJ MATTER: GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Elizabeth Mertz, *Editor's Introduction: Current Illusions and Delusions about Conflict Management-In Africa and Elsewhere*, 27 LAW & SOC. INQUIRY 567 (2002).

Introducing a series of articles, this author summarizes the major themes involving conflict management. The editor notes that all the authors agree that in general problems exist within in the field of alternative dispute resolution (ADR). They also agree that the exportation of ADR to other parts of the world, travels under a deceptive "cover" of neutrality which can have destructive effects.

{73} SUBJ MATTER: GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Wendy Miles, *International Arbitrator Appointment One vs. Three, Lawyer vs. Nonlawyer*, DISP. RESOL. J., Aug.–Oct. 2002, at 36 (2002).

International arbitration presents a different context than does domestic arbitration. In the international context an arbitral tribunal may be preferable to a sole arbitrator, and an expert lawyer may be more effective than a nonlawyer expert. This article compares national arbitration laws to rules of international arbitral institutions in an effort to understand these preferences.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Mary Mills, *Conflict in Health Care Organizations*, 5 J. HEALTH CARE L. & POL'Y 502 (2002).

This article examines the sources of conflict in the health care field and the common approaches to resolution. Critiquing poor dispute resolution mechanisms, the author recommends alternative approaches. The article suggests that conflict resolution, in the health care setting, requires a top down approach of setting expectations and providing mechanisms by which disputes can receive early attention. Suggestions include: team building, workplace mediation, academic training in negotiation, and conflict resolution.

{1} NEGOTIATION—GENERAL
 {21} MEDIATION—GENERAL
 {89} SUBJ MATTER: HOSPITALS

Neal Milner, *Commentary: Illusions and Delusions about Conflict Management-In Africa and Elsewhere*, 27 LAW & SOC. INQUIRY 621 (2002).

A critique of an article by Laura Nader and Elisabetta Grande, the author points out several potential weaknesses, including that they present little evidence of alternative dispute resolution's (ADR) consequences, particularly ADR's impact on developing countries. The author encourages educators to make greater attempts to show how contemporary scholarly understandings of the interaction between global and local spheres apply to the movement of ADR.

{73} SUBJ MATTER: GENERAL
 {92} SUBJ MATTER: INT'L
 {124} COMPARISONS: CROSS-CULTURAL
 {125} COMPARISONS: HISTORICAL

Martha Minow, *Isaac Marks Memorial Lecture: Education for Co-Existence*, 44 ARIZ. L. REV. 1 (2002).

The article describes various methods and teaching strategies for teaching conflicting groups how to co-exist in a post September 11th political climate. This educational program's premise of trust through understanding takes the following forms: conflict resolution, education through social contact, education in human rights, education through moral reasoning, and education in the histories of intergroup conflicts. The author also provides observations on the effectiveness and criticisms of various aspects of these programs.

{21} MEDIATION—GENERAL
 {83} SUBJ MATTER: EDUCATION
 {134} DISPUTE PREVENTION

Robert H. Mnookin & Eleanor Maccoby, *Facing the Dilemmas of Child Custody*, 10 VA. J. SOC. POL'Y & L. 54 (2002).

This article evaluates the four central themes of gender differentiation in parental roles. Themes include legal conflict, children's contact with both parents over time, and the implication of co-parenting relationships on the well-being of children whose parents divorce. In conclusion, the authors provide a framework for divorcing parents and policy makers to evaluate the divorce dispute process while considering the implications of the four central themes.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Eric Montalvo, Comment, *Operational Encroachment: Woodpeckers and their Congressman*, 20 TEMP. ENVTL. L. & TECH. J. 219 (2002).

The author briefly presents the problems and dangers associated with the contentious relationship between government and citizens groups seeking injunctive relief to protect the environment. By establishing that litigation wastes valuable resources, the author supports the establishment of an alternative forum focusing on environmental stewardship. The creation of an alternative dispute resolution (ADR) forum would enhance compliance and provide an opportunity for developing proactive approaches to unique problems. Further, the ADR forum would provide an opportunity for understanding beneficial to both sides of the issue.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{127} REQUIREMENTS: MANDATE TO USE

Donald L. Morgan, *Implications of the Proliferation of International Legal Fora: The Example of the Southern Bluefin Tuna Cases*, 43 HARV. INT'L L.J. 541 (2002).

The author discusses the implications of the expansion of international bodies for dispute resolution. The *Southern Bluefin Tuna* cases served as a case study to examine the fragmentation of international law and the negative implications of fragmentation. The author suggests that the current system of international dispute resolution gives rise to forum shopping and difficulties in determining jurisdiction.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

2002 BIBLIOGRAPHY: ARTICLES

Todd M. Murphy, Comment, *Crossroads: Modern Contract Dissatisfaction as Applied to Songwriter and Recording Agreements*, 35 J. MARSHALL L. REV. 795 (2002).

Forming publishing and recording contracts, in the music industry, involves developing relationships between songwriters and publishers and transferring rights to the works composed under the contract. Given the disputes that arise when attempting to interpret and terminate such contracts, the author recommends the use of mediation during contract negotiations and the inclusion of arbitration clauses to ensure that disputes are heard by professionals knowledgeable of the music industry.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Cynthia Murray, *Contractual Expansion of the Scope of Judicial Review of Arbitration Under the Federal Arbitration Act*, 76 ST. JOHN'S L. REV. 633 (2002).

The author examines a recent circuit split over the ability of parties to contractual expand the grounds for judicial review under the Federal Arbitration Act (FAA). The author concludes that the policies underlying expansion of such review consistently coincide with the underlying purpose of the FAA to enforce contracts according to their terms.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Laura Nader, *A Wide-Angle on Dispute Management*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 37 (2002).

The author indicates that alternative dispute resolution is not universally desired. The author discusses consequences of false distinctions between scholarship, legal practice, and the role of the media and allied institutions. The author suggests that such distinctions ignore the intersections between law and society.

{21} MEDIATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Laura Nader & Elisabetta Grande, *Current Illusions and Delusions About Conflict Management-In Africa and Elsewhere*, 27 LAW & SOC. INQUIRY 573 (2002).

Finding the imposition of American alternative dispute resolution (ADR) as a condition for foreign aid or capital investment problematic, the authors urge

a more sophisticated analysis of the power dimensions and ideological basis of ADR. Noting that American ADR ignores substantive issues central to conflict management in African and other communities, the authors argue for a broader perspective in analyzing the global ADR revolution.

- {73} SUBJ MATTER: GENERAL
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL
- {125} COMPARISONS: HISTORICAL

Laura Nader & Elisabetta Grande, *Reply: Current Illusions and Delusions About Conflict Management-In Africa and Elsewhere*, 27 LAW & SOC. INQUIRY 631 (2002).

In responding to comments on their article, *Current Illusions and Delusions About Conflict Management-In Africa and Elsewhere*, the authors explain that the article responds to the lack of understanding by most dispute resolution professionals of the significance or consequence of their work in a larger sense. The authors respond individually to each of the commentaries. And emphasize that mediation should not be used in lieu of remedying institutionalized discriminatory practices that may result from treating everyone as if they are equal when they are not.

- {73} SUBJ MATTER: GENERAL
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL
- {125} HISTORICAL

James A.R. Nafziger, *Comparative Dispute Resolution: A New Look*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 11 (2002).

The article introduces the topics discussed at the fiftieth anniversary meeting of the American Society of Comparative Law. The topics included ancient Greek arbitration, Japanese litigation, multicultural disputes, institutionalized settlement as a revival of historic experience in England, and variations of international commercial arbitration. The article, also, explains the importance of cultural comparative studies as well as in the context of dispute resolution.

