

ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Jerry Abeles, *From the Chair*, 27 L.A. LAW. 10 (2004).

Many attorneys do their clients a great disservice by simply not preparing their cases. This author states that attorneys should be as ready for arbitration as they would be on the first day of a trial.

{44} ARBITRATION—GENERAL

{151} ROLE OF LAWYERS

Jeffrey I. Abrams, *A Firsthand View of the Middle East: The Lessons of Mediation Provide Insight into the Obstacles to Peace in the Region*, 27 L.A. LAW. 44 (2004).

Resolving a litigated case requires overcoming myths that the parties create toward the opposition. Eventually, these myths can grow into perceived realities that make settlement harder, if not impossible. This same process is an impediment to peace in the Middle East.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

John Adams, *Digital Age Standard Form Contracts Under Australian Law: "Wrap" Agreements, Exclusive Jurisdiction, and Binding Arbitration Clauses*, 13 PAC. RIM L. & POL'Y J. 503 (2004).

This article discusses binding arbitration under Australian law, concluding that, because the clauses have become increasingly important in international e-commerce, their enforceability against consumers in mass-market contracts presents troubling public policy questions. Thus, Australia law should promote fair arbitration procedures for consumers by empowering judges to amend unfair aspects of consumer arbitration clauses.

{44} ARBITRATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{133} COURT REFORMS

Ari Afilalo, *Towards a Common Law of International Investment: How NAFTA Chapter 11 Panels Should Solve Their Legitimacy Crisis*, 17 GEO. INT'L ENV'T'L L. REV. 51 (2004).

The author explores the profound crisis of legitimacy involving Chapter 11 of NAFTA and the potential of arbitral panels borrowing common law doctrines from international trade in goods and services to possibly solve that crisis.

{1} NEGOTIATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{92} SUBJ MATTER: INT'L

Hans-Jörg Albrecht, *Youth Justice in Germany*, 31 CRIME & JUST. 443 (2004).

This article examines the youth justice policies in Germany, including the introduction of mediation. The article considers mediation as an educational method for juvenile offenders and also discusses arguments in favor of making mediation a prerequisite to dismissal.

{21} MEDIATION—GENERAL
 {82} SUBJ MATTER: CRIMINAL
 {92} SUBJ MATTER: INT'L
 {100} SUBJ MATTER: PRISONS

Alexis Anderson et al., *Ethics in Externships: Confidentiality, Conflicts, and Competence Issues in the Field and in the Classroom*, 10 CLINICAL L. REV. 473 (2004).

This article discusses the problems inherent in maintaining and operating a clinical program at law schools. The authors discuss the various problems in confidentiality and ethics that can be encountered by a clinical program. The potential problems and resolutions to those problems are discussed in a corresponding “best efforts” section.

{1} NEGOTIATION—GENERAL
 {83} SUBJ MATTER: EDUCATION
 {132} CONFIDENTIALITY
 {155} TEACHING

Van Anderson & Biff Sowell, *Staying Ahead of the ADR Curve in South Carolina*, 16 S.C. LAW. 36 (2004).

Discusses the upcoming court-annexed dispute resolution program that would apply to the entire state of South Carolina and the issues that must be addressed for such a program to prove successful. Among the issues are competent counsel, the duty that falls upon counsel to know and advise clients with respect to when ADR is a favorable forum, and, more broadly, the need for all lawyers in South Carolina to recognize the drastic and unforeseeable changes the law might entail.

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

Jane Andrewartha & Zeldia Stone, *English Maritime Law Update: 2003*, 35 J. MAR. L. & COM. 369 (2004).

The author uses the case of *Nisshin Shipping Co. Ltd. v. Cleaves & Co.* to discuss whether third-party brokers to a charterparty agreement can use an arbitration clause contained within the agreement to enforce their right to unpaid commissions. Although the commission clauses did not expressly provide for the use of arbitration to enforce the brokers' rights, the scope of the arbitration clause led to its enforceability by the brokers.

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

Penelope Andrews, *Reparations for Apartheid's Victims: The Path to Reconciliation?*, 53 DEPAUL L. REV. 1155 (2004).

This article discusses the Truth and Reconciliation Commission (TRC) established by the South African government and Nelson Mandela, and how the TRC attempts to augment nation-building efforts in the country by giving victims an opportunity to be heard and compensated.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {92} SUBJ MATTER: INT'L
 {76} SUBJ MATTER: CIVIL RIGHTS

Susan B. Apel, *Collaborative Law: A Skeptic's View*, 30 VT. B.J. & L. DIG. 41 (2004).

The author discusses collaborative law's requirement that the parties refuse to litigate their disputes as the characteristic of the process that prevents it from being a valid alternative to resolving disputes. Apel draws on her experience handling divorce cases and notes that collaborative law would be particularly unhelpful in that class of disputes.

{44} ARBITRATION—GENERAL
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Robert J. Araujo, *Implementation of the ICJ Advisory Opinion—Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Fences [Do Not] Make Good Neighbors?*, 22 B.U. INT'L L.J. 349 (2004).

This article examines the International Court of Justice's (ICJ) advisory opinion on the legal consequences of Israel's construction of a wall in the Palestinian Territory. The article examines the advisory opinion and the justifications offered to substantiate its conclusion, concluding with a comment regarding future consequences of this dispute's resolution through the ICJ.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {92} SUBJ MATTER: INT'L
 {121} SETTLEMENT: AUTHORITY

Ass'n of the Bar of the City of N.Y. Fund, Inc. et al., *Public Service in a Time of Crisis: A Report and Retrospective on the Legal Community's Response to the Events of September 11, 2001*, 31 FORDHAM URB. L.J. 831 (2004).

This article details a comprehensive plan established through the collaboration of several New York area legal groups, including organizations

specializing in alternative dispute resolution, to provide legal aid to those affected by the events of September 11, 2001. The article describes the model of providing trained “facilitators” to counsel individuals and families on a variety of legal issues, offer legal representation, and direct the clients to the proper experts.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Gary August, *Contractual Terms That Impact Future Litigation: Issues Pertaining to Their Validity*, 83 MICH. B.J. 26 (2004).

Parties are including in their contracts terms that seek to control future litigation, like arbitration clauses, jury waivers, and forum selection clauses. Courts are more willing to impose contractual legal standards on jury waivers than on arbitration clauses that waive a trial by jury.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Kevin Avruch, *Culture as a Context, Culture as Communication: Considerations for Humanitarian Negotiators*, 9 HARV. NEGOT. L. REV. 391 (2004).

This article considers some of the special problems that humanitarian workers in the field encounter when engaging in negotiations with parties whose cultural backgrounds differ substantially from their own.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Jeffrey R. Babbitt et al., *Developments in the Second Circuit: 2002–2003*, 36 CONN. L. REV. 1187 (2004).

The article covers the decisions of the United States Court of Appeals for the Second Circuit, 2002–2003. The court rendered judgments on arbitration issues including when a court must adjudicate the arbitrability of a claim, non-signatories to arbitration agreements, the need to broadly interpret arbitration provisions to effectuate the policy favoring arbitration, the statute of limitations for confirming an arbitral award, and arbitration agreements in licenses for downloaded computer software.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

J. Nick Badgerow, *Rattling the Saber: The Ethics of Threatening Criminal and Disciplinary Prosecution*, 61 J. MO. B. 5 (2005).

Bedgerow identifies a growing trend of using threats of criminal and disciplinary prosecution during negotiation to gain power. He then outlines potential ethical and criminal consequences of taking this course of action.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Christopher Baker, *Tolerance of International Espionage: A Functional Approach*, 19 AM. U. INT'L L. REV. 1091 (2004).

Espionage is beneficial for international negotiations when understood from a functionalist perspective. Espionage is a tool which facilitates international cooperation by functionally permitting states to verify that their neighbors are complying with international obligations and to confirm the legitimacy of those assurances provided by these neighbors. The legitimacy of espionage is rooted in the growth of modern, transnational threats that increasingly threaten international security.

{1} NEGOTIATION—GENERAL.

{92} SUBJ MATTER: INT'L

R. Lisle Baker, *Using Insights About Perception and Judgment from the Myers-Briggs Type Indicator Instrument as an Aid to Mediation*, 9 HARV. NEGOT. L. REV. 115 (2004).

This article examines the impact of using psychological and personality factors to help disputants understand each other on a deeper level.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Donald I. Baker, *Revisiting History—What Have We Learned About Private Antitrust Enforcement That We Would Recommend to Others?*, 16 LOY. CONSUMER L. REV. 379 (2004).

This keynote address explores some important questions that should be asked of what has been learned about private antitrust enforcement. Namely, the address explores whether arbitration of antitrust claims can be made fair and effective. Though it makes considerable sense to arbitrate antitrust disputes that are solely between parties to a contract, serious problems may arise when the dispute involves a party or parties that are not parties to the contract containing the arbitration clause.

{44} ARBITRATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

Richard A. Bales, *The Laissez-Faire Arbitration Market and the Need for a Uniform Federal Standard Governing Employment and Consumer Arbitration*, 52 U. KAN. L. REV. 583 (2004).

This article discusses the current state of indeterminacy regarding the enforceability of arbitration agreements in the consumer and employment contexts. The author advocates for Congress to amend the FAA by creating an arbitration “bill of rights” in these contexts, but only when statutory rights are at issue and when one party has not had a meaningful opportunity to negotiate the agreement’s terms.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

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

Kerri Bandics, Note/Comment, *Toward a Future of Enforcement: A Critique of the Ninth Circuit’s Invalidation of Mandatory Arbitration Agreements in Employment*, 34 GOLDEN GATE U. L. REV. 75 (2004).

This comment examines the impact of the United States Supreme Court’s decision in *Circuit City v. Adams II* on subsequent Ninth Circuit decisions regarding compulsory arbitration agreements in employment contracts. The author recommends changes to the Ninth Circuit’s approach in assessing unconscionability claims about such agreements in order to preserve employees’ rights, while at the same time encouraging voluntary arbitration as an effective tool to resolve employment disputes.

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

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

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Nigel Bankes, *Environment: Garrison Dam, Columbia River, the IJC, NGOs*, 30 CAN.-U.S. L.J. 117 (2004).

This Article is primarily a transcript from a 2004 symposium on Canada-U.S. relations. This particular contribution focuses on what the author considers the very successful Columbia River Treaty. Specifically, the author highlights the amiable negotiation of the treaty and its successful implementation. The author also points out that the parties’ continued reliance on negotiation has been beneficial in maintaining the success of the treaty.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{92} SUBJ MATTER: INT’L

David Barnhizer, *Profession Deleted: Using Market and Liability Forces to Regulate the Very Ordinary Business of Law Practice for Profit*, 17 GEO. J. LEGAL ETHICS 203 (2004).

The author argues that there is no automatic need to resort to full and long-term courtroom litigation to deal with many situations of legal malpractice but the creation of ombudsmen and mandatory mediation systems outside the control of bar associations and lawyers generally could help bring greater fairness and sanity into the system.

{21} MEDIATION—GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

Kelly Barrett, *Women in the Workplace: Sexual Discrimination in Japan*, 11 HUM. RTS. BRIEF 5 (2004).

This article explores the role of Japanese women in the workplace from the viewpoint of Japanese legal and social norms since the passage of the 1997 Equal Employment Opportunity Law (EEOC). While the EEOC has not brought about complete equality, it has made progress as far as enabling women to seek remedies for workplace discrimination. It has, for example, eliminated the dual consent requirement from the arbitration process and restricted employers from retaliating against women who seek mediation.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: CIVIL RIGHTS

James Bartens, Note, *If a Threat of Violence is Presented, When Does the Law Require Family Mediators to Breach Confidentiality?*, 42 FAM. CT. REV. 641 (2004).

Using the California Supreme Court's decisions in *Tarasoff v. Regents of the University of California* as a foundation, the article examines the principles and appropriateness surrounding a breach of confidentiality when a family mediator is presented with a threat of violence by one of the parties. The author argues that using these principles will help the mediator make an informed decision and possibly avoid tort liability.

{21} MEDIATION—GENERAL

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

{132} CONFIDENTIALITY

{138} ETHICS: GENERAL

John H. Barton, *The International Video Industry: Principles for Vertical Agreements and Integration*, 22 CARDOZO ARTS & ENT. L.J. 67 (2004).

This article discusses what the author considers to be an unhealthy concentration in the international video industry. The author suggests that action should be taken to reinvigorate the marketplace of ideas, both at the national level through greater regulation and at the international level through trade negotiations.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

Mary Lynn Bates, *Report of Committee on Alternative Methods of Dispute Resolution—“ADR” Usually Means Mediation*, 65 ALA. LAW. 163 (2004).

The author reports on the public misconception that ADR is synonymous with mediation. The article provides an overview of both arbitration and mediation objectives.

{44} ARBITRATION—GENERAL

{21} MEDIATION—GENERAL

Carl Baudenbacher, *Judicialization: Can the European Model Be Exported to Other Parts of the World?*, 39 TEX. INT'L L.J. 381 (2004).

This article discusses “judicialization,” a term that means replacing non-judicial proceedings of legislation, administration, or dispute settlement with judicial proceedings. While analyzing this term, the article looks at supranational law and the shift of power from the legislature and the executive branch to the judiciary. Additionally, it examines why international law and traditional dispute settlement proceedings that are rooted in the world of diplomacy are increasingly being replaced by permanent international courts or court-like institutions.

{44} ARBITRATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{133} COURT REFORMS

Elena Baylis, *Beyond Rights: Legal Process and Ethnic Conflicts*, 25 MICH. J. INT'L L. 529 (2004).

The article covers ethnic conflicts in Kenya, and the author surveys several legal methods to solve these ethnic conflicts. The author evaluates past methods and their relative successes and shortcomings, then recommends new ways to resolve the age-old conflicts. Negotiation and arbitration play a significant part in the recommendations.

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Mark Berger, *Arbitration and Arbitrability: Toward an Expectation Model*, 56 BAYLOR L. REV. 753 (2004).

This article looks at the U.S. Supreme Court's pro-arbitration policy, and its application to questions concerning the scope of parties' arbitration agreements. It then addresses the problem of determining arbitrability in specialized contexts when the subject matter of the dispute is covered by an

arbitration agreement and concludes by developing an expectation model as a method for dealing with arbitrability challenges.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {73} SUBJ MATTER: GENERAL
 {128} REQUIREMENTS: STATUTORY OR RULES
 {133} COURT REFORMS

Ceci Culpepper Berman, *Appeals During and After Arbitration—State and Federal Issues*, 79 FLA. B.J. 35 (2005).

Culpepper Berman states that an attorney should consider the appellate ramifications of pursuing a case in federal versus state court in which arbitration may be compelled. She outlines Florida law to illustrate this point.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {73} SUBJ MATTER: GENERAL
 {151} ROLE OF LAWYERS

Roger C. Bern, *“Terms Later” Contracting: Bad Economics, Bad Morals, and a Bad Idea for a Uniform Law, Judge Easterbrook Notwithstanding*, 12 J.L. & POL’Y 641 (2004).

Bern’s article discusses the arbitration clause found in software packages, as seen in the case of *Hill v. Gateway 2000*. This article also discusses class actions with respect to arbitration clauses.

{44} ARBITRATION—GENERAL
 {78} SUBJ MATTER: COMPUTER—INTERNET
 {79} SUBJ MATTER: CONSUMER
 {105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Mark I. Bernstein, *The Opportunity for ADR in Medical Malpractice Cases: A Judge Urges Alternatives to Court to Resolve Med Mal*, 26 PA. LAW. 32 (2004).