- {44} ARBITRATION—GENERAL
- {83} SUBJ MATTER: EDUCATION
- {92} SUBJ MATTER: INT'L
- {124} COMPARISONS: CROSS-CULTURAL

2002 BIBLIOGRAPHY: ARTICLES

National Commission of Uniform State Laws, *Uniform Act: The Uniform Mediation Act*, 22 N. ILL. U. L. REV. 165 (2002).

Drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Uniform Mediation Act (UMA) is recommended by the commissioners for enactment in all states. The Drafters of the UMA intend its provisions to be applied uniformly with the purpose of promoting candor and confidentiality of parties involved in the mediation process. The NCCUSL designed the UMA to encourage the policy of fostering prompt, economical, and amicable resolution of disputes through the mediation process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Richard W. Naimark & Stephanie E. Keer, *What do Parties Really Want from International Commercial Arbitration?*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 78.

This article consists of a study on the expectations of international arbitration participants. The authors surveyed participants and their lawyer in order to evaluate their perceptions of and expectations for international commercial arbitration. The authors report interesting findings, for example, participants appear to place greater importance on the fairness of the system than actual monetary awards.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Barry A. Naum, Recent Development, *EEOC v. Waffle House, Inc.*, 18 OHIO ST. J. ON DISP. RESOL. 225 (2002).

The *EEOC v. Waffle House* decision yields one clear result: the Equal Employment Opportunity Commission can pursue victim-specific relief within the court for an employee who has signed an arbitration agreement with his employment contract. This limited result does nothing to change the notion that arbitration agreements are preferred in the employment context. What seems to be a clear victory for employers may actually be a victory for arbitration agreements in general.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{104} SUBJ MATTER: REGULATORY

Alastair Nicholson, *Setting the Scene: Australian Family Law and the Family Court—A Perspective From the Bench*, 40 FAM. CT. REV. 279 (2002).

The author explains the impact of the Family Law Act of 1976 that established the Family Court of Australia. Focusing on dispute resolution, the author explains the evolution of in-house mediation services provided by the court. As part of the explanation, the author focuses on amendments to the original law and the implementation of the amendments in the dispute resolution context.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {125} COMPARISONS: HISTORICAL
- {144} LEGISLATION

Jacqueline Nolan-Haley, *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective*, 7 HARV. NEGOT. L. REV. 235 (2002).

The growth of mediation creates a “turf battle” between lawyers and non-lawyer mediators, the author argues, creating a tension that inhibits the development of the mediation profession. Among already-blurred boundaries between law and mediation, lawyers employ the Unauthorized Practice of Law (UPL) doctrine as a weapon to combat competition from non-lawyer mediators. The author examines the state of mediation practice and proposes modifications to UPL regulations to allow the non-lawyer mediator more freedom and to encourage the practice of mediation.

- {1} NEGOTIATION—GENERAL
- {114} 3D PARTY: PRACTICE OF LAW

Jeffrey O’Connell & Andrew S. Boutros, *Treating Medical Malpractice Claims Under a Variant of the Business Judgment Rule*, 77 NOTRE DAME L. REV. 373 (2002).

The author argues that arbitrary awards have undermined the goals of the medical malpractice tort system. The article summarizes the duty of care standard applied to physicians and the same standards as applied to corporate officers under the business judgment rule. The author also responds to arguments regarding the difference between the attachment of legal liability to physicians as opposed to corporate officers. The author suggests improvements over the existing tort system.

- {44} ARBITRATION—GENERAL
- {98} SUBJ MATTER: MEDICAL MALPRACTICE
- {125} COMPARISONS: HISTORICAL
- {138} ETHICS: GENERAL

Erin Ann O'Hara, *The Jurisprudence and Politics of Forum-Selection Clauses*, 3 CHI. J. INT'L L. 301 (2002).

The author discusses the costs and benefits of forum-selection clauses, while exploring the relationship between the courts and the legislature regarding the enforcement of forum-selection clauses. The author argues that forum-selection clauses are only durable to the extent that the clauses make the contracts more valuable. The author concludes that forum-selection clauses are more valuable in cases involving arbitration provisions and less valuable in international shipping contracts.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Ronald L. Oran, *Recent Development, Texaco Exploration & Production Co. v. AmClyde Engineered Products Co.: The Federal Arbitration Act Trumps Federal Rule of Civil Procedure 14(c)*, 76 TUL. L. REV. 833 (2002).

The article analyzes a Fifth Circuit Court of Appeals decision involving a conflict between the a mandatory arbitration clause and Federal Rule of Civil Procedure 14(c). The author explores the holding and its implications on future agreements.

{44} ARBITRATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Steven R. Patoir, *Bid Protests: An Overview for Agency Counsel*, ARMY LAW., July 2002, at 29.

Written for agency attorneys new to bid protests and those looking for a review of the rules, this article provides practitioners with a basic understanding of the General Accounting Office (GAO) bid-protest process and practical tips for defending bid protests. While most of the article discusses each step in the process, the article's last section explores the GAO's internal alternative dispute resolution (ADR) programs designed to reduce the time and expense of the overall process. Specifically, the author discusses negotiation assistance, which focuses on reaching amicable solutions prior to a full GAO review, and outcome prediction, which streamlines the process by helping the parties to efficiently focus their efforts.

{1} NEGOTIATION—GENERAL

{88} SUBJ MATTER: GOV'T CONTRACTS

{146} ORGANIZATION POLICIES & RULES

{134} DISPUTE PREVENTION

Scott R. Peppet, *Mindfulness in the Law and ADR: Can Saints Negotiate? A Brief Introduction to the Problems of Perfect Ethics in Bargaining*, 7 HARV. NEGOT. L. REV. 83 (2002).

In an desire to initiate debate regarding the ethics of negotiation, the author raises several poignant questions. The article serves, in part, as a response to Leonard L. Riskin's article *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients* articulating the benefits of mindfulness meditation on negotiators. Peppet takes a contrary position that mindfulness meditation may lead to increase partisanship.

{1} NEGOTIATION—GENERAL

Leonel Perezniето-Castro, *Negotiation, Conciliation, and Mediation: Mediation in Mexico*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 117 (2002).

Misinterpretations can occur in cross-cultural dispute resolution. This article examines empirical data revealing value conflicts between normative systems and suggests that general principles of law and human rights require that national legal systems take into account the standards of the ethnic minority group. The author feels that the "right to culture" should be incorporated in domestic legal systems to increase the consideration of ethnic minority groups.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Jeffrey Perron, Note, *Administrative Law—Courts' Scope of Review of Arbitration Decisions—Supreme Court Overturns the Ninth Circuit's Rejection of the Arbitration Panel's Decision that Found No Collusion Activities by the Baseball Owners—Major League Baseball Players Association v. Steve Garvey*, 121 S.Ct. 1724 (2001), 12 SETON HALL J. SPORT L. 131 (2002).

The author examines how the decision of the United States Supreme Court, in *Major League Baseball Player's Ass'n v. Garvey*, reaffirms the arbitration process in major league baseball. In *Garvey*, the Court reinforced the independence of the arbitration process by limiting the ability of a court to overturn an arbitration decision to situations where arbitrators exceed their authority. With continued judicial deference in arbitration proceedings,

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arbitration will continue to play an important role in deciding disputes in Major League Baseball.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

John R. Phillips, *Mediation as One Step in Adversarial Litigation: One Country Lawyer's Experience*, 2002 J. DISP. RESOL. 143.

The author, a labor and employment lawyer of thirty years, describes the evolution of mediation in civil litigation in Missouri. The author refutes the conclusions of Professor Deborah Hensler that mediation of disputes results in client dissatisfaction compared to adjudication. Comparing voluntary versus mandatory mediation in civil litigation, the author concludes that mounting evidence shows the efficacy of required mediation in civil litigation.

{21} MEDIATION—GENERAL

{{73} SUBJ MATTER: GENERAL} GENERAL

{127} REQUIREMENTS: MANDATE TO USE

Lucille Ponte, *Boosting Consumer Confidence in E-Business: Recommendations for Establishing Fair and Effective Dispute Resolution Programs for B2C Online Transactions*, 12 ALB. L.J. SCI. & TECH. 441 (2002).

Consumers, in the global marketplace of online shopping, face a risky world. Cyberspace has no uniform laws, no single court system, and an international nature that challenges national sovereignty, jurisdiction, and enforcement. The author examines the existing American Arbitration Association (AAA) Consumer Protocol for Online Dispute Resolution (ODR), the challenges posed, the role of electronic retailers (e-tailers), and necessary changes to create appropriate ODR standards for business-to-consumer (B2C) conflict resolution.

{73} SUBJ MATTER: GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Lucille Ponte, *Broadening Traditional ADR Notions of Disclosure: Special Considerations for Posting Conflict Resolution Policies and Programs on E-Business Web Sites*, 17 OHIO ST. J. ON DISP. RESOL. 321 (2002).

Disclosures of potential conflicts of interests are re-examined in the context of emerging online dispute resolution (ODR) services and electronic

businesses (e-businesses). The author suggests that the traditional definition of disclosure should be expanded to include not only the existence, nature, and costs of such ODR programs, but also any relationship that the party has with such providers, the outcomes of these proceedings, and general information about ODR methods.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Kenneth Port, *Intellectual Property in an Information Economy: Trademark Monopolies in the Blue Nowhere*, 28 WM. MITCHELL L. REV. 1091 (2002).

This article explores the normative implications of the Uniform Dispute Resolution Policy (UDRP) using data reported in other studies as well as data collected specifically for this paper. The author concludes that the UDRP is a manifestation of the privatization and commercialization of the dispute resolution process for determining the proper registrant of a domain name. By suggesting bias on part of the panelists through arbitrated results, the author argues that an unnatural monopoly has been created for trademark owners. Thus, the author concludes that the most important normative implication of the UDRP process chills the motivation of trademark owners to innovate and establish methods of identifying their web pages.

{44} ARBITRATION—GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

Brian M.J. Quinn, Note, *Legal Reform and Its Context in Vietnam*, 15 COLUM. J. ASIAN L. 219 (2002).

Exploring the implications of economic reform in Vietnam, the author discusses the changes in the formal legal system focusing on the various types of dispute resolution available to parties. The author evaluates the arbitration centers used in Vietnam and suggests ineffective processes should be changed.

{44} ARBITRATION—GENERALN

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

{133} COURT REFORMS

Steve Quiring, Note, *Attorney-Client Arbitration: A Search for Appropriate Guidelines for Pre-Dispute Agreements*, 80 TEX. L. REV. 1213 (2002).

The author examines pre-dispute arbitration agreements between attorneys and clients, focusing on the apparent violations of the attorney's fiduciary duty and on practical concerns about the negotiating process. The author

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evaluates proposed disciplinary rules and other approaches that some states and bar associations have adopted and concludes that the lack of uniformity in rules governing arbitration agreements and the differences in state and local programs make a single national solution impractical.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Robert W. Rack, Jr., *Thoughts of a Chief Circuit Mediator on Federal Court-Annexed Mediation*, 17 OHIO ST. J. ON DISP. RESOL. 609 (2002).

Drawing from his experiences in the Sixth Circuit Court of Appeals, the author discusses issues that arise while trying to provide quality mediation services in the federal court. The author looks at mediator qualifications and training, questioning whether either should be required of staff mediators in federal court programs. The author also discusses some of the issues that arise regarding supervision and evaluation of mediators, using the program provided by the Sixth Circuit as an example.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{125} COMPARISONS: HISTORICAL

Mary F. Radford, *Is the Use of Mediation Appropriate in Adult Guardianship Cases?*, 31 STETSON L. REV. 611 (2002).

This article explores the potential for integration of mediation into the adult guardianship system. It begins by reviewing mediation in general and the advantages of mediation over formal court proceedings. The article then describes essential aspects of an adult guardianship case and intricate issues surrounding the determination of incapacitation and the appointment of a guardian. In consideration of these issues, the article encompasses the appropriateness of submitting guardianship cases to mediation. Concluding that mediation might play a role in adult guardianship cases, both in the initial proceedings and in the ongoing guardianship, the article provides recommendations for special rules and guidelines for the use of mediation in such cases.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Stephen Ralph & Stephen Meredith, *Working Together: A Model of Mediation With Aboriginal and Torres Strait Islander Families in the Family Court of Australia*, 40 FAM. CT. REV. 329 (2002).

Upon realizing that the indigenous people of Australia were reluctant to utilize the courts in familial disputes, a committee was created to study the problem. The committee recommended that the court enlist consultants to assist in the mediation process and educate the counselors about cultural differences in order to provide mediation services sensitive to the needs of the indigenous people.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Lucy Reed, *Great Expectations: Where Does the Proliferation of International Dispute Resolution Tribunals Leave International Law?*, 96 AM. SOC'Y INT'L L. PROC. 219 (2002).

In examining the “great expectations” that private actors have towards their rights and responsibilities under international law, the author scrutinizes the proliferation of international tribunals and new international dispute resolution institutions. The thesis of the article states that two trends in international law created increased expectations, the flowing down of international law rights from the state to the private actor level, and the expansion of international trade.

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Christine Reilly, Comment, *Achieving Knowing and Voluntary Consent in Pre-Dispute Mandatory Arbitration Agreements at the Contracting Stage of Employment*, 90 CAL. L. REV. 1203 (2002).

United States Supreme Court has upheld the validity of pre-dispute mandatory arbitration agreements that require job applicants to relinquish their rights to sue future employers. However, criticisms indicate that mandatory arbitraiton agreements provide little meaningful choice or notice to those seeking work. The author argues for applying a modified version of knowing and voluntary consent contained in the Older Worker's Protection Act that would give employees just-cause protection in exchange for agreeing to arbitrate their disputes.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

2002 BIBLIOGRAPHY: ARTICLES

Alison Dundes Renteln, *Cross-Cultural Dispute Resolution: Cross-Cultural Dispute Resolution: The Consequences of Conflicting Interpretations of Norms*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 103 (2002).

Recognizing that misinterpretations occur in cross-cultural dispute resolution, this article examines empirical data revealing value conflicts between normative systems. The article suggests that general principles of law and human rights require national legal systems to take into account the standards of the ethnic minority group. The article indicates that the "right to culture" should be incorporated in domestic legal systems.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Judith Resnik, *Mediating Preferences: Litigant Preferences for Process and Judicial Preferences for Settlement*, 2002 J. DISP. RESOL. 155.

The author discusses the implications of the litigants' desire for a specific type of process, adjudication, and judges' desire for settlement. Throughout the discussion, the author addresses the issues raised in both social scientific research and individual cases. The author defines the trend away from court adjudicated processes to mediation as risky.

{21} MEDIATION—GENERAL
{123} SETTLEMENT: PRESSURES TO SETTLE
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS

Barak D. Richman, *Mandating Negotiations to Solve the NIMBY Problem: A Creative Regulatory Response*, 20 UCLA J. ENVTL. L. & POL'Y 223 (2001).

The "not in my back yard" (NIMBY) syndrome causes significant difficulties for land use planners and developers of socially beneficial facilities. The author discusses the use of mandatory negotiation procedures implemented in Wisconsin and Massachusetts and evaluates the reasons for their successes and failures. Negotiation appears to have a positive impact on these NIMBY problems, but limitations to mandatory negotiation procedures must be addressed.

{1} NEGOTIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY
{84} SUBJ MATTER: ENVIRONMENT
{127} REQUIREMENTS: MANDATE TO USE

Annelise Riles, *Commentary: User Friendly: Informality and Expertise*, 27 LAW & SOC. INQUIRY 613 (2002).