The author, a judge in the First Judicial District, Philadelphia Court of Common Pleas, posits ADR as a solution for problems such as rising insurance premiums for health care providers that have resulted from the vast number of medical malpractice claims filed in Pennsylvania over the past few decades. The article then provides a detailed summary of how the ADR process would work and focuses extensively on the discovery process involved in these particular ADR proceedings.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {91} SUBJ MATTER: INSURANCE
 {98} SUBJ MATTER: MEDICAL MALPRACTICE
 {136} ECONOMIC ADVANTAGES OF ADR

Jennifer Callahan Berry, Note, *Giving Repose to the Exhaustion Doctrine: An Argument for More Exceptions to Exhaustion of Administrative Remedies in the Context of the University of Minnesota Grievance Procedure*, 89 MINN. L. REV. 510 (2004).

The author evaluates how informal dispute resolution procedures mesh with pre-established judicial structures by discussing two cases in which university employees sought review of adverse employment decisions. Berry supports in-house procedures for efficiency purposes but urges that more exceptions to the exhaustion doctrine are allowed so that employees' rights are adequately protected.

{44} ARBITRATION—GENERAL

{83} SUBJ MATTER: EDUCATION

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

{149} QUALITY CONTROL

Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463 (2004).

Litigants predict trial outcomes and bargain for settlement on the eve of trial to avoid loss. This article examines the effects and strategies of "eve of trial" bargaining and settlement.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

Lisa B. Bingham, *Control Over Dispute-System Design and Mandatory Commercial Arbitration*, 67 LAW & CONTEMP. PROBS. 221 (2004).

This article contends that the fairness concerns directed at mandatory commercial arbitration should focus on the design of the particular dispute system in question. The author claims that when one party to an arbitration, rather than both parties or a third party, controls the structure of the system, the operation of the system is more likely to be unfair, and thus should be more rigorously monitored by the courts.

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

{75} SUBJ MATTER: COMMERCIAL

{102} SUBJ MATTER: PUBLIC POLICY

David Bird, *Mediation as a Casemanagement Tool*, 23-4 AM. BANKR. INST. J. 18 (2004).

The author discusses the fact that, in an effort to keep up with an increasing caseload, more bankruptcy courts are instituting mediation and arbitration procedures as part of their local rules. This alternative is being pursued as resources available to bankruptcy courts are limited by lack of congressional

action on new bankruptcy judges and annual bankruptcy budget reductions in the face of record bankruptcy filings

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{127} REQUIREMENTS: MANDATE TO USE

Kristen M. Blankley, Comment, *Abitrability After Green Tree v. Bazzle: Is There Anything Left for the Courts?*, 65 OHIO ST. L.J. 697 (2004).

This comment discusses the *Green Tree Financial Corp. v. Bazzle* decision and its possible effects on class-action arbitrations. It explores the idea put forth by the Court's holding that if an arbitration agreement is silent with regard to class actions, then the arbitrator is charged with deciding whether or not a class action should proceed. Additionally, it discusses the ramifications of the decision on future arbitrations and arbitration clauses.

{44} ARBITRATION—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Gary Blasi, *Deborah L. Rhode's Access to Justice: How Much Access? How Much Justice?*, 73 FORDHAM L. REV. 865 (2004).

This article responds to DEBORAH RHODE, ACCESS TO JUSTICE, a reformative vision of providing full access to justice for all that goes beyond access to a lawyer. The article argues that access to justice implicates dispute resolution as needing reform to be a less biased forum for all parties.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{147} POWER IMBALANCE

Erik B. Bluemel, *Substance Without Process: Analyzing TRIPS Participatory Guarantees in Light of Protected Indigenous Rights*, 86 J. PAT. & TRADEMARK OFF. SOC'Y 671 (2004).

This article discusses the rights of indigenous people to participate in negotiations between states. It analyzes the implementation of the indigenous right to participation in the World Trade Organization. Finally, the article examines the rights-based model of international participatory rights and uses the model to establish a framework for granting procedural rights to indigenous populations.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Matthew T. Bodie, *Questions About the Efficiency of Employment Arbitration Agreements*, 39 GA. L. REV. 1 (2004).

This article examines the economic model for agreements to arbitrate employment claims. The author discusses both post-dispute and pre-dispute employment arbitration agreements. The article goes on to consider whether pre-dispute employment arbitration agreements are efficient, given problems with informational deficiencies to employees who enter into such agreements. The author argues for these deficiencies to be remedied in order to permit employees to make informed decisions.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

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

{136} ECONOMIC ADVANTAGES OF ADR

Ulrich Boettger, *Efficiency Versus Party Empowerment—Against a Good Faith Requirement in Mandatory Mediation*, 23 REV. LITIG. 1 (2004).

This article discusses good faith requirements in mandatory mediation, along with problems that may occur as a result of a good faith requirement. Also, the article examines some of the results of good faith requirements in different states. Finally, it discusses the impact of good faith requirements on the mediator's traditional role.

{21} MEDIATION—GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{124} COMPARISONS: CROSS-CULTURAL

Anthony Bottoms & James Dignan, *Youth Justice in Great Britain*, 31 CRIME & JUST. 21 (2004).

In focusing on the differences between the English and Scottish youth justice systems, Bottoms and Dignan describe the correctionalist systems of each country, finding that both systems share a preventative goal, rather than a retributive goal. In comparing the two systems, the article looks into victim-offender mediation and reparation schemes.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L

{100} SUBJ MATTER: PRISONS

Kevin P. Braig, *A Game Plan to Conserve the Interscholastic Athletic Environment After LeBron James*, 14 MARQ. SPORTS L.J. 343 (2004).

Due to current deficiencies, the author outlines a new system of checks and balances that will more fairly and effectively enforce recruiting regulations within the Ohio High School Athletic Association (OHSAA). Under Braig's plan, high school principals would pro-actively submit a written complaint of improper recruiting to the OHSAA Commissioner and the dispute would be handled by mandatory mediation or binding arbitration.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Ronald A. Brand, *A Global Convention on Choice of Court Agreements*, 10 ILSA J. INT'L & COMP. L. 345 (2004).

The Draft Text on Choice of Court Agreements would establish rules for enforcing private party agreements regarding the forum for resolution of any resulting disputes, and rules for recognizing and enforcing the decisions issued by the chosen forum. This is consistent with the structure of the New York Arbitration Convention. The March 2003 Draft Text on Choice of Court Agreements offers a framework for the negotiation of a workable Hague Convention.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{133} COURT REFORMS

{144} LEGISLATION

Norman T. Braslow, *Contractual Stipulation for Judicial Review and Discovery in United States-Japan Arbitration Contracts*, 27 SEATTLE U. L. REV. 659 (2004).

This article discusses a trend in transnational contracting to include an agreement that the parties will arbitrate any disputes that may arise, and the problems with this agreement for both United States and Japanese parties under the countries' respective arbitration procedures. The article explains certain clauses that should be included to increase the benefits of arbitration for both parties, specifically clauses addressing problems with judicial review and discovery.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Avi Braz, Note, *Out of Joint: Replacing Joint Representation With Lawyer-Mediation in Friendly Divorces*, 78 S. CAL L. REV. 323 (2004).

The author chronicles the economic and social needs that have spurred the demand for joint representation in friendly divorce cases and the issues joint representation has raised under California's malpractice laws and ethical rules. Because these laws essentially bar the practice of joint representation in friendly divorce cases, the author suggests lawyer-mediation as a solution, because it will enable attorneys to meet the quasi-legal needs of parties undertaking a friendly divorce without exposing themselves to the fear of malpractice or ethical censure.

{21} MEDIATION—GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
 {136} ECONOMIC ADVANTAGES OF ADR
 {151} ROLE OF LAWYERS

Stephanie Brenowitz, Note, *Deadly Secrecy: The Erosion of Public Information Under Private Justice*, 19 OHIO ST. J. ON DISP. RESOL. 679 (2004).

This note focuses on the increase in confidentiality as a result of ADR. It explores the investigative freedoms typically associated with tort litigation, and the move toward secrecy with the popularity of arbitration and mediation as dispute resolution techniques. It details the lack of public notice associated with this shift, and provides recommendations to guarantee public access to important information about safety.

{44} ARBITRATION—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {102} SUBJ MATTER: PUBLIC POLICY
 {110} SUBJ MATTER: TORTS—OTHER

Charles Brower, *International Decision: S.D. Myers, Inc. v. Canada*, 98 AM. J. INT'L L. 339 (2004).

The decision of *S.D. Myers, Inc. v. Canada* before an arbitral tribunal established significant but controversial principles in four areas of importance to investor-state arbitration: the threshold for the imposition of liability under substantive treaty disciplines; the quantification of damages for treaty violations; the preservation of jurisdictional objections under the UNCITRAL Rules; and the standards for judicial review of jurisdictional questions under the UNCITRAL Model Law on International Commercial Arbitration.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {75} SUBJ MATTER: COMMERCIAL
 {81} SUBJ MATTER: CORPORATE

Carole J. Brown, *Facilitative Mediation: The Classic Approach Retains its Appeal*, 4 PEPP. DISP. RESOL. L.J. 279 (2004).

This article explores the debate between two traditional modes of mediation: facilitative and evaluative. The author contends that, in the court-annexed context, the goals of mediation are best served through the facilitative method where the mediator encourages communication and problem solving, rather than primarily evaluating the merits.

{21} MEDIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {149} QUALITY CONTROL

Jennifer Gerarda Brown, *Debate and Decision-Making About Marriage Rights in Connecticut: Envisioning a Third Way*, 23 QUINNIPIAC L. REV. 597 (2004).

This article discusses the State of Connecticut's marriage reforms, including mediation for same-sex couples.

{21} MEDIATION—GENERAL

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

Jennifer Gerarda Brown et al., *Negotiation as One Among Many Tools*, 87 MARQ. L. REV. 853 (2004).

The hypothetical state "Grace," which is struggling with the interpretation of same-sex couples laws, is discussed. Before negotiating large-scale public policy conflicts such as this, the authors recommend that a broader public dialogue about social change be conducted. Activities that can precede or supplement a negotiation include the following: capacity strengthening, shuttle diplomacy, back-channel negotiations, cooperation projects, interaction with the media, and cultivating leadership.

{1} NEGOTIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{144} LEGISLATION

Michael R. Brown, *Accountability and Fraud in Arbitration Proceedings*, 27 L.A. LAW. 52 (2004).

Brown argues that the checks and balances of the judicial system are simply not present in the arbitration setting. Further, he contends that adequate safeguards have yet to be employed by arbitration programs to ensure accountability and prevent fraud.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{146} ORGANIZATION POLICIES & RULES

{149} QUALITY CONTROL

Philip Bryden & William Black, *Mediation as a Tool for Resolving Human Rights Disputes: An Evaluation of the B.C. Human Rights Commission's Early Mediation Project*, 37 U.B.C. L. REV. 73 (2004).

This article explains the mediation practices of the British Columbia Human Rights Commission. It highlights the Early Mediation Project by describing and critiquing its activities in relation to selected human rights complaints. It examines the connection between the Project and public interest. Furthermore, it explains which types of cases had the greatest rates of success with mediation.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{87} SUBJ MATTER: GOV'T
 {147} POWER IMBALANCE

Susan M. Buckholz, *Two Views on Collaborative Law: Collaborative Dissolution*, 30 VT. B.J. & L. DIG. 37 (2004).

The author discusses collaborative law as a potentially viable solution to litigating divorce disputes, but only in certain situations in which the parties are prepared to deal with each other open and honestly.

{1} NEGOTIATION—GENERAL
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Mark E. Budnitz, *The High Cost of Mandatory Consumer Arbitration*, 67 LAW & CONTEMP. PROBS. 133 (2004).

This article uses empirical information to show that the high cost of arbitration often prevents consumers from accessing a forum that binding, predispute arbitration provisions have made the exclusive one for resolving their disputes. The author claims that denying consumers the access to justice threatens the integrity of the entire dispute-resolution system, and he concludes by proposing strategies to correct this problem.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {102} SUBJ MATTER: PUBLIC POLICY

Jonathan R. Bunch, Note, *To Be Announced: Silence from the United States Supreme Court and Disagreement Among Lower Courts Suggest an Uncertain Future for Class-Wide Arbitration*, 2004 J. DISP. RESOL. 259 (2004).

Bunch's note describes the growth of class-wide arbitration. In *Ting v. AT&T*, the arbitrator held a hearing to determine if a class-wide arbitration was permissible. In its holding, the court stated that AT&T customers had been dissuaded from making meaningful choices because of the arbitration agreements. However, while technically silent, the court held that class-wide arbitration was precluded. California, on the other hand, has adopted class-wide arbitrations.

{44} ARBITRATION—GENERAL
 {77} SUBJ MATTER: COMMUNITY
 {79} SUBJ MATTER: CONSUMER
 {103} SUBJ MATTER: PUBLIC UTILITIES

Thomas Burch, Comment, *Necessity Never Made a Good Bargain: When Consumer Arbitration Agreements Prohibit Class Relief*, 31 FLA. ST. U. L. REV. 1005 (2004).

This comment analyzes the interplay between the Federal Arbitration Act, the Federal Communications Act, and state laws of unconscionability, focusing on federal preemption policy and the resultant effect on the national policy favoring arbitration. The use of arbitration agreements to stifle class relief is given special attention. The author proposes a new policy that would uphold the federal policy favoring arbitration, while returning control over arbitration procedure to the states.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{102} SUBJ MATTER: PUBLIC POLICY

Marcilynn A. Burke, *Klamath Farmers and Cappuccino Cowboys: The Rhetoric of the Endangered Species Act and Why it (Still) Matters*, 14 DUKE ENVTL. L. & POL'Y F. 419 (2004).

This article explores how political rhetoric influences the law through government acts that are responses to such rhetoric. Specifically, this article examines the debate surrounding the Endangered Species Act, and focuses on sections of the Act that were most targeted by political rhetoric. The article includes a section discussing how binding arbitration, if offered to landowners as a possible remedy, would affect the intentions of the Act.

{44} ARBITRATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{87} SUBJ MATTER: GOV'T

{144} LEGISLATION

Robert A. Baruch Bush, *One Size Does Not Fit All: A Pluralistic Approach to Mediator Performance Testing and Quality Assurance*, 19 OHIO ST. J. ON DISP. RESOL. 965 (2004).

This article explores performance testing for mediators. It explains the difficulties encountered when trying to fashion appropriate assessments of mediators, especially since there is no singular set of skills that a mediator must possess. It posits that no current test is broad enough in its approach to effectively test different mediator styles, and suggests an alternative, pluralistic approach.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Megan E. Byrnett, Comment, *Howsam v. Dean Witter Reynolds, Inc.*, 19 OHIO ST. J. ON DISP. RESOL. 739 (2004).

This comment focuses on the *Howsam* case, which deals with arbitration clauses. Specifically, the Court provides some clarification regarding the differences between the questions of procedural and substantive arbitrability.

The comment explains that, while the decision gives some direction to arbitrators, practitioners, and courts, the Court failed to address the issue of waiver as it pertains to this case and others like it.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Sara Cadwallader, Comment, *Annual Survey of Caselaw: Arbitration Law*, 26 U. ARK. LITTLE ROCK L. REV. 795 (2004).

This comment explores the decision in *Green Tree Financial Corp. v. Bazzle*. It explains the U.S. Supreme Court's holding that the Federal Arbitration Act leaves decisions to the arbitrator. Additionally, it explores the lingering issue that the Court did not expressly preclude class arbitration.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David E. Cahn, Note, *Homeless for Generations: Land Rights for the Chocoe Indians from Mogue, Panama*, 28 FORDHAM INT'L L.J. 232 (2004).

This note discusses land rights issues involving the Chocoe Indians from the Village of Mogue. It closely examines the Draft UN Declaration on the Rights of Indigent People, specifically Agenda 21, and its requirement that state governments strengthen national dispute-resolution arrangements in relation to the settlement of land and resource-management concerns.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{147} POWER IMBALANCE

Emily M. Calhoun, *Workplace Mediation: The First-Phase, Private Caucus in Individual Discrimination Disputes*, 9 HARV. NEGOT. L. REV. 187 (2004).