The commentary develops from an article written by Laura Nader & Elisabetta Grande entitled *Current Illusions and Delusions About Conflict Management-In Africa and Elsewhere*. The author desires an increase in the understanding of the relationship between informality and expertise through alternative dispute resolution (ADR) techniques. ADR techniques appeal to a new market-inspired rationale of providing a service, filling a need, or solving a problem. The author suggests this new “user-friendly” rationale provides less incentive for negative critique.

- {73} SUBJ MATTER: GENERAL
- {92} SUBJ MATTER: INT’L
- {124} COMPARISONS: CROSS-CULTURAL
- {125} COMPARISONS: HISTORICAL

Leonard Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002).

Recognizing a growing “tripartite crisis” in the legal profession—decline in professionalism, increased dissatisfaction with work, and low esteem in which the public holds the profession—the author proposes mindful meditation for attorneys and law students. The article discusses meditation, involving non-judgmental attention to one’s emotions and thoughts, and its benefits for both dealing with stress and creating a non-adversarial mindset to improve listening and negotiation skills, and thus better serve clients.

- {1} NEGOTIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Bonnie Roach, *Recent Development, George Watts & Son v. Tiffany & Co.*, 17 OHIO ST. J. ON DISP. RESOL. 503 (2002).

A recent case before the Seventh Circuit Court of Appeals, questioned whether an arbitrator that disregards state law has committed manifest disregard. The decision indicates that an arbitrator does not commit manifest disregard, if the award produces an outcome similar to one the parties could have reached on their own. According to the court, an arbitrator commits manifest disregard only by ordering the parties to violate the law.

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
- {128} REQUIREMENTS: STATUTORY OR RULES

2002 BIBLIOGRAPHY: ARTICLES

Simon Roberts, *Institutionalized Settlement in England: A Contemporary Panorama*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 17 (2002).

The author discusses the history of institutionalized mediation in England. According to the author, the last two decades of the twentieth century saw the emergence of mediation as an important method of dispute resolution. The author ultimately reflects on the reasons for the emergence of alternative dispute resolution (ADR), the different types of ADR, and the implications for the traditional conception of "public justice," in England.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {124} COMPARISONS: CROSS-CULTURAL
- {125} COMPARISONS: HISTORICAL

Donald Lee Rome, *A Guide to Business to Business Mediation*, DISP. RESOL. J., Nov.–Jan. 2002–2003, at 51.

The author explores the use of mediation in resolving conflicts between businesses. Finding that business to business mediation can be advantageous, the author discusses the decision to mediate, selection of mediators, and potential problems. The author also provides practical tips for business mediation.

- {21} MEDIATION—GENERAL

William B. Rubenstein, *The Concept of Equality in Civil Procedure*, 23 CARDOZO L. REV. 1865 (2002).

The author argues that there are three notions of procedural equality: equally-armed sides provide the best results, rules should be formulated and applied consistently, and like cases should have similar outcomes. The author posits, among other assertions, that courts require these three forms of procedural equality when evaluating the fairness of the procedures of arbitration and other alternative dispute resolution mechanisms.

- {44} ARBITRATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Adrienne M. Ruffle, Note, *Resurrecting the International Whaling Commission: Suggestions to Strengthen the Conservation Effort*, 27 BROOK. J. INT'L L. 639 (2002).

Exploring the current crisis facing the International Whaling Commission (IWC) because of Japan's increased desire to commercially hunt whales, this note briefly examines the general history of commercial whaling. The author demonstrate the attempt by, and failure of, the United States to utilize domestic policy as a way to enforce IWC regulations against other nations. The author argues the controversy would be better served if countries

cooperated in monitoring whaling efforts. This non-litigious cooperation to show a clearly anti-whaling attitude and international objection to whaling could lead to abandonment of such practices.

- {1} NEGOTIATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {84} SUBJ MATTER: ENVIRONMENT
- {92} SUBJ MATTER: INT'L

Erin Ryan, Note, *Zoning, Taking, and Dealing: The Problems and Promise of Bargaining in Land Use Planning Conflicts*, 7 HARV. NEGOT. L. REV. 337 (2002).

The author examines negotiation-based decisionmaking in land use conflicts and proposes a return to bargain-based mediation model that represents all interests at the table and provides procedural protections to stem abuses. Reviewing the practice of land use planning, the article explores recent United States Supreme Court takings jurisprudence and its anti-bargaining implications. The author recommends a return to a bargain-based model constrained by adequate representation of all interests, including those not at the table, to correct the power imbalance between public and private parties.

- {1} NEGOTIATION—GENERAL
- {137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES
- {147} POWER IMBALANCE

Clara H. Saafir, Comment, *To Fee or Not to Fee: Examining Enforceability of Fee-Splitting Provisions in Mandatory Arbitration Clauses in Employment Contracts*, 48 LOY. L. REV. 87 (2002).

Federal district and appellate court dockets have experienced a recent plague of cases involving arbitration agreements in employment contracts. The author discusses the problems associated with fee-splitting in this employment context. The author discusses the purpose of the Federal Arbitration Act, and gives a historical account of the way courts have dealt with fee-splitting provisions. The author emphasizing ensuring procedural and substantive safeguards, given the increasing use of mandatory arbitration clauses in the employment context.

- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {93} SUBJ MATTER: LABOR—GENERAL
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

2002 BIBLIOGRAPHY: ARTICLES

Cameron L. Sabin, Note, *The Adjudicatory Boat Without a Keel: Private Arbitration and the Need for Public Oversight of Arbitrators*, 87 IOWA L. REV. 1337 (2002).

Considering the increasing popularity of arbitration and the lack of adequate arbitrator accountability, the author examines how such inadequate oversight of arbitration has led to public mistrust and arbitrator corruption. In order to restore trust in the system and ensure fair and just arbitration decisions, the author suggests that states should create oversight boards to license arbitrators, promote a code of ethics, and sanction those arbitrators who failed to comply with the regulations.

{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{138} ETHICS: GENERAL

Frank E.A. Sander, *Some Concluding Thoughts*, 17 OHIO ST. J. ON DISP. RESOL. 705 (2002).

The author briefly discusses three topics to wrap up the Ohio State Journal on Dispute Resolution Symposium on the Impact of Mediation held at the Moritz College of Law at The Ohio State University. The author discusses the methods for achieving basic change in the dispute resolution system, the importance of continuing basic research, and the collateral benefits of alternative dispute resolution (ADR). The author comments on the profound development of ADR since the Pound Conference, but notes the importance of continued research.

{21} MEDIATION—GENERAL
{73} SUBJ MATTER: GENERAL

Kathleen M. Scanlon, *A Case for Judicial Accountability: When Courts Add a Settlement Detour to the Traditional Appellate "Path"*, 17 OHIO ST. J. ON DISP. RESOL. 379 (2002).

The decision of the United States Supreme Court, in *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, has resulted in a disjunction between appellate level mediation programs and its potential impact in settlement-related vacatur cases. The author disagrees with the Court's establishment of a high burden for vacatur of a lower court's judgment as part of a post-judgment settlement agreement. The author suggests several avenues of possible reform.

{73} SUBJ MATTER: GENERAL
{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Julia Scarpino, Comment, *Mandatory Arbitration of Consumer Disputes: A Proposal to Ease the Financial Burden on Low-Income Consumers*, 10 AM. U. J. GENDER SOC. POL'Y & L. 679 (2002).

As the use of mandatory arbitration clauses increases, the author argues that higher costs to the consumer in arbitration result in unfair consumer contracts. In order to remedy this problem, the author argues that courts should adopt a rule requiring businesses to cover the costs of arbitration, as some courts have with regard to employment disputes.

{44} ARBITRATION—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Alexander Scherr, Note, *Lawyers and Decisions: A Model of Practical Judgment*, 47 VILL. L. REV. 161 (2002).

The author examines the development of lawyering theory over the last fifty years. The author examines traditional lawyering functions, but also explores the increasing role dispute resolution has played in the field over the last twenty-five years. The author examines how the use of alternative dispute resolution has changed the role of the lawyer from zealous advocate to "problem-solver." The author concludes that by using an attorney as a problem-solver, clients are exposed to a larger array of remedies than would be possible under the traditional system.