This article examines the relationship between mediation and civil rights disputes in terms of when civil rights mediation is appropriate and under what procedural guidelines.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

Alejandro Esteban Camacho, *Mustering the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement and Adaptive Planning in Land Use Decisions*, 24 STAN. ENVTL. L.J. 3 (2005).

This article rejects the bilateral negotiated land use theory because it may exclude affected parties and prevent public input. Instead, the author asserts that, by adopting a nuanced conception of public regulation rooted in collaborative governance theory and including a more multilateral and

adaptive negotiation and implementation process in land use decisions, new land use regulations might foster civic engagement and cooperation and achieve fairer and more effective land use decisions.

{1} NEGOTIATION—GENERAL

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{104} SUBJ MATTER: REGULATORY

William J. Caplan, *Mediation is Confidential—Not Exactly*, 46 ORANGE COUNTY LAW. 16 (2004).

The author discusses that statements made during mediation are not always confidential. For example, if the statement made would exculpate a criminal defendant in a subsequent proceeding, the person making the statement can be compelled to repeat it.

{21} MEDIATION—GENERAL

{132} CONFIDENTIALITY

{82} SUBJ MATTER: CRIMINAL

William J. Caplan, *The Quick Brown Lawyer Jumped Over the Mediation Traps*, 47 ORANGE COUNTY LAW. 23 (2005).

Caplan discusses what he feels are two potential traps in the mediation process: what a written agreement needs to say for it to be admissible and enforceable, and the reliability of information provided by an opponent during mediation.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Tracy Carbasho, *Arbitration Becoming Increasingly Attractive as Option for Dispute Resolution*, 7 LAW. J. 1 (2005).

Carbasho notes increased use of the Construction Dispute Resolution Group and supplies information regarding the qualifications of the groups' mediators and arbitrators as well as proposing other benefits of using the group to resolve disputes.

{21} MEDIATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

Paul D. Carrington & Paul Y. Castle, *The Revocability of Contract Provisions Controlling Resolution of Future Disputes Between the Parties*, 67 LAW & CONTEMP. PROBS. 207 (2004).

This article seeks to clarify misperceptions surrounding the doctrine of revocability and advocates for its application to many types of arbitration

clauses. The authors discuss the expanded applicability of the FAA to many types of contracts and argue that the revival of revocability would eliminate many arbitration clauses of questionable validity, thus ensuring that arbitration is beneficial to all parties involved.

- {45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {124} COMPARISONS: CROSS-CULTURAL
- {125} COMPARISONS: HISTORICAL

Jared Cawley, *Friend of the Court: How the WTO Justifies the Acceptance of the Amicus Brief from Non-Governmental Organizations*, 23 PENN. ST. INT'L L. REV. 47 (2004).

The article begins with a discussion of the amicus briefs with respect to the U.S. Supreme Court, and then considers the introduction of amicus briefs into cases before the WTO. The article discusses a WTO agreement entitled, "Understanding the Rules and Procedures Governing the Settlement of Disputes". This agreement governs the settlement of disputes that arise under the WTO and instituted an alternative arbitration system.

- {38} NON-BINDING RECOMMENDATION PROC—GENERAL
- {92} SUBJ MATTER: INT'L
- {87} SUBJ MATTER: GOV'T
- {104} SUBJ MATTER: REGULATORY

Rhonda P. Chambers, *The Alabama Appellate Mediation Program: How and Why It Will Work*, 65 ALA. LAW. 180 (2004).

The focus of this article is the establishment of Alabama's Appellate Mediation Program. The author provides an overview of the different procedures and aspects of mediation within the appellate process and predicts the program will have success if lawyers thoughtfully approach the process.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {151} ROLE OF LAWYERS
- {136} ECONOMIC ADVANTAGES OF ADR

Susan M. Chandler & Marilou Giovannucci, *Family Group Conferences: Transforming Traditional Child Welfare Policy and Practice*, 42 FAM. CT. REV. 216 (2004).

This article describes family group conferencing and discusses the strengths and challenges associated with incorporating family group conferencing into child protection and child welfare agencies. The author also explains the four essential elements of family group conferencing: (1) moving toward a strength-based model; (2) respecting and valuing cultural ideals and

practices; (3) encouraging of family and community involvement; and (4) utilizing the community as a family support resource.

{1} NEGOTIATION—GENERAL

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Seung Wha Chang, *Interaction Between Trade and Competition: Why a Multilateral Approach for the United States?*, 14 DUKE J. COMP. & INT'L L. 1 (2004).

This article discusses global trade policy and the United States' attitude towards multilateral negotiations on the interaction between trade and competition policy. The article concludes that the United States should come forward and assume a leadership role in instituting negotiations for a multilateral framework in order to enhance the contribution of competition policy to international trade and development.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Oreen Chay, Comment, *Campaign for Fiscal Equity, Inc. v. State*: (decided June 26, 2003), 48 N.Y.L. SCH. L. REV. 613 (2004).

This comment details the court's failure to take advantage of the mediation process in *Campaign for Fiscal Equity, Inc. v. State*. The author argues that, if it had done so, the court would not have violated the separation of powers because such a ruling would have allowed the law-making power to remain in the hands of the legislature.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

Richard Chernick, *"ADR" Comes of Age: What Can We Expect in the Future?*, 4 PEPP. DISP. RESOL. L.J. 187 (2004).

This article discusses the advancements of ADR procedures, including both mediation and arbitration, and addresses the ways in which ADR procedures have reduced court dockets, taken disputes from the public sector of courts to the private sector of ADR, and the effects of the booming ADR business on the court system in general.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{114} 3D PARTY: PRACTICE OF LAW

{149} QUALITY CONTROL

Miriam A. Cherry, *Whistling in the Dark? Corporate Fraud, Whistleblowers, and the Implications of the Sarbanes-Oxley Act for Employment Law*, 79 WASH. L. REV. 1029 (2004).

This article discusses the protections provided by § 806 of the Sarbanes-Oxley Act for whistleblowers. The author asserts that the protections provided remain inadequate due to the fact that civil whistle-blowing claims can still be sent to mandatory arbitration thereby limiting the remedies available to employees.

{44} ARBITRATION—GENERAL

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

{81} SUBJ MATTER: CORPORATE

Christopher Clark, Note, *The Truth in Domain Names Act of 2003 and a Preventative Measure to Combat Typosquatting*, 89 CORNELL L. REV. 1476 (2004).

The central focus in this article is the Internet and regulations governing it. The author introduces the basic concepts of typosquatting and therein proceeds to detail the shortcomings of fragmented civil litigation and arbitration. The article then evaluates the Truth in Domain Names Act and its purpose to combat such activity. Concluding, the author believes that the Act is ineffective.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Cait Clarke & James Neuhard, *“From Day One”: Who’s in Control as Problem Solving and Client-Centered Sentencing Take Center Stage?*, 29 N.Y.U. REV. L. & SOC. CHANGE 11 (2004).

This article raises some of the ethical concerns for criminal defense lawyers who engage in problem solving for their individual clients or who work within “problem-solving” courts. It attempts to highlight ethical boundaries for criminal defense advocates who want to address clients’ underlying problems while they resolve the pending criminal matters. It also raises ethical concerns presented by problem-solving courts.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{82} SUBJ MATTER: CRIMINAL

Kenneth Cloke, *Journeys into the Heart of Conflict*, 4 PEPP. DISP. RESOL. L.J. 219 (2004).

This article contemplates the reasons disputes arise in the first place, attempting to describe how they come about in an effort to teach others how to avoid them altogether.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{77} SUBJ MATTER: COMMUNITY

{134} DISPUTE PREVENTION

Christine A. Coates et al., *Parenting Coordination for High-Conflict Families*, 42 FAM. CT. REV. 246 (2004).

This article describes and assesses how parenting coordination is used to provide intensive case management of high-conflict child custody cases in family courts.

{1} NEGOTIATION—GENERAL

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

James R. Coben, *Gollum, Meet Smeagol: A Schizophrenic Ruminant on Mediator Values Beyond Self-Determination and Neutrality*, 5 CARDOZO J. CONFLICT RESOL. 65 (2004).

This article provides a dark tale on the quality of justice delivered in mediation written by a dissatisfied consumer of mediation services. The author employs metaphors from *The Lord of the Rings* to illustrate his dissatisfaction with the transformation that mediation has undergone in recent history. He ultimately proposes that if mediation is to move beyond the triumph of influences, values other than individual self-determination and a false neutrality of intervention must be forged.

{21} MEDIATION—GENERAL

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

James Coben & Penelope Harley, Symposium, *Intentional Conversations About Restorative Justice, Mediation, and the Practice of Law*, 25 HAMLINE J. L. & POL'Y 235 (2004).

This article discusses restorative justice and victim-offender mediation, highlighting the origins of restorative justice and constraints on mediator neutrality. It includes a transcript of the third annual Symposium on Advanced Issues in Dispute Resolution, hosted by the Dispute Resolution Institute and Hamline School of Law.

{21} MEDIATION—GENERAL

John Alan Cohan, *Legal War: When Does It Exist, and When Does It End?*, 27 HASTINGS INT'L & COMP. L. REV. 221 (2004).

This article discusses the role of ADR techniques to determine when a war in the legal sense, as opposed to the de facto sense, has begun or ended.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

I. Glenn Cohen, *Negotiating Death: ADR and End of Life Decisionmaking*, 9 HARV. NEGOT. L. REV. 253 (2004).

The judicial system has repeatedly failed as a process for resolving end of life treatment disputes involving incompetent patients. This article argues that negotiation and ADR procedures are valuable tools for the health care system to fashion better dispute resolution.

{1} NEGOTIATION—GENERAL

{101} SUBJ MATTER: PROBATE

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Steven Cohen, *Resolving Disputes with Tag Team Mediation*, 27 L.A. LAW. 76 (2004).

The field of mediation comprises different styles or techniques. The mediation menu includes facilitative, transformative, and evaluative styles of mediation. Each of these models has the capability of bringing forth different results.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Deborah Coldwell et al., *Annual Survey of Texas Law: Franchise Law*, 57 SMU L. REV. 1035 (2004).

This article discusses a Fifth Circuit case, *Saturn Distribution Corp. v. Paramount Saturn*, favoring arbitration when an automobile franchisor sought to compel arbitration of a dispute with its franchisee. The court reemphasized the importance of the strong federal policy favoring arbitration and said that the FAA will continue to preempt state laws that act to limit the availability of arbitration.

{44} ARBITRATION—GENERAL

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

{81} SUBJ MATTER: CORPORATE

Sarah Rudolph Cole & E. Gary Spitko, *Arbitration and the Batson Principle*, 38 GA. L. REV. 1145 (2004).

This article considers the extent to which agreements to discriminate in the selection of an arbitrator should be enforceable and when discrimination in the selection process should invalidate subsequent arbitration awards. The authors suggest federal and state legislation that would prohibit parties to discriminate in many cases based on such characteristics as race, sex, and religion in the selection of an arbitrator, but allow such discrimination under specified circumstances.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

David A. Colson, *Fisheries: Fishers, Natives, Sportsmen, States, and Provinces*, 30 CAN.-U.S. L.J. 181 (2004).

As the former chief American negotiator on international maritime issues, the author of this article discusses why fishery agreements are often the most difficult international agreements to negotiate. The article gives a concise history of recent fishery negotiations between Canada and the United States, focusing on the difficulties encountered in the negotiation and implementation of the agreements.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{97} SUBJ MATTER: MARITIME

Kim Compoc, *Five Questions Attorneys Ask Mediators*, HAW. B.J. 16 (2004).

Compoc, executive director of Mediation Services of Maui, Inc., answers five questions that attorneys have asked her regarding mediation—whether the attorney should be present during the client's mediation session, what are the mediator's qualifications, whether the attorney should give the mediator their client's information, how the attorney can assist mediation, and how the attorney can prepare the client for mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

William J. Condon, Jr., *Electronic Assent to Online Contracts: Do Courts Consistently Enforce Clickwrap Agreements?*, 16 REGENT U. L. REV. 433 (2003).

This article discusses the enforceability of arbitration clauses in box-top licenses purchased by consumers online.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

Patrick Connors et al., *Ethics and Sports: Agent Regulation*, 14 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 747 (2004).

This is a transcript from a symposium panel discussing the role of agents in the negotiation of sports contracts. The panel members gave close attention to the ethical dilemmas that frequently confront sports agents and the regulations currently in place to curb unethical behavior of and provide guidance to sports agents.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Julian A. Cook III, *All Aboard! The Supreme Court, Guilty Pleas, and the Railroad of Criminal Defendants*, 75 U. COLO. L. REV. 863 (2004).

This article looks critically upon recent Supreme Court holdings regarding plea negotiations for criminal defendants. The author points out that the criminal defendant is at an extreme disadvantage during these proceedings and, therefore, the criminal's decisions must be understood in the context in which it was given.

- {1} NEGOTIATION—GENERAL
- {82} SUBJ MATTER: CRIMINAL
- {123} SETTLEMENT: PRESSURES TO SETTLE
- {147} POWER IMBALANCE

Charles Cookson II, *Long-Term Direct Investment in Brazil*, 35 U. MIAMI INTER-AM. L. REV. 345 (2004).

This article investigates the possibility of long-term investment in Brazil, a third-world country with historical instability but also great financial capability. The author investigates certain protections for international investment in Brazil. Included among these protections include finding neutral forums to solve disputes, neutral and binding arbitration, and the use of the International Center for Settlement of Investment Disputes (ICSID).

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL

John W. Cooley, *Defining the Ethical Limits of Acceptable Deception in Mediation*, 4 PEPP. DISP. RESOL. L.J. 263 (2004).

This article discusses the limits that should be placed on affirmatively using deception as a tool in the mediation process, as well as how much deception society in general is willing to tolerate.

- {21} MEDIATION—GENERAL
- {138} ETHICS: GENERAL
- {139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE
- {149} QUALITY CONTROL

J. Thomas Corbett, *Bankruptcy & Mediation*, 65 ALA. LAW. 194 (2004).

In Alabama, the benefits of mediation have expanded into bankruptcy cases. The author provides an overview of how the United States Bankruptcy Attorney for the Northern District, Southern Division of Alabama began utilizing this process.

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

J. Thomas Corbett, *Mediation, Bankruptcy, and the Bankruptcy Administrator*, 65 ALA. LAW. 410 (2004).

Mediation is identified by the author as one of the best dispute resolution methods for bankruptcy cases because it offers a rapid and cost-effective option that is aligned with the Bankruptcy Code. The article closely examines the specific provisions of the BA Mediation Division Guidelines and how they are applied to a case.

- {21} MEDIATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {136} ECONOMIC ADVANTAGES OF ADR
- {146} ORGANIZATION POLICIES & RULES

Peter Reed Corbin & John Duvall, *Employment Discrimination*, 55 MERCER L. REV. 1175 (2004).

This article surveys employment discrimination cases from the U.S. Supreme Court and the Eleventh Circuit decided in 2003. In a section devoted to Title VII cases, the author notes the remedies available for claims under that law, including the primary one, arbitration. The author analyzes a few major cases in this area and draws conclusions based on those cases.

- {44} ARBITRATION—GENERAL
- {76} SUBJ MATTER: CIVIL RIGHTS
- {94} SUBJ MATTER: LABOR—DISCRIMINATION
- {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Richard Coulson, *Choice of Law in United States Cross-Border Insolvencies*, 32 DENV. J. INT'L L. & POL'Y 275 (2004).

This article attempts to trace federal choice of law rules. By tracing the federal choice of law rules, the author comes to the conclusion that the choice of law rules have had limited use in bankruptcy cases thus far. This article articulates the conclusion by looking at the Bankruptcy Reform Act and looking at the limited application of the federal choice of law analysis.