{1} NEGOTIATION—GENERAL
 {21} MEDIATION—GENERAL
 {138} ETHICS: GENERAL
 {151} ROLE OF LAWYERS

Winsor Schmidt, *The Wingspan of Wingspread*, 31 STETSON L. REV. 1027 (2002).

The author examines the available social-science research relating to the public guardianship system. The author discusses the following topics: the use of mediation as an alternative to the trial process, the use of guardianship procedures through a comparison of volunteer and professional guardianship programs, and the costs and benefits of public guardian programs. The author also investigates the current state of knowledge with regard to guardianship monitoring and accountability.

{21} MEDIATION—GENERAL
 {38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {76} SUBJ MATTER: CIVIL RIGHTS

2002 BIBLIOGRAPHY: ARTICLES

Amy J. Schmitz, *Ending a Mud Bowl: Defining Arbitration's Finality Through Functional Analysis*, 37 GA. L. REV. 123 (2002).

Schmitz argues that arbitration is losing its significance with regard to finality. Specifically, she asserts that expansive use of arbitration by the courts has led to the misapplication of arbitration remedies, which in turn dilutes the significance of arbitration and weakens the functional scheme underlying arbitration statutes. The author considers whether Federal Arbitration Act and the Uniform Arbitration Act statutes should be revised to provide options for expanded judicial review of arbitral awards.

- {44} ARBITRATION—GENERAL
- {133} COURT REFORMS
- {128} REQUIREMENTS: STATUTORY OR RULES
- {102} SUBJ MATTER: PUBLIC POLICY

Andrea Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 (2002).

Providing a current study of how lawyers negotiate, the author dispels the myth that adversarial bargaining is an effective problem-solving tool. Recognizing the need to update the prevailing 1976 study by Gerald Williams, the author shows—via the results of her survey of approximately 1,100 lawyers—that effective negotiators are perceived as empathetic, assertive, and good problem-solvers, while stubborn, egotistical or unethical negotiators are viewed as ineffective. The author discusses the results of the new study, concluding that courteous and astute lawyers do well in negotiations.

- {1} NEGOTIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Jennifer Schulz, *Mediator Liability: Using Custom to Determine Standard of Care*, 65 SASK. L. REV. 163 (2002).

In Canada, mediators cannot be held liable in tort because no established standard of care exists for the mediation profession. The author contends that standards of care for mediators can be established through the examination of mediation customs. Once the system mandates legal standards of care for mediators, any breach of this duty will result in liability, thereby, increasing mediator accountability.

- {21} MEDIATION—GENERAL
- {99} SUBJ MATTER: OTHER PROF MALPRACTICE
- {114} 3D PARTY: PRACTICE OF LAW

Kathleen Scully-Hayes, "*MEDispute: Resolving Health Care Conflicts*": *Mediation and Medicare Part A Provider Appeals: A Useful Alternative*, 5 J. HEALTH CARE L. & POL'Y 356 (2002).

The author discusses the use of mediation to resolve Medicare Part A provider reimbursement appeals. The discussion describes the Medicare appeals process and analyzes the effect of a pilot program using mediation to resolve the appeals. Based on the success of the pilot program and positive feedback from the participating parties, the author concludes that using mediation effectively resolves the appeals in a timelier and less costly manner.

{21} MEDIATION—GENERAL
{91} SUBJ MATTER: INSURANCE

Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445 (2002).

The article explains how education through creative problem solving can enhance the clinical context through work with poorer communities engaged in community building. The University of Dayton Law School assisted community groups in Dayton and developed a method of clinical teaching that emphasizes broad-based problem solving in addition to traditional technical legal skills. The program led to a fruitful and invigorating relationship, resulting in palpable and significant improvements.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
{77} SUBJ MATTER: COMMUNITY
{84} SUBJ MATTER: ENVIRONMENT
{155} TEACHING

Edward I. Selig, *Mediation Principles: An Environmental Case History*, DISP. RESOL. J., Feb.–Apr. 2002, at 73.

This article discusses the methods, confrontational and cooperative, lawyers use when representing parties to a dispute. Using an environmental case study, the author believes that the best results occur when opposing lawyers and their clients adopt a cooperative style for dealing with each other. The author suggests that this method allows the parties to settle disputes effectively.

{21} MEDIATION—GENERAL
{84} SUBJ MATTER: ENVIRONMENT

2002 BIBLIOGRAPHY: ARTICLES

Jennifer Shack & Susan Yates, *Mediating Lanham Act Cases: The Role of Empirical Evaluation*, 22 N. ILL. U. L. REV. 287 (2002).

Seeking to assess the effectiveness of court-related mediation programs, the authors discuss the mediation process for cases falling under the Federal Trademark Act of 1946 otherwise known as the "Lanham Act." After discussing design issues regarding the study of court-related programs, the authors provide an analysis of their research on cases involving the "Lanham Act."

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Melissa Hayes Shirey, Note, *The Role of Arbitration in Reviewing Deportation Orders of Criminal Aliens: A Possible Solution to Remedy the Current System*, 17 OHIO ST. J. ON DISP. RESOL. 487 (2002).

The author discusses the history of deportation procedures and the problems inherent in deportation proceedings. According to the author, the use of a neutral arbitrator, in reviewing all deportation procedures, would create a expedient, efficient, and just proceeding. This proceeding would protect the rights of aliens and meet the Congressional goal of expeditiously removing criminal aliens.

{44} ARBITRATION—GENERAL

{103} SUBJ MATTER: PUBLIC POLICY

{144} LEGISLATION

{127} REQUIREMENTS: MANDATE TO USE

Laurence Shore, *Disclosure and Impartiality: An Arbitrator's Responsibility Vis-à-vis Legal Standards*, DISP. RESOL. J., Feb.–Apr. 2002, at 32.

Laurence Shore discusses various legal standards on the issues of disclosure and impartiality of arbitrators by examining the relevant case law. He calls for increased individual responsibility and less refuge in legal standards on the part of arbitrators. In conclusion, the author postulates that because "independence and impartiality" support the entire arbitral process, arbitrators should carefully alleviate any appearance of bias.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Susan S. Silbey, *The Emperor's New Clothes: Mediation Mythology and Markets*, 2002 J. DISP. RESOL. 171.

The article addresses the claim that mediation is simply an ideological mythology rooted in a misreading of public preferences. The author points out that rather than addressing public desires, the alternative dispute resolution (ADR) movement provided a necessary first step in reducing court

dockets promulgated by the Warren Court's liberalizing reforms. The ADR movement also served the interests of critics who felt adjudicatory processes inadequately addressed both dispute substance and relationships. Finally, the ADR movement succeeded in providing social scientists with grounds for legal scholarship and studies.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL

Charles Silver, *What We Know and Do Not Know About the Impact of Civil Justice on the American Economy and Policy: Does Civil Justice Cost Too Much?*, 80 TEX. L. REV. 2073 (2002).

The author contends that the Revised Uniform Arbitration Act (RUAA), approved in 2000 by the National Conference of Commissioners on Uniform State Laws, can be improved. The author suggests that the RUAA fails to completely address the interests of both repeat and one-time arbitrating parties, provides inadequate handling of arbitration agreements in adhesion contracts, and presents problems relating to federal preemption.

- {44} ARBITRATION—GENERAL
- {104} SUBJ MATTER: REGULATORY
- {127} REQUIREMENTS: MANDATE TO USE
- {133} COURT REFORMS

Karl Slaikou & Diane Slaikou, *MEDispute: Resolving Health Care Conflicts: Confidential from General Counsel to CEO: "I'm fed up, and we're not going to take this anymore!"*, 5 J. HEALTH CARE L. & POL'Y 335 (2002).

This article presents an imaginary memorandum from the General Counsel (GC) of Health Care, Inc. to the Chief Executive Officer describing how weak systems inside the health care organization lead to increased risks and costs flowing from litigation expenses, turnover, and lost revenue. The GC recommends channeling predictable conflicts through specific procedural "gates" for early resolution before they reach a formal alternative dispute resolution (ADR) process or the courts. The argument provides a "more than ADR" approach to conflict resolution in the hospital. The GC's thesis states that while predictable conflict in health care represents a huge financial risk, managing it well can save money, protect corporate assets, and strengthen long-term relationships.

- {1} NEGOTIATION—GENERAL
- {89} SUBJ MATTER: HOSPITALS

2002 BIBLIOGRAPHY: ARTICLES

Richard E. Speidel, *ICANN Domain Name Dispute Resolution, the Revised Uniform Arbitration Act, and the Limitations of Modern Arbitration Law*, 6 J. SMALL & EMERGING BUS. L. 167 (2002).

After analyzing the Uniform Domain Name Dispute Resolution Policy (UDRP), the author concludes that UDRP is not a form of arbitration. Therefore, the author finds that UDRP is not subject to arbitration law. Speidel bases this conclusion on key procedural differences between the UDRP and arbitration. However, in order to demonstrate the incapability of modern arbitration law to adequately address complex public policy issues, the author evaluates the UDRP under the Revised Uniform Arbitration Act.

{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL
{78} SUBJ MATTER: COMPUTER—INTERNET
{146} ORGANIZATION POLICIES & RULES

Amanda Stallard, Note, *Joining the Culture Club: Examining Cultural Context When Implementing International Dispute Resolution*, 17 OHIO ST. J. ON DISP. RESOL. 463 (2002).

Recent trends toward globalization have increased the necessity of considering the impact of different cultures within the international dispute resolution arena. The author presents a conceptual framework for understanding cultural variations based on paradigms through evaluation of American, Asian and South Pacific dispute resolution methods.

{73} SUBJ MATTER: GENERAL
{92} SUBJ MATTER: INT'L
{124} COMPARISONS: CROSS-CULTURAL

Paul B. Stephan, *Courts, Tribunals, and Legal Unification—The Agency Problem*, 3 CHI. J. INT'L L. 333 (2002).

The author discusses the roles of various adjudicatory bodies in promoting the unification of law. The author applies the evolutionary game theory to certain areas of international law including commercial transactions, antitrust laws, and environmental regulation. The author concludes that political and economic factors decrease the likelihood of a unified body of law among international adjudicatory bodies.

{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Andrew Stimmel, Note, *Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code*, 18 OHIO ST. J. ON DISP. RESOL. 197 (2002).

Evaluating will disputes, the author suggests that mediation is uniquely suited to resolve family disputes by dealing with paramount emotional concerns and family dynamics, while protecting the family relationship. Where as, litigation, with its polarizing, winner-take-all methodology, is not well-suited to address such concerns. Revising the Uniform Probate Code to include a mediation provision would help to encourage this alternative approach to conflict resolution.

- {21} MEDIATION—GENERAL
- {101} SUBJ MATTER: PROBATE
- {102} SUBJ MATTER: PUBLIC POLICY
- {104} SUBJ MATTER: REGULATORY

Katherine V.W. Stone, *Employee Representation in the Boundaryless Workplace*, 77 CHI.-KENT L. REV. 773 (2002).

The employment relationship has transformed dramatically in recent years. Concepts of the psychological contract, the boundaryless career, and the Organizational Citizenship Behavior standards are used by management and organizational theory to address a fundamental paradox in today's workplace. The paradox asks whether unions, fundamentally compatible with the new employment relationship, can become compatible with the boundaryless workplace.

- {44} ARBITRATION—GENERAL
- {95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

Jim Stott & Juan Carlos Gonzalez, *Construction Partnering: Can These Protocols Build a Stronger Labor/Management Community?*, 2 PEPP. DISP. RESOL. L.J. 445 (2002).

The author examines a collaborative labor-management relationship model and parallels the roles of labor and management in two distinct industries—construction and the manufacturing/service industry. He notes that a higher level of accountability exists in construction than in manufacturing, since the hiring process starts over with each new project. The author concludes that construction partnering could serve as a model for a stronger and more collaborative labor management community.

- {21} MEDIATION—GENERAL
- {80} SUBJ MATTER: CONSTRUCTION
- {95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

2002 BIBLIOGRAPHY: ARTICLES

Andrea Strimling, *The Federal Mediation and Conciliation Service: A Partner in International Conflict Prevention*, 2 PEPP. DISP. RESOL. L.J. 417 (2002).

The author discusses the Federal Mediation and Conciliation Service (FMCS) as an invaluable resource in international dispute resolution. As an independent federal agency the FMCS has developed strong relationships with both governmental and non-governmental organizations. The author notes an increasingly active role for the FMSC in the international community would add to the diversity of resources and provide a medium for preventative diplomacy.

{21} MEDIATION—GENERAL
{92} SUBJ MATTER: INT'L
{134} DISPUTE PREVENTION

Joseph B. Stulberg, *Questions*, 17 OHIO ST. J. ON DISP. RESOL. 531 (2002).

As part of the Symposium on the Impact of Mediation sponsored by the Ohio State Journal on Dispute Resolution, Stulberg examines questions that have been answered since the Pound conference with regard to mediation and those questions where further research and study is necessary. These questions include the undesirability of med-arb processes, the ability of one mediator to mediate across contexts, the use of mediation in resolving complex disputes, and the effectiveness of mandatory mediation.

{21} MEDIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{155} TEACHING

Kevin Sullivan, Comment, *The Problems of Permitting Expanded Judicial Review of Arbitration Awards Under the Federal Arbitration Act*, 46 ST. LOUIS U. L.J. 509 (2002).

In June 2001, the United States Circuit Courts of Appeals split over whether parties to an arbitration agreement could agree to federal court appellate review of an arbitration award in federal court beyond the level of review Congress set forth in the Federal Arbitration Act (FAA). This comment looks to several United State Supreme Court decisions interpreting the FAA for guidance on how the Court might resolve the circuit split regarding the expansion of judicial review of arbitration awards.

{44} ARBITRATION—GENERAL
{73} SUBJ MATTER: GENERAL
{144} LEGISLATION

Jan Jung-Min Sunoo & Brenda Paik Sunoo, *Managing Workplace Grief—Vision and Necessity*, 2 PEPP. DISP. RESOL. L.J. 391 (2002).

The authors comment on the outdated nature of most employment bereavement policies. Recognizing that proper grieving is essential for good health, and employee health is essential for the success of a corporation, the authors suggest companies take time to review their bereavement policies. The authors also discuss the Federal Mediation and Conciliation Service (FMCS) role in addressing grief in the workplace. The FMCS provides preventive services to build labor relations as well as programs for the resolution of developed disputes.

{21} MEDIATION—GENERAL

{95} SUBJ MATTER: LABOR—MANAGEMENT (UNION)

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Symeon C. Symeonides, *The Fiftieth Anniversary Meeting of the American Society of Comparative Law*, 10 WILLAMETTE J. INT'L L. & DISP. RESOL. 1 (2002).

Introducing the Willamette Journal of International Law and Dispute Resolution Symposium issue titled “A New Look at Comparative Dispute Resolution,” this article gives a brief history of the American Society of Comparative Law. The article traces the history of the Society from its origins in New York in 1951. Today, the Society promotes the growth of international comparative study.

{73} SUBJ MATTER: GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Christine Szaj, *The Fine Art of Listening: Children's Voices in Custody Proceedings*, 4 J.L. FAM. STUD. 131 (2002).