- {44} ARBITRATION—GENERAL
- {104} SUBJ MATTER: REGULATORY

Gay G. Cox & Robert J. Matlock, Symposium, *Problem Solving Process: Peacemakers and the Law: The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45 (2004).

This article discusses collaborative law, and its usage in resolving family law disputes. The authors summarize the Texas collaborative law movement, and discuss how lawyers typically manage collaborative law cases to help achieve their client's goals.

- {1} NEGOTIATION—GENERAL
- {21} MEDIATION—GENERAL
- {44} ARBITRATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Jason Crawford et al., *Annual Survey of Georgia Law: June 1, 2003– May 31, 2004: Trial Practice and Procedure*, 56 MERCER L. REV. 433 (2004).

This article covers changes in Georgia's trial practice and procedure law from June 2003 to May 2004. The authors document a new law passed by the state legislature that allows vacation of arbitration awards for an "arbitrator's manifest disregard of the law." This law overruled an earlier decision by the state supreme court on the issue. Also included are a new law that mandates ADR for construction disputes and major cases involving settlements.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

John Crawford, Note, *Going Dutch: Should Employees Have to Split the Costs of Arbitration in Disputes Arising from Mandatory Employment Arbitration Agreements?*, 2004 J. DISP. RESOL. 277 (2004).

This note examines the legality of requiring employees to pay all or part of the arbitration fees and costs when an employee submits a statutory claim for arbitration. It specifically examines two recent consolidated Sixth Circuit Court of Appeals cases, *Morrison v. Circuit City Stores, Inc.* and *Shankle v. Pep Boys-Manny, Moe & Jack, Inc.*, as well as the approach of other circuits, to support the proposition that employees' statutory rights are limited by arbitration contracts containing cost-splitting provisions.

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

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robert Creo, *Mediation 2004: The Art and the Artist*, 108 PENN ST. L. REV. 1017 (2004).

This article is essentially a biography and a guide to mediation. The portion that attempts to serve as a guide deals with the mediation process and the goals and focuses of a mediator. The article also considers the teaching of mediation and the growth of the field as evidenced by its inclusion in law school curricula.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Teall Crossen, *Multilateral Environmental Agreements and the Compliance Continuum*, 16 GEO. INT'L ENVTL L. REV. 473 (2004).

This article discusses the role of negotiations and dispute resolution processes in the development and enforcement of international treaties.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

Astrid Cubano-Iguina, *Legal Constructions of Gender and Violence Against Puerto Rico Under Spanish Rule, 1860–1895*, 22 *LAW & HIST. REV.* 531 (2004).

This article is based on the court records of domestic violence and rape in the Arecibo Superior Court from 1860–1895. Because of the demographic explosion of the island of Puerto Rico, previous and traditional Spanish judicial instances were insufficient and inaccessible. Thus, a negotiation process emerged in which jurists, the police personnel, and common men and women participated.

{1} NEGOTIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{125} COMPARISONS: HISTORICAL

Mariano Cuellar, *Reflections on Sovereignty and Collective Security*, 40 *STAN. J. INT'L L.* 211 (2004).

This article discusses how responses to transgressions of international law could involve negotiation, mediation, sanctions, or force. In many cases, mediation as the dominant conflict resolution strategy was infrequent.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Patrick D. Curran, *Universalism, Relativism, and Private Enforcement of Customary International Law*, 5 *CHI. J. INT'L L.* 311 (2004).

This article details the controversy arising from a private domestic tribunal's determination of customary international law, and the application of management of private rights arising out of this law. The author suggests that, by emphasizing universalist outlooks on human rights, domestic tribunals in the United States and abroad could speed the adoption of avowedly universal human rights norms. The article suggests that courts should begin to take note of universalist statements by executive officials in their attempt to allow private enforcement of international legal norms.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Joel Cutcher-Gershenfeld & Thomas Kochan, *Taking Stock: Collective Bargaining at the Turn of the Century*, 58 *IND. & LAB. REL. REV.* 3 (2004).

The transformation model of labor-management relations proposes that workplace and collective bargaining innovations need to be complemented and reinforced by more consultation, information sharing, or other forms of union participation in strategic business decisions. Most telling is the clear and strong relationship between the negotiation of new contract language at

the collective bargaining level and follow-on innovation at the workplace level.

{1} NEGOTIATION—GENERAL

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

Brandy Carestia Cutting, *Toward More Successful Mediation*, 30 MONT. LAW. 22 (2004).

Carestia Cutting suggests that, by preparing the client, being candid and objective with the mediator, making recommendations to the client, and choosing a skilled mediator, an attorney can lead her clients in more successful mediation.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{149} QUALITY CONTROL

{151} ROLE OF LAWYERS

Melody Richardson Daily et al., Symposium, *Damages: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution*, 2004 J. DISP. RESOL. 1 (2004).

This article describes the book DAMAGES: ONE FAMILY'S LEGAL STRUGGLES IN THE WORLD OF MEDICINE, which takes an in-depth look at a medical malpractice case and represents the perspectives of various parties, including three mediators. The article explains a course that was based on the case study in DAMAGES and suggests ways in which other law schools might utilize the course material developed.

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{155} TEACHING

H. Ron Davidson, *The Mechanics of Judicial Vote Switching*, 38 SUFFOLK U. L. REV. 17 (2004).

This article is about game theory, public choice theory, and the use of strategic voting by judges, but the author uses *Green Tree Financial Corp. v. Bazzle*, among other cases, to illuminate his views.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Martin Davies, *Litigation Fights Back: Avoiding the Effect of Arbitration Clauses in Charterparty Bills of Lading*, 35 J. MAR. L. & COM. 617 (2004).

This article discusses the impact of the federal policy in favor of international commercial arbitration on the enforcement of charterparty arbitration clauses. The author uses *Kahn Lucas v. Lark Int'l* to demonstrate the policy's limitations and the implications on maritime arbitration that result from a

restrictive application of the New York Convention requirements. The author then contrasts the *Kahn Lucas* interpretation with other approaches and determines it to be preferable.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

Joshua Davis, *Expected Value Arbitration*, 57 OKLA. L. REV. 47 (2004).

This Article proposes a new form of dispute resolution, Expected Value Arbitration (EVA), which resembles traditional forms of arbitration. EVA is different because of its standard for decisionmaking. The neutral decisionmaker awards the winning party with the estimate of the expected value of the outcome at trial. This is the average of the possible outcomes with each weighted by its likelihood of occurring at trial.

{44} ARBITRATION—GENERAL

Ellen Deason, *Competing and Complementary Rule Systems: Civil Procedure and ADR: Procedural Rules for Complementary Systems of Litigation and Mediation—Worldwide*, 80 NOTRE DAME L. REV. 553 (2005).

This article highlights mediation as a common form of dispute resolution worldwide. The author notes the major differences between using mediation and arbitration in settling disputes and draws several conclusions regarding the benefits and costs of choosing mediation over arbitration, all with an eye on achieving the desired results for which parties aim when choosing mediation.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{132} CONFIDENTIALITY

Merryn B. DeBenedetti, Note, *Show Me the Money?: Washington Adopts the Cost Prohibitive Defense to Arbitration Clauses in Consumer Contracts*, 27 SEATTLE U. L. REV. 899 (2004).

This note explores the concept of equal bargaining power in arbitration, and considers *Mendez v. Palm Harbor Homes* and Washington's newly adopted approach to invalidate certain mandatory arbitration clauses in consumer contracts. The Washington Court of Appeals adopted a legal and equitable cost-prohibitive defense with respect to mandatory arbitration agreements, and this note examines the cost-prohibitive defense in the consumer context.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{133} COURT REFORMS

{147} POWER IMBALANCE

Sara DeForge, *A Tough Pill to Swallow: The United States' Passive Efforts in Curtailing Intellectual Property Rights in Favor of Humanity*, 4 LOY. L. & TECH. ANN. 75 (2004).

This article examines the dilemma faced by the international community: how to protect creative expression and creators of intellectual property while ensuring that their creations are shared with the public to foster future growth. The author argues that the United States must take an affirmative role in the implementation and effectuation of international agreements reached via negotiation.

{1} NEGOTIATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Dorothy J. Della Noce, *The Beaten Path to Mediator Quality Assurance: The Emerging Narrative of Consensus and Its Institutional Functions*, 19 OHIO ST. J. ON DISP. RESOL. 937 (2004).

This article explores consensus in the context of mediation. It begins with a study of the various meanings of consensus in the different areas of decisionmaking. The definition of consensus is then applied to quality assurance initiatives with regard to mediation. Additionally, it examines the effect of consensus with respect to a certain outcome versus consensus during the decisionmaking process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Dorothy J. Della Noce, *From Practice to Theory to Practice: A Brief Retrospective on the Transformative Mediation Model*, 19 OHIO ST. J. ON DISP. RESOL. 925 (2004).

This article explores the history of the transformative mediation model. It reflects on the framework first presented by Professors Baruch Bush and Folger in 1994, noting that their initial analysis and observations have gained wide acceptance. It also explains the focus of quality assurance within other articles about transformative mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Dorothy J. Della Noce et al., *Identifying Practice Competence in Transformative Mediators: An Interactive Rating Scale Assessment Model*, 19 OHIO ST. J. ON DISP. RESOL. 1005 (2004).

The authors present shortcomings of recent mediator quality assurance initiatives. The article offers a new method of evaluating mediators that the authors argue is theoretically, methodologically, and empirically solid.

{21} MEDIATION—GENERAL
 {114} 3D PARTY: PRACTICE OF LAW

Linda J. Demaine & Deborah R. Hensler, *“Volunteering” to Arbitrate Through Predispute Arbitration Clauses: The Average Consumer’s Experience*, 67 LAW & CONTEMP. PROBS. 55 (2004).

This article provides the necessary empirical support for determining whether the use of predispute arbitration agreements in the consumer context undermines consumers’ rights. The authors investigate a broad array of consumer purchases and conclude that predispute arbitration clauses often lead consumers into a forum in which their rights are being negatively and substantively affected.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {79} SUBJ MATTER: CONSUMER

Paul Stephen Dempsey, *Flights of Fancy and Fights of Fury: Arbitration and Adjudication of Commercial and Political Disputes in International Aviation*, 32 GA. J. INT’L & COMP. L. 231 (2004).

This article examines six ad hoc arbitrations that have been used to resolve issues of commercial aviation. The author focuses on the legal means by which international dispute settlement mechanisms have been used to resolve not only commercial aviation disputes, but also other aviation disputes before the International Civil Aviation Organization and the International Court of Justice.

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

Aashish Y. Desai, *Class Action Arbitration—The Chickens Come Home to Roost*, 46 ORANGE COUNTY LAW. 36 (2004).

Class actions are an important and necessary arsenal in our legal system to protect victims from unfair and illegal business practices. In *Green Tree Financial Corp. v. Bazzle*, the Court held that, because the parties agreed to have all their disputes resolved by the arbitrator, it would be “up to the arbitrator” if a class action could be decided in arbitration.

{44} ARBITRATION—GENERAL
 {75} SUBJ MATTER: COMMERCIAL

Lucien J. Dhooge, *The Loewen Group v. United States: Punitive Damages and the Foreign Investment Provisions of the North American Free Trade Agreement*, 19 CONN. J. INT’L L. 495 (2004).

The article examines the O’Keefe Litigation and the resultant arbitration proceeding before the International Centre for the Settlement of Investment

Disputes (ICSID). The author discusses the criticisms of international review of state jury verdicts through the use of the North American Free Trade Agreement (NAFTA). As argued by the author, the punitive damages award, granted in the litigation, fail to meet the standards of the United States and the world.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Timothy Dickson, *Self-Government by Side Agreement?*, 49 MCGILL L.J. 419 (2004).

The author discusses the use of non-constitutionally entrenched agreements to reconcile First Nation and state interests through negotiation, a practice that the Supreme Court of Canada expressly endorsed in *Delgamuukw v. British Columbia*. Negotiation is preferred over litigation in this context because when conducted in good faith, it maximizes choices and in turn, individually-defined goods.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Robert Dinerstein & Stephen Ellmann, *Connection, Capacity and Morality in Lawyer-Client Relationships: Dialogues and Commentary*, 10 CLINICAL L. REV. 755 (2004).

This article unpacks the normative concept of the “moral dialogue” in the lawyer-client relationship. The author points out that techniques which are appropriate in certain legal contexts such as mediation are not ethical during the interaction with clients. This does not mean, however, that an ethical lawyer cannot persuade, only that such persuasion must be sincere.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

{138} ETHICS: GENERAL

Jayne Seminare Docherty, *Narratives, Metaphors, and Negotiation*, 87 MARQ. L. REV. 847 (2004).

Elaborating on the concept of human beings as “symbol-using animals,” the author urges negotiators to use metaphors and storytelling wisely. Likewise, truly listening to and probing one’s counterpart will greatly assist in properly framing the conflict.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{151} ROLE OF LAWYERS

Jayne Seminare Docherty et al., *Three Conceptions of Power*, 87 MARQ. L. REV. 861 (2004).

This collection of essays presents three separate views on what power means in relation to negotiation. Docherty worries that reputation alone can further coerce the powerless. Russell Korobkin takes a real-world stance and insists that power is dependent on the strength of one's BATNA. Christopher Honeyman explores power as defined in the world of physics and urges that power may be more effective when it is not directly expended.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{147} POWER IMBALANCE

Thomas W. Donovan, *Challenges to the Territorial Integrity of Guyana: A Legal Analysis*, 32 GA. J. INT'L & COMP. L. 661 (2004).

This article concerns disputes regarding maritime boundaries between Guyana and Suriname. The author advocates that many of Guyana's claims to its boundaries would be sustained by international arbitrators according to precedent, the historical occupation of treaties, and by constructive occupation. Thus, it is argued that, based on traditional methods of maritime delineation, the desired boundaries should be awarded to Guyana and not to Suriname.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Douglas Dorskocil, *Knowing Your Toolset: How to Use ADR to Your Advantage During Patent Litigation*, 44 IDEA 247 (2004).

This article explores some of the current issues in ADR, particularly the various formats of ADR, in relation to patent law. Issues covered include claim construction, bifurcation of damages, attachment proceedings, and certainty of the amount of accused revenue. The article uses specific cases from the author's experience to illustrate key points.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{87} SUBJ MATTER: GOV'T

Christopher R. Drahozal, *A Behavioral Analysis of Private Judging*, 67 LAW & CONTEMP. PROBS. 105 (2004).

This article examines the extent to which arbitral decisions are affected by heuristics and cognitive illusions. The author tentatively concludes that arbitrators may be less susceptible to cognitive biases than jurors, which, if supported by more empirical research, may have important implications on the perception of arbitral decisionmaking.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {102} SUBJ MATTER: PUBLIC POLICY

Christopher R. Drahozal, *Competing and Complementary Rule Systems: Civil Procedure and ADR: Contracting Out of National Law: An Empirical Look at the New Law Merchant*, 80 NOTRE DAME L. REV. 523 (2005).

This article looks at arbitration as the preferred choice of settling international commercial disputes and asks why this preference exists. The author relies on empirical evidence to suggest that the sought-after benefits of arbitration in these settings may not be a reality. In addition, the author investigates the international phenomenon of using arbitration to opt-out of certain national laws.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Christopher R. Drahozal, *Federal Arbitration Act Preemption*, 79 IND. L.J. 393 (2004).

The author notes that courts are now facing the second generation of Federal Arbitration Act (FAA) preemption cases. “First generation” cases of FAA preemption involve state laws that invalidate parties’ agreements to arbitrate. Courts now routinely hold such laws preempted. Courts have only begun to address preemption challenges to state laws regulating the arbitration process—“second generation” FAA preemption cases.