The author discusses the American Law Institute (ALI) Family Dissolution Principles, criticizing the diminished role of children in custody proceedings. The author examines the interests and needs of the child in the process, concluding that greater child involvement in designing custody plans will better serve the interests of the child.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Robert Terris & Vera Inoue-Terris, Note, *A Case Study of Third World Jurisprudence—Palestine*, 20 BERKELEY J. INT'L L. 462 (2002).

The article highlights the need to understand Palestinian culture and customary law, which utilizes a form of negotiation, before attempting to inject Western legal practices in to the dispute resolution system. The article

examines developments of the Palestinian legal system and movements for the incorporation of Western legal and democratic ideologies. While investigating the recent use of alternative dispute resolution mechanisms in Palestine, the authors note that the Palestinian emphasis on group (as opposed to individual) responsibility poses special obstacles to the implementation of Western legal theories.

- {1} NEGOTIATION—GENERAL
- {21} MEDIATION—GENERAL
- {92} SUBJ MATTER: INT'L

Elizabeth G. Thornburg, *Fast, Cheap, and Out of Control: Lessons from the ICANN Dispute Resolution Process*, 6 J. SMALL & EMERGING BUS. L. 191 (2002).

The author examines the Uniform Domain Name Dispute Resolution Policy (UDRP) and evaluates its strengths and weaknesses. Despite the transparency of the process and its quickness for resolving disputes, the author concludes that the UDRP lacks overall fairness because of procedural and due process deficiencies. The author suggests that improvements on the UDRP model will lead to better resolution of Internet-related multijurisdictional disputes.

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {146} ORGANIZATION POLICIES & RULES

Christopher T. Timura, *Cross-Examining Expertise in the WTO Dispute Settlement Process*, 23 MICH. J. INT'L L. 709 (2002).

The author discusses the increasing use of experts on the Dispute Settlement Body (DSB) of the World Trade Organization. The amount of trust and responsibility that parties place in these experts emphasizes the need for competence in the area of the specific dispute. The author suggests that instead of having trade experts solve human rights problems, the DSB should use experts specialize in a specific area. Since science-based trade disputes are increasing in number before the DSB, the use of experts in these disputes will become increasingly important.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {125} COMPARISONS: HISTORICAL
- {149} QUALITY CONTROL

Christine M. Tomko, Note, *Can You Keep a Secret?: Discoverability and Admissibility of Confidential Agreement Amounts in Ohio*, 52 CASE W. RES. L. REV. 833 (2002).

The author examines the discoverability and admissibility of confidential settlement agreements in Ohio from the perspective of the litigant seeking to preserve confidentiality. The discussion begins with an overview of applicable rules and the arguments for the discovery and admissibility of settlements. The author suggests a method for protecting confidentiality by using a heightened relevancy standard.

{1} NEGOTIATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{133} COURT REFORMS

Joseph A. Torregrossa, *Appellate Mediation in the Third Circuit—Program Operations: Nuts, Bolts and Practice Tips*, 47 VILL. L. REV. 1059 (2002).

This article focuses on the appellate mediation process in the Third Circuit Court of Appeals. The author notes that a vast majority of appealed civil cases are potentially subject to mediation. This article attempts to provide counsel with suggestions and a better understanding of the appellate mediation process when representing clients faced with appellate mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Gerald Torres, *Law, Knowledge, and the Academy: Translation and Stories*, 115 HARV. L. REV. 1362 (2002).

The author discusses the role of narrative in structuring our understanding of social life. While exploring the role that law plays in negotiating conflicts, the author underscores the the critical nature of understanding the role of narrative interpretations when engaged in negotiations. Because law provides the principal tool for generating broader reform, the experiences of the communities working for change must be translated into the language of law and law reform.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Ronald Turner, *When the Court Makes Law and Policy (with Special Reference to the Employment Arbitration Issue)*, 19 HOFSTRA LAB. & EMP. L.J. 287 (2002).

Over the past ten years, much has been written about the United States Supreme Court ruling in *Gilmer v. Interstate/Johnson Lane Corp.*, where the Court held that the Age Discrimination in Employment Act of 1967 did not

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intend to preclude compulsory arbitration of claims under the Federal Arbitration Act (FAA). In this article, the author goes beyond the result reached by the Court and addresses the underlying rationale, which the author interprets as a judicially-created statutory “intent” grounded in a preference for arbitration.

{44} ARBITRATION—GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Douglas A. Van Epps, *The Impact of Mediation on State Courts*, 17 OHIO ST. J. ON DISP. RESOL. 627 (2002).

The author challenges the common assumption that mediation makes room for trial-worthy cases on court dockets. The author acknowledges that, while this lofty goal has yet to be attained, mediation in the courts has changed several aspects of the judicial environment. The author also looks ahead and hypothesizes about the impact mediation will have on courts in the future. The author concludes with a few remarks regarding the role of legal education in mediation and questions the appropriateness of litigation focused education.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

Francisco Orrego Vicuna, *Dispute Resolution Mechanisms in the International Arena: The Roles of Arbitration and Mediation*, DISP. RESOL. J., May–July 2002, at 64.

The topic of this article addresses the future role of arbitration in an emerging international dispute settlement system. The author investigates whether arbitration can truly be considered a part of the international alternative dispute resolution (ADR) mechanism and the connections between international arbitration and other ADR methods. The author concludes that the integration of arbitration and other ADR methods provides the only viable alternative for justice in the international community.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT’L

David R. Wade & Curtiss K. Behrens, *Opening Pandora's Box: Circuit City v. Adams and the Enforceability of Compulsory, Prospective Arbitration Agreements*, 86 MARQ. L. REV. 1 (2002).

Critiquing the Ninth Circuit Court of Appeals decision, *Circuit City Stores Inc. v. Adams*, the authors posit that the case created unfavorable precedent. Since the decision allows for the enforceability of arbitration agreements to

remain primarily within state contract law, the federal courts will become over-burdened with state statutory interpretation questions.

{44} ARBITRATION

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robert Wai, *Transnational Liftoff and Judicial Touchdown: The Regulatory Function of Private International Law in an Era of Globalization*, 8 COLUM. J. TRANSNAT'L L. 209 (2002).

The author examines how the globalization of trade leads to decreases in national regulatory oversight of businesses. As more nations develop international law processes and procedures, international trade and its regulation are greatly affected. The author identifies current challenges faced by nations as they develop regulatory systems to monitor trade.

{92} SUBJ MATTER: INT'L

{104} SUBJ MATTER: REGULATORY

J. Clifford Wallace, *Civil Pretrial Procedures in Asia and the Pacific: A Comparative Analysis*, 34 GEO. WASH. INT'L L. REV. 1 (2002).

This article provides a comparative analysis of pretrial dispute resolution rules present in several different countries. The author discusses the importance of pretrial procedures in the effective and efficient resolution of disputes. Examining pretrial processes of other countries will increase the quality of pretrial systems in jurisdictions in Asia and the Pacific that are appraising and adapting their own systems. The author makes recommendations to countries developing their pretrial procedures to achieve speedy, efficient, cost-effective, and just dispositions of disputes.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

Stephen J. Ware, *Domain-Name Arbitration in the Arbitration-Law Context: Consent to, and Fairness in, the UDRP*, 6 J. SMALL & EMERGING BUS. L. 129 (2002).

The author analyzes arbitration used to resolve disputes over Internet domain names, including charges of unfairness in domain-name arbitration. By analyzing other arbitration systems similarly criticized, the author concludes that domain-name arbitration offers a useful and fair alternative to litigation.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{146} ORGANIZATION POLICIES & RULES

Stephen J. Ware, *Money, Politics and Judicial Decisions: A Case Study of Arbitration Law in Alabama*, 30 CAP. U. L. REV. 583 (2002).

The author examines the relationship between the decisions of elected judges and their sources of campaign funds. The author reviewed decisions of the Supreme Court of Alabama in the area of arbitration and found a correlation between a justice's vote on arbitration cases and the source of his or her campaign funds.

{44} ARBITRATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY

Nancy A. Welsh, *Disputant's Decision Control in Court-Connected Mediation: A Hollow Promise Without Procedural Justice*, 2002 J. DISP. RESOL. 179.

This symposium article focuses on the significance of giving decision control to the disputants in consensual dispute resolution processes. Specifically, the author argues that vesting the decision control in the disputants, while appealing, may lead to procedural injustice and dissatisfied participants. Through an analysis of the procedural justice literature, the author concludes that courts need to focus on the institutionalization of third party processes that are procedurally just, regardless of whether or not those processes are consensual.

{21} MEDIATION—GENERAL
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS

Raymond J. Werbicki, *Arbitral Interim Measures: Fact or Fiction?*, DISP. RESOL. J., Nov.–Jan. 2002–03, at 62.

This article discusses problems with obtaining interim measures during international arbitrations. Noting the importance of protective interim measures, the author comments on current practical realities and offers solutions to encourage efficiency.

{44} ARBITRATION—GENERAL
{92} SUBJ MATTER: INT'L

Laurel Wheeler, Comment, *Mandatory Family Mediation and Domestic Violence*, 26 S. ILL. U. L.J. 559 (2002).

While mediation has become one of the most widely accepted alternatives to traditional divorce and custody proceedings, the author contends that mediation should not be used in cases where there is a history of domestic violence. The author argues that mediation is an ineffective process in domestic violence cases because the parties are unlikely to begin with equal

positions of power and some mediators may not be qualified to facilitate a discussion between a victim and an abuser.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

{147} POWER IMBALANCE

Sarah A. Wight, Note, *No Out for the Federal Government: Enforcing Contractual Arbitration Clauses in Federal Government False Claims Action*, 2002 J. DISP. RESOL. 227.

Recognizing the federal government as a looming presence in judicial proceedings, the author examines how the United States Court of Appeals for the Fourth Circuit recently addressed the issue of enforcing contractual arbitration clauses, in the context of a false claims action. The author further states that attempts by the government to elude obligations under arbitration agreements, if successful, would significantly impact the elite status currently held by pre-dispute contractual arbitration clauses.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Melissa Williams, *Criminal Justice, Democratic Fairness, and Cultural Pluralism: Case of Aboriginal Peoples in Canada*, 5 BUFF. CRIM. L. REV. 451 (2002).

People of aboriginal descent are over-represented in the Canadian criminal justice system. Therefore, the author explores the conflicts between Canada's Anglo-American legal traditions and the norms of many aboriginal cultures. In examining aboriginal justice initiatives in Canada over the last twenty years, the author explains in-depth the alternative practices of elder panels and sentencing circles where aboriginal leaders advise legal authorities about local norms regarding particular circumstances of offenders and offenses.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{82} SUBJ MATTER: CRIMINAL

{102} SUBJ MATTER: PUBLIC POLICY

David Williams, *Arbitration and Dispute Resolution*, 2002 N.Z. L. REV. 49.

This article examines the success of the Arbitration Act of 1996 in New Zealand by studying case law from 2000–2002. Specifically, the 1996 Act does not require resolution by an arbitration tribunal when a party denies the existence of the arbitration agreement. The author suggests that in certain situations such questions should be left to an arbitrator.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Michael Wishnie, *Immigrant Workers and the Domestic Enforcement of International Labor Rights*, 4 U. PA. J. LAB. & EMP. L. 529 (2002).

The author advocates upward harmonization of labor rights across borders, establishment of precise international labor standards, and development of effective enforcement mechanisms for these labor standards. The author proposes two strategies for enforcing international labor standards and protecting the rights of immigrant workers in the United States. The first strategy involves initiating Alien Tort Claims Act litigation. The second strategy requires the filing of petitions pursuant to the North American Agreement for Labor Cooperation.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{92} SUBJ MATTER: INT'L

Roselle L. Wissler, *Court-Connected Mediation in General Civil Cases: What We Know from Empirical Research*, 17 OHIO ST. J. ON DISP. RESOL. 641 (2002).

The author uses original empirical research gathered from court-connected general civil case mediation in nine Ohio courts to address questions about the general effectiveness of the programs. The author emphasizes the necessity of continued research to determine the effectiveness of court mediation programs. The author also suggests several points for further research.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Roselle L. Wissler, *When Does Familiarity Breed Content? A Study of the Role of Different Forms of ADR Education and Experience in Attorneys' ADR Recommendations*, 2 PEPP. DISP. RESOL. L.J. 199 (2002).

Voluntary alternative dispute resolution (ADR) programs generally have low usage rates. Studies indicate that the direct experience of an attorney with ADR, especially as counsel, significantly impacts on whether the attorney recommends ADR to clients, whereas ADR education has less impact on attorney ADR recommendations. These findings suggest that increasing direct use of ADR procedures will promote more ADR recommendations by attorneys. This supports the use of mandatory ADR, judicial ADR referrals, and, to a lesser extent, mandatory Continuing Legal Education and service as third-party neutrals.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Michael J. Wolf et al., *Essential Collaborative Technology Tools for the 21st Century: FMCS TAGS System*, 2 PEPP. DISP. RESOL. L.J. 327 (2002).

The authors discuss the Technology Assisted Group Solutions (TAGS) System, a technological tool utilized by the Federal Mediation and Conciliation Service (FMCS). TAGS consists of a network that includes Internet servers, mobile computers, electronic conferencing facilities, customized software, and external partners. This network offers virtual alternatives to live meetings. The authors note that although participants spend more time preparing an electronically enabled case, TAGS saves conference attendees twenty working hours for each hour expended by FMCS mediators.

{21} MEDIATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNETT

{93} SUBJ MATTER: LABOR—GENERAL

Charles Qiong Wu, Note, *A Unified Forum? The New Arbitration Rules for Environmental Disputes Under the Permanent Court of Arbitration*, 3 CHI. J. INT'L L. 263 (2002).

Drafters of the Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (Rules) claim that the Rules make the Permanent Court of Arbitration (PCA) the first unified international forum for environmental dispute resolution. Unlike other arbitral rules, the PCA allows the arbitrator panel to appoint one or more experts to form an expert panel. The author argues that the Rules enhance the status of PCA, and other tribunals may adopt similar provisions.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{127} REQUIREMENTS: MANDATE TO USE

{144} LEGISLATION

Douglas Yarn, *Foreword: An Introduction to Ethics in a World of Mandatory Arbitration*, 18 GA. ST. U. L. REV. 903 (2002).

Introductory remarks made by the moderator of the Georgia State University Symposium. The moderator discusses issues relating to mandatory arbitration arising out of pre-dispute clauses in contracts and the ethical duties placed on members of the legal profession regarding mandatory arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

2002 BIBLIOGRAPHY: ARTICLES

Peter K. Yu, *Toward a Non-Zero-Sum Approach to Resolving Global Intellectual Property Disputes: What We Can Learn from Mediators, Business Strategists, and International Relations Theorists*, 70 U. CIN. L. REV. 569 (2002).

After outlining common approaches, the author proposes a new analytical framework to examine intellectual property dispute resolution arrangements. Recent developments in alternative dispute resolution, business competition strategy, and international relations are discussed. The author evaluates the preference of the non-zero-sum approach for resolving global intellectual property disputes. Lastly, the author examines recent disputes between the European Union and the United States, developed and less developed countries, and China and the United States.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

I. William Zartman, *Cowardly Lions: Missed Opportunities for Dispute Settlement*, 18 OHIO ST. J. ON DISP. RESOL. 1 (2002).

The author discusses missed opportunities for improving international conflict resolution in Lebanon, Somalia, Liberia, Zaire, Haiti and Yugoslavia. The lessons learned include: inaction or delayed action is costly, promises should be supported by threats, and peacekeeping forces need clearer missions and rules of engagement. The author also analyzes the reasons for past failure, including fear of changing the status quo and unwillingness to bear responsibility.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

CROSS-CULTURAL