{44} ARBITRATION—GENERAL
 {75} SUBJ MATTER: COMMERCIAL
 {144} LEGISLATION

Rochelle Cooper Dreyfus, *TRIPS—Round II: Should Users Strike Back?*, 71 U. CHI. L. REV. 21 (2004).

This article discusses the various rights that should be considered when negotiating the next General Agreement on Tariffs and Trade (GATT). The author suggests an approach considering users’ rights as a model when applying GATT to nations’ varied interests in intellectual property.

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

Elizabeth Duall, Note, *A Liability and Redress Regime for Genetically Modified Organisms Under the Cartagena Protocol*, 36 GEO. WASH. INT'L L. REV. 173 (2004).

This note discusses the potential creation of a liability regime under the Cartagena Protocol, which deals with biological diversity. The author

explores the history of the Protocol and addresses challenges to the creation of a liability and redress regime. In the discussion, the author describes the process of negotiating the Protocol, giving special attention to the competing interests of the different groups involved.

{1} NEGOTIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{75} SUBJ MATTER: COMMERCIAL

Matthew S. Duchesne, *The Continuous-Nationality-of-Claims Principle: Its Historical Development and Current Relevance to Investor-State Investment Disputes*, 36 GEO. WASH. INT'L L. REV. 783 (2004).

This article reviews the status of the individual in international law, demonstrating the trend of recognizing individuals as subjects rather than mere objects of the law. The article identifies traditional rationales for conditioning diplomatic espousal on continuous nationality, demonstrating their inapplicability to arbitral proceedings in which an investor prosecutes a claim directly against a state.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

Jared Dwyer, Note, *Town of Groton v. United Steelworkers of America: What's So Illegal About a Nolo Plea?*, 22 QUINNIPIAC L. REV. 569 (2004).

This casenote generally discusses the approach of Connecticut state courts in relation to the enforcement of arbitration awards and the public policy exception. Through an analysis of the recent decision in *Groton* utilizing the public policy exception, the author examines the impact of the court's decision and offers an alternative approach in evaluating public policy challenges to arbitration awards.

{44} ARBITRATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{133} COURT REFORMS

Stephen D. Easton, *Damages: The Litigation Environment*, 2004 J. DISP. RESOL. 57 (2004).

The author discusses the importance of formal litigation in the dispute resolution process. In particular, the article uses a case which involved a hospital that finally settled out of court after a long and arduous litigation proceeding.

{1} NEGOTIATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{121} SETTLEMENT: PRESSURES TO SETTLE

Michael Oliver Eckard, *The United States Supreme Court's Indecision in Green Tree Financial Corporation v. Bazzle: A Class Act*, 55 S.C. L. REV. 489 (2004).

This article considers some of the questions left unanswered following *Green Tree Financial Corporation v. Bazzle*, specifically regarding a state court's refusal to enforce an arbitration clause prohibiting class-action arbitration on the grounds that the state's contract law holds such an agreement to be adhesive and unconscionable. This article recounts *Green Tree*, the Court's various opinions, and discusses the future of class arbitrations.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Paul F. Eckstein, *Seeking Negotiation's Cutting Edge*, 40 ARIZ. ATT'Y 11 (2004).

The article offers the author's personal views on the importance of negotiations for all lawyers and evaluates MARTIN E. LATZ, GAIN THE EDGE! NEGOTIATING TO GET WHAT YOU WANT. Overall, the author concludes that those that would read GAIN THE EDGE! will be better prepared to negotiate.

{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{151} ROLE OF LAWYERS

{114} 3D PARTY: PRACTICE OF LAW

Stuart E. Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II*, 37 VAND. J. TRANSNAT'L L. 333 (2004).

In this article, Former Ambassador Stuart E. Eizenstat describes his role as a mediator and negotiator while a Special Envoy in Europe and to assist in the restitution of assets taken by Hitler during World War II.

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: CIVIL RIGHTS

Ian H. Eliasoph, *Missing Link: International Arbitration and the Ability of Private Actors to Enforce Human Rights Norms*, 10 NEW ENG. J. INT'L & COMP. L. 83 (2004).

This article addresses a link that has been overlooked as members of the academic and human rights communities have been searching for effective enforcement mechanisms for international norms with regard to human

rights, such as effective labor standards. The article suggests that uniform labor standards can potentially be linked with the extraordinarily effective adjudicatory mechanism of international commercial arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Kay Elkins Elliott & Frank W. Elliott, Symposium, *Problem Solving Process: Peacemakers and the Law: Settlement Advocacy*, 11 TEX. WESLEYAN L. REV. 7 (2004).

This article discusses how a lawyer could use negotiation, mediation, and other settlement procedures to zealously represent their clients. The author guides the reader through the settlement process and explains the importance of the art of persuasion.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Mark Ells et al., *Unraveling the Labrynth: A Proposed Revision of the Nebraska Juvenile Code*, 82 NEB. L. REV. 1126 (2004).

This article provides suggestions for a proposed code for Nebraska juvenile law. The proposed code includes a provision for the use of mediation in resolving disputes. The article describes the mediation process as it applies to Nebraska juvenile law.

{21} MEDIATION—GENERAL

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

Adam Epstein, *Employer's Exclusive Control Over Selection of Arbitrators Held Invalid*, 83 MICH. B.J. 28 (2004).

Employee handbooks that require mandatory arbitration procedures have consistently been held to be valid. *McMullen v Meijer, Inc.*, held that, when the process used to select an arbitrator is fundamentally unfair, the arbitral forum could not then serve as an effective alternative for a judicial forum, even if there is no evidence of a bias or corrupt arbitrator.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

Nancy Erbe, *The Global Popularity and Promise of Facilitative ADR*, 18 TEMP. INT'L & COMP. L.J. 343 (2004).

This article emphasizes the popularity and potential of ADR to affect change with track two diplomacy, and help with preventative and restorative efforts after war. This article presents the results of qualitative research which asked parties to cross-ethnic dispute resolution in the Balkans, Cameroon, Nepal,

and the Ukraine to evaluate, in their own words, the effectiveness of group facilitation. She concludes that facilitative, inter-ethnic teams were a consistently popular approach to dispute resolution across all four regions and have the ability to help with community building, counseling, conflict resolution, and reconciliation.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Ann Laquer Estin, *Embracing Tradition: Pluralism in American Family Law*, 63 MD. L. REV. 540 (2004).

In explaining courts' efforts to understand cultural and religious diversity in family law, the author notes that Orthodox rabbis have begun encouraging married couples to execute arbitration agreements. Secular courts will refuse to recognize the agreement if it is poorly drafted or signed under duress. If given legal effect, however, the disputing parties begin in the bet din and then receive confirmation of the award from the civil divorce court.

{44} ARBITRATION—GENERAL

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

{124} COMPARISONS: CROSS-CULTURAL

Frank G. Evans, Symposium, *Problem Solving Process: Peacemakers and the Law: Introduction*, 11 TEX. WESLEYAN L. REV. 1 (2004).

This article discusses the Texas ADR movement and its progression over the past 20 years. The author argues that ADR professionals must continue to increase the public's awareness of ADR. The author also encourages ADR professionals to increase their understanding of new ADR mechanisms, such as transformational mediation and other hybrid ADR processes. The author also argues that law schools must teach students about ADR and its use in practice.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{125} COMPARISONS: HISTORICAL

Ariel Ezrachi, *The Role of Voluntary Frameworks in Multinational Cooperation Over Merger Control*, 36 GEO. WASH. INT'L L. REV. 433 (2004).

This article discusses the increasing number of jurisdictions developing and enforcing merger regimes, calling for greater cooperation between competing agencies in their appraisal of merger transactions. The article explores the obstacles that hinder cooperative developments at the multinational level of merger control, and questions the extent to which voluntary frameworks contribute to create a multinational agreement.

{1} NEGOTIATION—GENERAL
 {81} SUBJ MATTER: CORPORATE

Amy Farmer et al., *The Causes of Bargaining Failure: Evidence From Major League Baseball*, 47 J.L. & ECON. 543 (2004).

The authors examine player/owner arbitration data available from Major League Baseball to investigate the empirical regularities associated with final offer arbitration, specifically, the effect of aggressive offers made by both the players and club managers. While different models of settlement failure generate different predictions regarding the relationship between aggressiveness and arbitration outcomes, the authors find that higher levels of disagreement between players and club managers lead to lower player salaries.

{44} ARBITRATION—GENERAL
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Amy Farmer & Paul Pecorino, *Civil Litigation with Mandatory Discovery and Voluntary Transmission of Private Information*, 34 J. LEGAL STUD. 137 (2005).

This article looks into a variety of models for pretrial negotiations. The model looks closer into the variables of costly voluntary disclosure and costly mandatory discovery. The article looks into what it calls the “screening game” and the “signaling game” to propose different methods of pretrial negotiations. Concluding, the authors find that the two models will increase the likelihood of settlement.

{1} NEGOTIATION—GENERAL
 {136} ECONOMIC ADVANTAGES OF ADR
 {155} TEACHING

Celia Wasserstein Fassberg, *The Empirical and Theoretical Underpinnings of the Law Merchant: Lex Mercatoria—Hoist with Its Own Petard?*, 5 CHI. J. INT’L L. 67 (2004).

This article provides background to the idea of Lex Mercatoria and describes its relationship to both national and international law to examine the question of its autonomy in light of the recent move towards its codification. The article further suggests that arbitral tribunals can interpret Lex Mercatoria in a way that ensures professional ad hoc fairness for merchants in arbitration proceedings.

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

Jay M. Feinman, *Un-Making Law: The Classical Revival in the Common Law*, 28 SEATTLE U. L. REV. 1 (2004).

The author reviews and examines the so-called “classical revival” in the common law including the increased judicial respect for pre-dispute arbitration contracts. In reviewing the history of courts’ decisions upholding or striking down arbitration agreements, the author suggests that the Federal Arbitration Act as well as a string of Supreme Court decisions reflect an increased willingness to respect the private economic decisions of parties exercising their freedom of contract.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Gregory Firestone & Janet Weinstein, *In the Best Interests of Children: A Proposal to Transform the Adversarial System*, 42 FAM. CT. REV. 203 (2004).

This article discusses the shortcomings of the adversarial, rights-based model of traditional family law and dispute resolution systems design theory. The author proposes a comprehensive dispute resolution system for families in transition that is created around the psychological, social, and cultural needs and interest of children.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Timothy S. Fisher & Jason C. Welch, *Survey of 2000 Through 2002 Second Circuit Construction Law Decisions*, 22 QUINNIPIAC L. REV. 455 (2004).

This article analyzes the way the Second Circuit, from 2000–2002, interpreted arbitration clauses in construction law cases and contracts.

{44} ARBITRATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

George Flint, *Annual Survey of Texas Law: Securities Regulation*, 57 SMU L. REV. 1207 (2004).

This article states that brokerage agreements commonly provide for arbitration of all disputes between broker and customer and, since securities transactions are “transactions involving commerce,” the Federal Arbitration Act governs, not Texas’ arbitration law.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

Aubrey Ford, Jr., *The Alabama Supreme Court Commission on Dispute Resolution*, 65 ALA. LAW. 158 (2004).

This is a brief history of how Alabama established its Supreme Court Commission on Dispute Resolution. The article highlights the Commission's diverse membership and contributions to the community.

{44} ARBITRATION—GENERAL

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

Ben C. Fordham, *The Art of the Deal*, 40 TENN. B.J. 27 (2004).

The author discusses five principles, taken from SUN TZU, THE ART OF WAR, that help guide attorneys through business mergers and acquisitions. The principles are (1) have a plan, (2) seek unity, (3) be ready to anticipate and adapt, (4) maintain a stubborn disposition, and (5) seek success as opposed to annihilation.

{1} NEGOTIATION—GENERAL

{81} SUBJ MATTER: CORPORATE

Jerri L. Fosnaught, Note, *Domestic Violence in the Armed Forces: Using Restorative Mediation as a Method to Resolve Disputes Between Service Members and Their Significant Others*, 19 OHIO ST. J. ON DISP. RESOL. 1059 (2004).

This note examines the problem of domestic violence within the armed forces and suggests a mandatory restorative mediation program as a solution. In doing so, it explores the problems that potentially surround the armed forces, depending on what individuals discover as the reasoning behind their violent behavior. It posits that restorative mediation provides an opportunity for guidance by specialized mediators and allows the rebuilding of relationships.

{21} MEDIATION—GENERAL

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

{127} REQUIREMENTS: MANDATE TO USE

{136} ECONOMIC ADVANTAGES OF ADR

Tamar Frankel, *Governing by Negotiation: The Internet Naming System*, 12 CARDOZO J. INT'L & COMP. L. 449 (2004).

This article explores the complicated approaches to governing the Internet naming system. The author identifies the primary actors attempting to exercise some control over the naming system and focuses on negotiations among those actors to create some semblance of a balance of power. Specifically, the author notes that a market system provides more possibilities for negotiation, resulting in more flexibility.

{1} NEGOTIATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET
 {105} SUBJ MATTER: SCIENCE & TECHNOLOGY
 {92} SUBJ MATTER: INT'L

Bruce Fraser, *The Neutral Lie Detector: You Can't Judge Participants by Their Demanor*, 4 PEPP. DISP. RESOL. L.J. 259 (2004).

This article analyzes participants' desire and tendency to misrepresent themselves and their issues in ADR procedures.

{1} NEGOTIATION—GENERAL
 {77} SUBJ MATTER: COMMUNITY
 {124} COMPARISONS: CROSS-CULTURAL
 {149} QUALITY CONTROL

Andrew Frazer, *Redundancy and Interpretation in Industrial Agreements: The Amcor Case*, 26 SYDNEY L. REV. 241 (2004).

This article discusses how industrial parties in Australia are moving away from the courts for resolution of differences over the application of agreements and have moved toward using private arbitration clauses for the settlement of such disputes.

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

Christopher L. Frost, *Welcome to the Jungle: Rethinking the Amount in Controversy in a Petition to Vacate an Arbitration Award Under the Federal Arbitration Act*, 32 PEPP. L. REV. 227 (2005).

This article discusses the potential problem of mass unpredictability associated with allowing courts to vacate an arbitration award and decide an appropriate measure of relief on their own.

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

Marc Galanter & Jayanth K. Krishnan, *"Bread for the Poor": Access to Justice and the Rights of the Needy in India*, 55 HASTINGS L.J. 789 (2004).

This article discusses the problem of the high cost of accessing the court system in India, thus precluding many poorer individuals from the ability of invoking the benefits of justice. ADR procedures may help bring access to justice to the lower income citizens of India.

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

Kathrine Kuhn Galle, Comment, *The Appearance of Impropriety: Making Agreements to Arbitrate in Health Care Contracts More Palatable*, 30 WM. MITCHELL L. REV. 969 (2004).

This comment addresses the issue of consumer skepticism of arbitration in health care. The author notes that the critics of arbitration seem to have the loudest voices, but studies show that most patients are willing to sign arbitration agreements. The comment examines the nature of the analysis of arbitration clauses in health care contracts and the statutory and case law governing arbitration agreements. It concludes by proposing some steps that can be taken to correct the appearance of impropriety in health care related arbitration agreements.

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

David Gantz, *The Evolution of FTA Investment Provisions: From NAFTA to the United States-Chile Free Trade Agreement*, 19 AM. U. INT'L L. REV. 679 (2004).

Controversial new provisions in trade agreements are likely to affect investment arbitrations by limiting violations of fair and equitable treatment to the high standard imposed by customary international law, reflecting the growing jurisprudence of arbitral decisions under NAFTA Chapter 11 and bilateral investment treaties. These tribunals are likely to impose a high burden of proof to overcome the strong presumption that regulatory actions are not expropriatory.

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

Carlos G. Garcia, *All the Other Dirty Little Secrets: Investment Treaties, Latin America, and the Necessary Evil of Investor-State Arbitration*, 16 FLA. J. INT'L L. 301 (2004).

This article examines many of the issues surrounding the role of investor-state arbitration in resolving claims based on Bilateral Investment Treaties. More specifically, the article focuses primarily on the use of investor-state arbitrations in Latin American, where a large number of cases have been successfully brought by investors.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {92} SUBJ MATTER: INT'L
 {87} SUBJ MATTER: GOV'T
 {75} SUBJ MATTER: COMMERCIAL

Clifford Gately, *Resolving Complex Securites Claims: Navigating the Arbitration Process*, 19 CHI. B. ASS'N REC. 16 (2005).

Gately summarizes a panel discussion on "Arbitrating Complex Securities Law Claims." The panel emphasized the importance of setting schedules, fully briefing arbitrators, and resolving as many issues with co-counsel in advance of the actual arbitration proceeding.

{44} ARBITRATION—GENERAL
{106} SUBJ MATTER: SECURITIES
{149} QUALITY CONTROL
{151} ROLE OF LAWYERS

Michael J. Geiger, *The Mediation Bookends: How to Better Ensure Mediation Success*, 40 TENN. B.J. 26 (2004).

This article discusses mediation's "bookends"—the process of mediation and the scope of the potential agreement—as focal points in mediation that are often underappreciated, as parties and their attorneys instead focus on the space between the bookeneds, i.e., facts and presentation of those facts in support of their case.

{21} MEDIATION—GENERAL

Georgetown Journal of Legal Ethics, Transcript, *Access to Justice: Does it Exist in Civil Cases?*, 17 GEO. J. LEGAL ETHICS 455 (2004).

This transcript recounts a discussion of the use of court-connected mediation programs and whether or not such programs increase access to justice or save courts time and money.

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

Gemma Giantomasi, Note, *A Balancing Act: The Foreclosure Power of Homeowners' Associations*, 72 FORDHAM L. REV. 2503 (2004).

This note discusses the competing interests of homeowners and homeowners' associations. Foreclosure remains an unwarranted threat to many homeowners, while it is a valuable financial tool for many homeowners' associations. The author urges state legislatures to thoughtfully consider these competing interests. As part of the solution, the author points to several states that have adopted ADR programs to allow parties to settle disputes prior to foreclosure proceedings.

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

Brent S. Gilfedder, Note, "A Manifest Disregard of Arbitration?" *An Analysis of Recent Georgia Legislation Adding "Manifest Disregard of the*

Law” to the Georgia Arbitration Code as a Statutory Ground for Vacatur, 39 GA. L. REV. 259 (2004).

In 2003, Georgia became the first state to enact a statute naming “manifest disregard for the law” as grounds for vacating an arbitration award. This note discusses the impact of this new statutory standard on arbitration in Georgia. Additionally, it examines why the manifest disregard for the law standard is contrary to the goals of arbitration and to other Georgia arbitration statutes.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

Clayton P. Gillette, *The Empirical and Theoretical Underpinnings of the Law Merchant: The Law Merchant in the Modern Age: Institutional Design and International Usages Under the CISG*, 5 CHI. J. INT’L L. 157 (2004).

This article suggests that there are circumstances in which desirable customs are likely to emerge where arbiters have the competency to apply them. It points out that the existing cases in international sales law are sensitive to circumstances in which arbiters are competent to define and apply trade usages, and that arbiters have largely limited the usages that they recognize under the CISG to those that reflect realistic bargains and can be confirmed without technical expertise or significant discretion. The result is that decisions about usages that emerge from arbiters are less controversial.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{75} SUBJ MATTER: COMMERCIAL

{79} SUBJ MATTER: CONSUMER

Tom Ginsburg & Richard H. McAdams, *Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution*, 45 WM. & MARY L. REV. 1229 (2004).

This article focuses on international dispute resolution and the question of why some states are willing to comply with their primary international obligations only after an adjudicator has articulated those obligations. The authors use game theory and specifically coordination games to address the issue and explain their theories.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT’L

{124} COMPARISONS: CROSS-CULTURAL

Adam D. Glassman, *The Imposition of Federal Caps in Medical Malpractice Liability Actions: Will They Cure the Current Crisis in Health Care?*, 37 AKRON L. REV. 417 (2004).

This article examines the extent of the current medical malpractice crisis. It also compares the success of traditional “hard caps” with the success of ADR procedures in lowering malpractice premiums for doctors.

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

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{128} REQUIREMENTS: STATUTORY OR RULES

{136} ECONOMIC ADVANTAGES OF ADR

H. David Gold, *Legal Strategies to Address the Misrepresentation of Vermont Maple Syrup*, 59 FOOD & DRUG L.J. 93 (2004).

In addition to geographic references, this article examines the misrepresentation of food products’ purity and quality. The article concludes by proposing several legal strategies to counteract such practices, such as negotiating in the shadow of the law.

{1} NEGOTIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

Leigh Goodmark & Catherine F. Klein, *Deconstructing Teresa O’Brien: A Role Play for Domestic Violence Clinics*, 23 ST. LOUIS U. PUB. L. REV. 253 (2004).

The authors approach a complex domestic violence and child custody case study from a variety of perspectives including negotiation. They suggest that a “role playing” simulation of a negotiation process will provide significant training benefits for attorneys representing clients who may not be best served by traditional litigation or court-ordered remedies, such as civil protection orders. This negotiation focus is considered part of a client-centered approach to practice.

{1} NEGOTIATION—GENERAL

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

{155} TEACHING

Joanne Goss, *Judicial Dispute Resolution: Program Setup and Evaluation in Edmonton*, 42 FAM. CT. REV. 511 (2004).

In response to the long wait for trial dates in the Family and Youth Court in Edmonton, Alberta, Canada, the court created the Judicial Dispute Resolution program as a pretrial settlement process conducted by judges in hopes of resolving disputes before trial. The article examines the pilot project by discussing how the program was created, offers an evaluation of the program and results, and details the state of the program today.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

William B. Gould IV, *Labor Issues in Professional Sports: Reflections on Baseball, Labor, and Antitrust Law*, 15 STAN. L. & POL'Y REV. 61 (2004).

This article examines the evolution of labor-management conflict in sports, with particular reference to baseball. It addresses the development of collective bargaining agreements which utilized salary arbitration and concludes by pondering whether the collectively bargained salary cap restraints in football and basketball will play a role in future negotiations in baseball.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Lorie M. Graham, *Resolving Indigenous Claims to Self-Determination*, 10 ILSA J. INT'L & COMP. L. 385 (2004).

The right of self-determination is vitally important to indigenous peoples. At present, however, there is no specific forum or process for resolving indigenous claims to self-determination. One of the ways that the article proposes to resolve indigenous claims to self-determination is through a variety of ADR processes.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Robin L. Grant, Comment, *Mayo v. Dean Witter Reynolds, Inc.*, 19 OHIO ST. J. ON DISP. RESOL. 749 (2004).

This comment examines the *Mayo v. Dean Witter* case. It explains the holding of a district court that the enforcement of an arbitration clause was valid because federal standards trumped more stringent state standards. It also describes possible implications of the decision while noting that the deciding court limited its decision to the instant case.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

Miriam Grassby, *Two Income Couples: Presumption of Need for the Lower Income Spouse*, 20 CAN. J. FAM. L. 321 (2004).

This article discusses the inequity that arises in divorces when one spouse earns considerably less than the other. Particularly, the author proposes a formula for the equitable settlement of disputes between couples in this position. The author cites mediation as a reason contributing to less spousal support, arguing that mediation places pressure on the parties to settle, leaving women—frequently the lower income spouse—in an unfavorable bargaining position.

{21} MEDIATION—GENERAL
{1} NEGOTIATION—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Michael Z. Green, *Finding Lawyers for Employees in Discrimination Disputes as a Critical Prescription for Unions to Embrace Racial Justice*, 7 U. PA. J. LAB. & EMP. L. 55 (2004).

The article focuses on racial discrimination among union members. As part of the discussion, the article highlights alternatives to litigation—mediation and arbitration—ADR mechanisms. It goes through the pros and cons of using ADR mechanisms in these type of suits.

{21} MEDIATION—GENERAL
{44} ARBITRATION—GENERAL
{76} SUBJ MATTER: CIVIL RIGHTS
{94} SUBJ MATTER: LABOR—DISCRIMINATION

Todd Green, *Fraud is a Funny Thing*, 46 ORANGE COUNTY LAW. 36 (2004).

This author notes that courts wrestle with the question of what effect, if any, to give to contractual provisions in the face of claims seeking to rescind contracts based on fraud in the inducement. The author examines how integration clauses and arbitration clauses are treated in the face of such claims to highlight this tension.

{44} ARBITRATION—GENERAL
{75} SUBJ MATTER: COMMERCIAL

Tyler R. Green, Comment, *Medical Malpractice Amendments*, 2004 UTAH L. REV. 325 (2004).

This comment discusses the passage of a medical malpractice amendment by the Utah Legislature that would allow health-care providers to withhold services in non-emergency situations if a patient refuses to sign a binding arbitration agreement. It also examines the background leading up to the amendment and the arguments put forth by opponents of the amendment.

{44} ARBITRATION—GENERAL
{89} SUBJ MATTER: HOSPITALS
{98} SUBJ MATTER: MEDICAL MALPRACTICE

Myron Greenberg & Megan A. Blazina, *What Mediators Need to Know About Class Actions: A Basic Primer*, 27 HAMLIN L. REV. 191 (2004).

This article discusses mediation as it applies to class actions and mass torts. It discusses the complexities of class actions under Federal Rule of Civil Procedure 23. It describes class-action litigation from the perspective of both plaintiffs and defendants and ADR mechanisms and opportunities for their use in mass tort and class actions, including mediation to facilitate resolution

and settlement. Finally, it addresses helpful tools for mediation in class actions.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

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

{110} SUBJ MATTER: TORTS—OTHER

Nathan Greene, Note, *Enforceability of the People's Republic of China's Trade Secret Law: Impact on Technology Transfer in the PRC and Preparing for Successful Licensing*, 44 IDEA 437 (2004).

This note discusses the risks that U.S. companies face when transferring technology to China. The author explores the reasons behind the cultural gap in the protection of trade secrets, including China's ineffective system of enforcing arbitration awards. The article concludes by stating that, although the risks inherent in sharing trade secrets with business partners in China are great, they can be assessed and minimized if the proper steps are taken.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{124} COMPARISONS: CROSS-CULTURAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Philip J. Greene, *Questioning Faith—An Examination of the Fair Use Defense Within Internet Domain Name Disputes, and the Role of Good or Bad Faith*, 4 LOY. L. & TECH. ANN. 45 (2004).

This article explores “trademark fair use” that is prevalent on the Internet in domain names and other uses. In the context of Internet domain name disputes, it discusses Internet domain name policy and jurisprudence, and the role of fair use. The article discusses the Uniform Domain Name Dispute Resolution Policy as adopted by ICANN in 1999, which allows a successful complainant to bring about the transfer, cancellation, or alteration of a contested domain name.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Sean J. Griffith, *The Costs and Benefits of Precommitment: An Appraisal of Omnicare v. NCS Healthcare*, 29 IOWA J. CORP. L. 569 (2004).

In *Omnicare v. NCS Healthcare*, the Delaware Supreme Court stated that, in a merger transaction, the board of directors is required to negotiate a fiduciary out clause. This article criticizes the *Omnicare* decision, specifically noting that the decision disadvantaged target boards by taking away the negotiating strategy of precommitment.

{1} NEGOTIATION—GENERAL

{81} SUBJ MATTER: CORPORATE

James A. Gross, *Incorporating Human Rights Principles Into U.S. Labor Arbitration: A Proposal for Fundamental Change*, 8 EMPLOYEE RTS. & EMPLOYMENT POL'Y J. 1 (2004).

This article examines human rights as applied to labor arbitration in the United States. The article applies international human rights principles as standards for examining arbitration determinations of employer and employee rights. In concluding, the article emphasizes the need to incorporate human rights principles into labor arbitration in the United States.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{92} SUBJ MATTER: INT'L

Joel M. Grossman, *Clarifying the Confidentiality of Mediation Evidence: Guidance is Needed on the Relationship between Evidence Code Sections 1119 and 1120*, 27 L.A. LAW. 12 (2004).

The author argues that the Supreme Court's ruling in *Rojas* regarding mediation confidentiality, whichever way it goes, is not likely to stop the mediation juggernaut. He believes that the benefits of mediation are so significant that it will continue to thrive as the best alternative to costly and uncertain litigation.

{21} MEDIATION—GENERAL

{132} CONFIDENTIALITY

Isabelle R. Gunning, *Know Justice, Know Peace: Further Reflections on Justice, Equality and Impartiality in Settlement Oriented and Transformative Mediations*, 5 CARDOZO J. CONFLICT RESOL. 87 (2004).

This article advances the argument that, as mediators, people should have a concern for the justness of the outcome of the mediations in which they serve and not just a cessation of immediate hostilities. Mediators need to be concerned with justice in terms of process and substance. The author suggests that equality and justice should be included in the process of mediation and endorses transformative mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Chris Guthrie, *Principles of Influence on Negotiation*, 87 MARQ. L. REV. 829 (2004).

While persuasion plays a role in both adjudication and negotiation, the negotiating lawyer must elicit persuasion tactics in a more subtle manner. The author reviews Robert Cialdini's six "weapons of influence" (liking,

social proof, commitment and consistency, reciprocity, authority, and scarcity) and explains how they can be used both effectively and ethically in a negotiation setting.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Chris Guthrie, *Understanding Settlement in Damages (and Beyond)*, 2004 J. DISP. RESOL. 89 (2004).

This article discusses the *Sabia* case and talks about the settlement which resulted from the case. The article discusses the predicted trial outcome. However, as the article discusses, the predicted outcome may inform the litigant's strategy, but it cannot determine it. Thus, crucial questions that go into the settlement negotiation are left out from the predicted trial outcome, including how fast they should settle and what is a sincere offer.

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{121} SETTLEMENT: PRESSURES TO SETTLE

{155} TEACHING

Chris Guthrie & David Sally, *The Impact of the Impact Bias on Negotiation*, 87 MARQ. L. REV. 817 (2004).

Because humans tend to overestimate the intensity and duration of their emotional reactions to an outcome, it is difficult for them to identify what they really want out of a negotiation. While the repeat-player attorney may be able to better delineate his client's interests, the authors suggest that, in order to maintain the ethical standard of client-based negotiation, attorneys strike a balance between extreme paternalism and extreme anti-paternalism.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

Trish Haas, Comment, *Child Custody Determinations in Michigan: Not in the Best Interests of Children or Parents*, 81 U. DET. MERCY L. REV. 333 (2004).

This comment discusses Michigan's Child Custody Act, the proposed goals of the Act that attempt to further the best interests of the children involved in custody disputes, and the Act's failed application, as evidenced by its failure to meet parents' emotional needs and its failure to promote parental cooperation.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

W. Melvin Haas III et al., *Annual Survey of Georgia Law: June 1, 2003–May 31, 2004: Labor and Employment Law*, 56 MERCER L. REV. 291 (2004). This survey of Georgia labor and employment law from June 2003 to May 2004 includes a look into employment contracts and arbitration clauses. The authors highlight a court of appeals case that deals with the application of the Georgia Arbitration Code to an Asset Management Agreement. In that case, the court held that the specific provisions of the Georgia Arbitration Code did not apply to independent contractors.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

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

Toran Hansen, *The Narrative Approach to Mediation*, 4 PEPP. DISP. RESOL. L.J. 297 (2004).

This article explains the process behind a narrative method of mediation where the stories of parties inherent in every mediation are explored in the broader context. This approach takes into account other relationships that exist and events that have occurred in an effort to create a less adversarial environment during mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Bernard E. Harcourt, Symposium, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws: Exploding the Gun Culture Wars (A Call to Historians)*, 73 FORDHAM L. REV. 653 (2004).

This article examines the Nazi gun registration argument, and the cultural dilemma that arises from the gun debate. The article suggests that the way out of the cultural dilemma is through mediation and reconciliation.

{21} MEDIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{124} COMPARISONS: CROSS-CULTURAL

Margaret M. Harding, *The Limits of the Due Process Protocols*, 19 OHIO ST. J. ON DISP. RESOL. 369 (2004).

This article examines the role of due process protocols as mechanisms of self-regulation in the arbitration community. It provides background information about the creation of due process protocols and delves into the impact the protocols have had on arbitration. Additionally, it critiques the protocols, and offers ways in which efficacy can be increased.

{44} ARBITRATION—GENERAL

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

{146} ORGANIZATION POLICIES & RULES

Bobby M. Harges, *Mediation Settlement Agreement Legally Binding and Enforceable*, 52 LA. B.J. 113 (2004).

This article briefly describes a case in which a mediation settlement agreement, signed by a personal-injury plaintiff and all defendants in the case at the end of a mediation, was a legally binding document and was enforceable.

{21} MEDIATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Bobby M. Harges, *Party Cannot Avoid Arbitration by Refusing to Pay Arbitration Fees*, 52 LA. B.J. 113 (2004).

This article discusses a case where a court stated that a party may not escape its duty to arbitrate a matter that it agreed to arbitrate by deliberately failing to pay its fee to the arbitrator.

{44} ARBITRATION—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Harvard Law Review, Note, *Jurisdiction in Bankruptcy Proceedings: A Test for Implied Repeal of the Federal Arbitration Act*, 117 HARV. L. REV. 2296 (2004).

Arbitration clauses arise in many contracts and govern numerous aspects of the contract, becoming “super-contracts” due to their enforceability. However, a problem arises in the bankruptcy context because, under bankruptcy law, pre-petition contracts may be cancelled by the debtor-in-possession. This note challenges the enforceability of arbitration clauses in pre-petition contracts in a bankruptcy proceeding and reconceptualizes the relationship between arbitration and bankruptcy.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

Brian Haussmann, Note, *The ABA Ethical Guidelines for Settlement Negotiations: Exceeding the Limits of the Adversarial Ethic*, 89 CORNELL L. REV. 1218 (2004).

This article deals with the disclosure and omissions of material facts during court-approved settlement negotiations. It centers on a disturbing case where an attorney withheld documents indicating a life-threatening aneurysm during the settlement negotiations so that his client would not have to reimburse the plaintiff for the actual consequences of a car accident. The article explores the morality or immorality of such situations in reference to settlement negotiations.

{1} NEGOTIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{110} SUBJ MATTER: TORTS—OTHER

{151} ROLE OF LAWYERS

Laurence R. Helfer, Symposium, *Whither the URDP: Autonomous, Americanized, or Cosmopolitan?*, 12 CARDOZO J. INT'L & COMP. L. 493 (2004).

This article discusses the Uniform Domain Name Dispute Resolution Policy and its relationship to national courts and national intellectual property laws. It explains the three ways in which these relationships could evolve and considers the consequences that each different evolutionary path would have on the ability to reform the policy's institutional and procedural issues.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{92} SUBJ MATTER: INT'L

Kathryn Hendley, *Business Litigation in the Transition: A Portrait of Debt Collection in Russia*, 38 LAW & SOC. INQUIRY 305 (2004).

This article attempts to examine dispute resolution within the context of business litigation in Russia, including how firms handle disputes in legal systems that are less well-entrenched and in economic systems where long-term relationships are harder to sustain. As interenterprise debt has exploded in Russia, managers use the courts to collect debt. The article examines the role of the economic court in nonpayment cases.

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

{79} SUBJ MATTER: CONSUMER

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

William Heye, Note, *Forum Selection for International Dispute Resolution in China*, 27 HASTINGS INT'L & COMP. L. REV. 535 (2004).

This note discusses the workings of the unique dispute resolution process in China and why it draws many countries that use other systems to contractually establish China as a forum for settling disputes.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

J.R. Hildenbrand, Comment, *A Normative Critique of Private Domain Name Dispute Resolution*, 22 J. MARSHALL J. COMPUTER & INFO. L. 625 (2004).

This comment examines the balance of rights outlined by the Uniform Dispute Resolution Policy (UDRP) and the system of normative principles underlying traditional trademark protection. It considers the general workings of the UDRP and its relationship to the Anti-cyber-squatting Consumer Protection Act (ACPA). Finally, the comment evaluates the consistency of

the UDRP with the normative principles of traditional trademark protection and the principles governing the UDRP process.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER-INTERNET

Claire A. Hill & Christopher King, *How Do German Contracts Do as Much with Fewer Words?*, 79 CHI.-KENT L. REV. 889 (2004).

This article examines the difference between contracts negotiated in Germany and those negotiated in a country with an Anglo-American legal system. A main difference that the author notes is the lower emphasis Germans place on the contract drafting and negotiating process, taking a more efficient, cost-effective approach.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Bill Ong Hing, *Pursuing Equal Justice in the West: Rebellious Lawyering, Settlement, and Reconciliation: Soko Bukai v. YWCA*, 5 NEV. L.J. 172 (2004).

This article briefly describes the mediation process in trying to determine the rightful ownership of the 1830 Sutter Street Building in San Francisco and how the final resolution of the dispute in which the Japanese-American community groups agreed to purchase the structure for \$733,000 provided vindication for a community victimized by alien land laws in the early 1900s and internment during World War II.

{21} MEDIATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Thomas Hitter, Note, *What Is So Special About the Federal Circuit? A Recommendation for ADR Use in the Federal Circuit*, 13 FED. CIR. B.J. 441 (2004).

Through case analysis, this note examines the relationship between ADR programs and the United States Court of Appeals for the Federal Circuit. The author argues that ADR is a flexible remedy the Federal Circuit can use, despite the fact that the Federal Circuit consists of very complicated and expensive issues. By addressing the misconceptions of ADR within the Federal Circuit, the note demonstrates how ADR is an effective option.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{136} ECONOMIC ADVANTAGES OF ADR

{133} COURT REFORMS

Mahmoud Hmoud, *The Use of Force Against Iraq: Occupation and Security Council Resolution 1483*, 36 CORNELL INT'L L.J. 435 (2004).

This article discusses the negotiation process which occurred before, during, and after the invasion of Iraq to oust Saddam Hussein. Before the invasion of Iraq, intense negotiating sessions were used to justify the war. Thereafter, negotiations were again used in order for the U.S. to receive governing authority over Iraq.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Kerry M. Hodak, Note, *Court-Sanctioned Mediation in Cases of Acquaintance Rape: A Beneficial Alternative to Traditional Prosecution*, 19 OHIO ST. J. ON DISP. RESOL. 1089 (2004).

This note argues that victim-offender mediation is an effective alternative to the criminal prosecution of rape cases. It explains the evolution of the perception of rape in American society, and suggests that cases of acquaintance rape are best dealt with through restorative mediation. Specifically, it asserts that mediation empowers victims without sacrificing the rights of offenders.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

David C. Hoffman, Note, *A Modest Proposal: Toward Improved Access to Biotechnology Research Tools by Implementing a Broad Experimental Exception*, 89 CORNELL L. REV. 993 (2004).

In this article, Hoffman discusses negotiating licenses with respect to biotechnology. It is argued by some commentators that inventors are discouraged from follow-on inventions because the Patent Act of 1952 gives expansive patent protection for biotechnology patents. In conclusion, Hoffman argues that we may remove the discouragement of producing works on a previous patent by implementing a broad experimental exception.

{1} NEGOTIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

John Holcomb, *Corporate Governance: Sarbanes-Oxley Act, Related Legal Issues, and Global Comparisons*, 32 DENV. J. INT'L L. & POL'Y 175 (2004).

This article discusses in a short section about the choice of whether to arbitrate or litigate. In particular, the article discusses whether the private plaintiff should bring actions against investment analysts, brokers, and their firms in an arbitration or litigation arrangement. Plaintiffs who bring their cases individually to court have a difficult time recovering; however, they often complain that arbitration favors industry, leading to their lack of success in that forum.

- {44} ARBITRATION—GENERAL
- {81} SUBJ MATTER: CORPORATE
- {104} SUBJ MATTER: REGULATORY
- {106} SUBJ MATTER: SECURITIES

Victoria Holstein-Childress, *Lex Cyberus: The UDRP as a Gatekeeper to Judicial Resolution of Competing Rights to Domain Names*, 109 PENN ST. L. REV. 565 (2004).

This article considers the Uniform Domain Name Resolution Policy (UDRP) as a form of expedited non-judicial/administrative proceeding that gives the owners of trademarks, in the case of clear trademark law violations, an additional and expedited forum through which they can have trademark laws enforced. Additionally, the article discusses the creation of the UDRP by the Department of Commerce as the controller/manager of all domain names.

- {21} MEDIATION—GENERAL
- {38} NON-BINDING RECOMMENDATION PROC—GENERAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Benjamin Holt & Michael Waller, *International Trade and Workers' Rights: Practical Tools for Reading Labor Rights Provisions of Free Trade Agreements*, 11 HUM. RTS. BRIEF 42 (2004).

This article reviews workers rights within the context of the North American Agreement on Labor Cooperation (NAALC) and free trade agreements between the United States and Chile and the United State and Singapore. In evaluating the enforcement and remedies of these agreements, it analyzes the arbitration process of the NAALC. The article concludes by making several recommendations as to how FTAs can improve in terms of protecting worker's rights in the future.

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

Christopher Honeyman, *Moveable Feasts: An Introduction*, 5 CARDOZO J. CONFLICT RESOL. 145 (2004).

Building on the idea that all politics are local, this article serves as an introduction to other articles detailing how the dispute resolution movement fares in different locales. The study was designed to analyze and strengthen the commonalities across widely disparate parts of the conflict resolution field.

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

Christopher Honeyman & Lela P. Love, *New York Moveable Feast: Boundaries to Practice*, 5 CARDOZO J. CONFLICT RESOL. 147 (2004).

This article provides the results of a study of dispute resolution programs in New York City. The group concluded that to increase diversity in the New York dispute resolution community, outreach efforts need to be focused in non-traditional areas, where alternative methods of dispute resolution actually utilized by various ethnic and racial groups might be centered.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Christopher Honeyman & Carrie J. Menkel-Meadow, *Washington, D.C. Moveable Feast: The Odds on Leviathan—Dispute Resolution and Washington D.C.'s Culture*, 5 CARDOZO J. CONFLICT RESOL. 159 (2004).

This article provides the results of a study of the success of dispute resolution practices in Washington, D.C. The authors concluded that, for those in the federal government, there are few if any material career incentives to dispute resolution. However, the flourishing of ADR has been attributed to women in the workforce, adding a “humanizing dimension.”

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Christopher Honeyman & Ellen A. Waldman, *San Diego: Moveable Feast: Competition in Cooperation-Building*, 5 CARDOZO J. CONFLICT RESOL. 173 (2004).

This study suggests that San Diego’s mediation communities’ early success in ADR has imposed some cost on the collaborative ethos that characterized its founding origins.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Xue Hong, *Domain Name Dispute Resolution in China: A Comprehensive Review*, 18 TEMP. INT’L & COMP. L.J. 1 (2004).

This article discusses the problems associated with registering a domain name in China and the procedures and forums that exist where one may proceed to rectify disputes.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{87} SUBJ MATTER: GOV’T

Thomas Horenkamp, Comment, *The New Florida Medical Malpractice Legislation and Its Likely Constitutional Challenges*, 58 U. MIAMI L. REV. 1285 (2004).

This comment reviews the latest revisions to Florida's medical malpractice laws. The author includes a brief history of the evolution of this law. Included in both the new and old versions of the law is a reliance on arbitration to settle disputes between patients and physicians.

{44} ARBITRATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{102} SUBJ MATTER: PUBLIC POLICY

James M. Hosking, *The Third Party Non-Signatory's Ability to Compel International Commercial Arbitration: Doing Justice Without Destroying Consent*, 4 PEPP. DISP. RESOL. L.J. 469 (2004).

This article addresses the increasingly important and difficult issue of extending contractual agreements to arbitrate to third parties who have not taken part in the execution of the contract. In the context of international commercial arbitration, the author tackles the topic head-on through the analysis of various mechanisms in an attempt to formulate a workable and equitable compromise.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Stephen Huber, *The Arbitration Jurisprudence of the Fifth Circuit*, 35 TEX. TECH L. REV. 497 (2004).

This article discusses the recent developments in the Fifth Circuit. Specifically, it discusses arbitration and conflicts between state and federal law, prearbitration appellate review, review of predispute arbitration provisions, judicial action during arbitration proceedings, judicial review of arbitration awards, and class arbitration.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{133} COURT REFORMS

Scott H. Hughes, *Mediator Immunity: The Misguided and Inequitable Shifting of Risk*, 83 OR. L. REV. 107 (2004).

This article focuses on mediation and the rules courts and legislatures have fashioned governing mediator immunity. The author takes the position that mediator immunity represents the inequitable shifting of risk of mediator misconduct from the mediators and the courts to those mediation participants least able to protect themselves from or shoulder the burden of such negative behavior.

{21} MEDIATION—GENERAL

{133} COURT REFORMS

Keith N. Hylton, *Competing and Complementary Rules Systems: Civil Procedure and ADR: Arbitration: Governance Benefits and Enforcement Costs*, 80 NOTRE DAME L. REV. 489 (2005).

This article discusses differences between dispute resolution techniques and comments particularly on governance benefits and enforcement costs. Furthermore, the article discusses theory of law and law enforcement or norms and norm enforcement as applied to arbitration but is equally applicable to law generally.

{44} ARBITRATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Maria O'Brien Hylton, *The Changing World of Employee Benefits*, 79 CHI.-KENT L. REV. 625 (2004).

This article discusses how, as union power declines, workers in the private sector are left without significant bargaining power in all matters relating to employment, including benefits. The speaker shows how union density has declined, thereby affecting health insurance, pensions, and related benefits. The speaker proposes various methods to deal with the declining coverage for workers.

{1} NEGOTIATION—GENERAL

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

{125} COMPARISONS: HISTORICAL

{147} POWER IMBALANCE

Anne Isbell, *Peace Education Through Mediation*, 65 ALA. LAW. 196 (2004).

The article discusses how the implementation of mediation into the education system has created positive results by teaching communication, developing leadership skills, and building self-esteem. The author argues that peer mediation is the best, pro-active way to address the issues of violence in schools today because it teaches peaceful conflict resolution.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{138} ETHICS: GENERAL

Scott Jablonski, *NAFTA Chapter 11 Dispute Resolution and Mexico: A Healthy Mix of International Law, Economics and Politics*, 32 DENV. J. INT'L L. & POL'Y 475 (2004).

This article prompts discussion on whether dispute resolution is beneficial to Mexico. Two aspects related to the dispute resolution process are the promotion of dialogue between foreign investors and whether the dialogue is politically acceptable to Mexican authorities. The article concludes by stating that arbitration is less intrusive on the sovereignty of Mexico. Thus, dispute

resolution is beneficial for Mexico and will eventually increase investment within its borders.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Scott Jablonski, Comment, *!Si, PO! Foreign Investment Dispute Resolution Does Have a Place in Trade Agreements in the Americas: A Comparative Look at Chapter 10 of the United States-Chile Free Trade Agreement*, 35 U. MIAMI INTER-AM. L. REV. 627 (2004).

The comment covers the 2003 American-Chilean Free Trade Agreement (FTA). The author focuses on Chapter 10 of the FTA, which includes procedures governing the arbitration of disputes between the two countries and the use of an arbitral tribunal. The analysis compares Chapter 11 of NAFTA and Chapter 10 of the American-Chilean FTA.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Gregory F. Jacob, *Without Reservation*, 5 CHI. J. INT'L L. 287 (2004).

The article discusses the flawed negotiation process involved in the Framework Convention on Tobacco Control (FCTC), where the United States delegates were not lawyers trained in international law, but rather were public health ministers. The article claims that the FCTC is an imperfect document produced by a deeply flawed process and was from the outset destined to be a largely symbolic document, the primary benefit of which is the raising of worldwide awareness about the public health epidemic caused by tobacco consumption.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{110} SUBJ MATTER: TORTS—OTHER

{144} LEGISLATION

Melissa B. Jacoby, *Negotiating Bankruptcy Legislation Through the News Media*, 41 HOUS. L. REV. 1091 (2004).

This article discusses the omnibus bankruptcy bill and the role of the news media as a kind of negotiator in transforming the issues surrounding the bill. The article specifically analyzes the role of the news media in policymaking and discusses how the news media influenced the legislative process.

{1} NEGOTIATION—GENERAL

{144} LEGISLATION

{102} SUBJ MATTER: PUBLIC POLICY

J. Steven Jarreau, *Anatomy of a Bit: The United States-Honduras Bilateral Investment Treaty*, 35 U. MIAMI INTER-AM. L. REV. 429 (2004).

This article reviews the latest American-Honduran Bilateral Investment Treaty (BIT). Dispute resolution played a more prominent role in this latest BIT. The author covers the entire BIT, including the significant sections on dispute resolution under the treaty. Prominent among the modes of dispute resolution are intergovernmental arbitration tribunals.

- {44} ARBITRATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {87} SUBJ MATTER: GOV'T

J. Steven Jarreau, *International Commercial Arbitration*, 52 LA. B.J. 297 (2004).

Jarreau outlines the Ninth Circuit's decision in *China National Metal Products Import/Export Co. v. Apex Digital Inc.*, where the court upheld an arbitration award by the China International Economic and Trade Arbitration Commission.

- {44} ARBITRATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sheila Jasanoff & Dogan Perese, *Science for Judges II: The Practice of Epidemiology and Administrative Agency Created Science: Welfare State or Welfare Court: Asbestos Litigation in Comparative Perspective*, 12 J.L. & POL'Y 619 (2004).

This article discusses asbestos claims that are concentrated in the few courts that handle the issue. To resolve the large numbers of cases, the courts have consolidated trials. In bifurcated trials, the judge directs parties to negotiate a settlement after liability is found. If no negotiation can be reached, the jury will be instructed to give punitive damages.

- {1} NEGOTIATION—GENERAL
- {123} SETTLEMENT: PRESSURES TO SETTLE
- {134} DISPUTE PREVENTION

Linda Jellum, *Parents Know Best: Revising Our Approach to Parental Custody Agreements*, 65 OHIO ST. L.J. 615 (2004).

This article deals with child custody laws. Included in the author's analysis are various methods of ADR, including negotiation, arbitration, and mediation.

- {1} NEGOTIATION—GENERAL
- {21} MEDIATION—GENERAL
- {44} ARBITRATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Nejib Jibril, Note & Comment, *The Binding Dilemma: From Bakassi to Badme—Making States Comply with Territorial Decisions of International Judicial Bodies*, 19 AM. U. INT'L L. REV. 633 (2004).

The author states that, in mediating volatile border disputes, the international community should refer the disputing countries to arbitration courts under the Permanent Court of Arbitration rather than to the International Court of Justice. The international community needs to be as involved in encouraging compliance with international judicial decisions as they are mediating the creation of agreements. Such agreements must not be ambiguous, and should have effective enforcement mechanisms.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

{124} COMPARISONS: CROSS-CULTURAL

Clete D. Johnson, Note, *A Barren Harvest for the Developing World? Presidential "Trade Promotion Authority" and the Unfulfilled Promise of Agriculture Negotiations in the Doha Round*, 32 GA. J. INT'L & COMP. L. 437 (2004).

This note argues that language in the Trade Act of 2002, commanding the President to seek export opportunities for U.S. farmers, is critical to the success of the Doha Round. If the U.S. and its partners can reach agreement on agricultural trade that comports with this language, the Doha Round will be successful. According to the author, if the sides do not agree, the Doha Round will fail.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Mikel D. Johnson, Note, *Contracts—Into the Void: Minnesota Limits Application of the Prima Paint Doctrine—Onvoy, Inc. v. Shal, LLC*, 31 WM. MITCHELL L. REV. 579 (2004).

This article discusses the Minnesota Supreme Court decision of *Onvoy, Inc. v. Shal, LLC*. It supports the court's finding that Minnesota has chosen the correct balance between access to the courts and the state's presumption in favor of arbitration.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Andreas Joklik, *The Legal Status of Professional Athletes: Differences Between the United States and the European Union Concerning Free Agency*, 11 SPORTS LAW. J. 223 (2004).

This article discusses arbitration in Major League Baseball and how it was implemented to resolve conflicts between players and their employers. Consequently, it was possible for the players to challenge the reserve system through private arbitration instead of public litigation.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Donald J. Jordan & Taylor Jordan Chafetz, *The Remedial Authority of the Arbitrator: Have We Come Full Circle?*, 14 EMPLOYMENT. LAB. L. REP. 9 (2004).

In this article, the authors depict the circular trends of the Canadian judicial system in limiting and expanding the remedial authority of arbitrators. The authors contend that adopting bright line rules in labor arbitration will truncate its development and the needs of such a system. The article concludes by praising the judicial system's recognition that undue reliance on previous cases will not provided the requisite flexibility needed for arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Brian L. Josias, Note, *Burying the Hatchet in Burial Disputes: Applying Alternative Dispute Resolution to Disputes Concerning the Interment of Bodies*, 79 NOTRE DAME L. REV. 1141 (2004).

Inspired by the controversy surrounding the death of Ted Williams, this note examines the disputes that arise when a loved one dies. It suggests that ADR is an excellent option for dealing with these situations because it allows for flexibility based on the ultimate goals of the participants. Additionally, it enumerates the positives and negatives of arbitration and mediation in dealing with disputes regarding death.

{44} ARBITRATION—GENERAL

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

Josine Junger-Tas, *Youth Justice in the Netherlands*, 31 CRIME & JUST. 293 (2004).

The author says that the Netherlands has updated its policies and laws to place a greater emphasis on younger offenders and increased its focus on the use of repressive measures, which include longer confinement terms. However, longer sentences for the youths have declined. Accordingly, a number of ADR methods have been used, including mediation.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L
 {100} SUBJ MATTER: PRISONS

Emily Kadens, *The Empirical and Theoretical Underpinnings of the Law Merchant: Order Within Law, Variety Within Custom: The Character of Medieval Merchant Law*, 5 CHI. J. INT'L L. 39 (2004).

This article examines medieval merchant law. The article suggests that medieval merchant law may not only reveal that commercial law traditionally receives input from both custom and legislation, but that it traditionally employs two means of dispute resolution: the private and public fora, with each applying the law in a different way. The article suggests that this merchant law reflects the current hierarchy used to decide American commercial disputes today.

{21} MEDIATION—GENERAL
 {75} SUBJ MATTER: COMMERCIAL
 {125} COMPARISONS: HISTORICAL
 {92} SUBJ MATTER: INT'L

Avinash Kar, *Ensuring Durable Environmental Benefits Through a Collaborative Approach to Hydropower Re-Licensing: Case Studies*, 11 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 27 (2004).

This article contends that the use of an alternative and collaborative process in hydropower licensing decisions, rather than the traditional adversarial method, will more adequately address the serious environmental concerns associated with hydropower projects. The author argues that a collaborative approach reflects the interests of all stakeholders, is potentially less expensive, and has the ability to more effectively protect the environment while preserving the facilities' ability to conduct their business.

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

Ethan Katsh, Symposium, *Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes Through Code*, 49 N.Y.L. SCH. L. REV. 271 (2004).

This article describes the growing interest and need for dispute resolution and prevention in virtual worlds and the use of online dispute resolution techniques, which employs Internet-based resources. The article suggests that new technologies allow new interactions between parties and new opportunities to work with information, and describes ways that traditional arbitrators, mediators, and negotiators are able to train using non-face-to-face communication software.

{21} MEDIATION—GENERAL
 {1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL
{78} SUBJ MATTER: COMPUTER—INTERNET

Joseph D. Kearney & Thomas W. Merrill, *The Origins of the American Public Trust Doctrine: What Really Happened in Illinois Central*, 71 U. CHI. L. REV. 799 (2004).

This article discusses the history surrounding *Illinois Central*. The authors state that this case shaped the national attitude of the public trust doctrine. They discuss the negotiations, promises, and findings of the railroad company and public figures involved in the procurement of the Chicago lakefront, concluding that the railroad likely used corrupt means to procure the legislation and showing how a conscientious legislator might have voted for the procurement.

{1} NEGOTIATION—GENERAL
{108} SUBJ MATTER: TAX
{125} COMPARISONS: HISTORICAL
{144} LEGISLATION

Judith M. Keegan, *These Are a Few of My Favorite Things*, 65 ALA. LAW. 154 (2004).

The author provides a chronological review of the milestones experienced during the past ten years by the Alabama Supreme Court Commission on Dispute Resolution.

{44} ARBITRATION—GENERAL
{21} MEDIATION—GENERAL
{77} SUBJ MATTER: COMMUNITY

Michael Keene, Note, *The Failings of the Tri-State Water Negotiations: Lessons to Be Learned from International Law*, 32 GA. J. INT'L & COMP. L. 473 (2004).

Severe water droughts in the southeastern United States have given rise to contentious negotiations regarding water allocation in the region. This note argues that, since international law has been effective in resolving water rights disputes, the United States should incorporate international law standards, such as the equitable utilization principle, in order to improve the negotiation process in the region.

{1} NEGOTIATION—GENERAL
{102} SUBJ MATTER: PUBLIC POLICY
{124} COMPARISONS: CROSS-CULTURAL

Livingston Keithley, Comment, *Should a Lawyer Ever be Allowed to Lie? People v. Pautler and a Proposed Duress Exception.*, 75 U. COLO. L. REV. 301 (2004).

This comment deals with the issue of whether it is sometimes appropriate for lawyers to lie. For example, negotiators called to a crime scene are asked to lie to the assailant, even when the assailant believes the attorney is acting in his behalf. The author considers a proposed duress exception in such circumstances.

{1} NEGOTIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{138} ETHICS: GENERAL

Jaimie Kent, Note, *Current Developments 2003–2004: The Debate in California Over and Implications of New Ethical Standards for Arbitrator Disclosure: Are the Changes Valid or Appropriate?*, 17 GEO. J. LEGAL ETHICS 903 (2004).

This note discusses the conflict between California and provider organizations regarding the ability of states to pass arbitrator disclosure standards that conflict with those of the federal government. While the federal rules require disclosure of potential conflicts of interest, California requires arbitrators to disclose both potential conflicts and certain relationships that give rise to objective conflicts of interest. The note addresses the advantages and disadvantages of the new California standard.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Jay P. Kesan & Andres A. Gallo, *Optimizing Regulation of Electronic Commerce*, 72 U. CHI. L. REV. 1497 (2004).

This article addresses how to implement a new standard for Internet commerce. The authors discuss the various methods currently used for e-commerce regulation and end with a proposal for a third-party institution to manage and define a private regulatory system that would be a joint government and private effort.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{79} SUBJ MATTER: CONSUMER

Amalia D. Kessler, *Enforcing Virtue: Social Norms and Self-Interest in an Eighteenth-Century Merchant Court*, 22 LAW & HIST. REV. 71 (2004).

This discussion of the 18th-century merchant court looks at the important functions arbitration served in the Parisian merchant community. Arbitration offered the possibility of healing rifts that emerged between disputants, and mediated the distance between decisionmaker and disputant. Given the two goals of merchant-court arbitration, priests were an obvious choice to be selected as the arbiters.

{44} ARBITRATION—GENERAL
 {75} SUBJ MATTER: COMMERCIAL
 {125} COMPARISONS: HISTORICAL

Bradley King, Note, “*Through Fault of Their Own*”—*Applying Bonner Mall’s Extraordinary Circumstances Test to Heightened Standard of Review Clauses*, 45 B.C. L. REV. 943 (2004).

The author addresses the recent disagreement that exists among the federal circuits concerning the enforcement of heightened standard of review clauses contained within arbitration agreements governed by the Federal Arbitration Act (FAA). Through a historical analysis of arbitral awards, as well as an in-depth examination into the FAA, including legal precedent interpreting the same, the note proposes a resolution founded upon the Supreme Court’s extraordinary circumstances test.

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

Michael H. King & Peter N. Witty, *Know Thyself as You Know Thy Enemy: Setting Goals and Keeping Focus When Mediating IP Disputes*, 37 AKRON L. REV. 329 (2004).

This article discusses the advantages of mediation in intellectual property (IP) disputes after the National Conference of Commissioners on Uniform State Laws enacted the Uniform Mediation Act (UMA). It also examines the benefits of mediation in high stakes IP disputes and the advantages to mediation under the UMA.

{21} MEDIATION—GENERAL
 {75} SUBJ MATTER: COMMERCIAL
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES
 {134} DISPUTE PREVENTION

Karl Kirkland, *Efficacy of Post-Divorce Mediation and Evaluation Services*, 65 ALA. LAW. 186 (2004).

This article discusses how Alabama is lagging behind other states in utilizing mediation in the domestic arena. The author concentrates on post-divorce mediation and related evaluation services that are a direct response to the needs of divorced families, family lawyers, and domestic court judges.

{21} MEDIATION—GENERAL
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
 {151} ROLE OF LAWYERS
 {136} ECONOMIC ADVANTAGES OF ADR

Richard Klein, *Due Process Denied: Judicial Coercion in the Plea Bargaining Process*, 32 HOFSTRA L. REV. 1349 (2004).

This article discusses the coercive effect the courts have on individuals charged with criminal offenses. The author notes that pre-trial settlement and plea negotiations are often plagued by an imbalance of power—the State having the power and the defendant having none.

{1} NEGOTIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{147} POWER IMBALANCE

Anna Knull, *American Eagle Airlines, Inc. v. Air Line Pilots Association, International—The Fifth Circuit Dispenses Its Own Brand of Justice in Reviewing a Labor Arbitration Award*, 78 TUL. L. REV. 2305 (2004).

This article discusses the decision of *American Eagle Airlines, Inc. v. Air Line Pilots Ass'n, Int'l*, suggesting that this decision demonstrates the Fifth Circuit's intent to apply expanded rules of judicial review to labor arbitration awards despite Supreme Court precedent. It also calls for the Supreme Court to revisit the issues of judicial review of arbitration awards.

{44} ARBITRATION—GENERAL

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

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Hea Jin Koh, Note, *"Yet I Shall Temper So Justice with Mercy" Procedural Justice in Mediation and Litigation*, 28 LAW & PSYCHOL. REV. 169 (2004).

This note compares how mediation and litigation provide procedural justice to disputing parties. The author argues that while the outcome derived in mediation may be distinct from the one resulting from litigation, the common goal is to find a just resolution for the parties involved. Finally, the author offers that there are certain disputes where mediation serves the parties better, and others, such as domestic violence disputes, when litigation might produce a better outcome.

{21} MEDIATION—GENERAL

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

Andrew Kopp, Note, *Securities Arbitration Awards of Punitive Damages: Protective or Expansive Steps for Review?*, 2004 J. DISP. RESOL. 289 (2004).

This note examines the standards courts apply upon reviewing decisions of arbitral bodies to award punitive damages under securities arbitration agreements. Under the Federal Arbitration Act, judicial vacation of such awards may be accomplished only upon a showing of either specific statutory grounds or non-statutory grounds such as manifest disregard of the law. This note argues that the limitations set forth by the U.S. Supreme Court in *BMW*

v. *Gore* undermine the strong federal policy in support of limited review of arbitration punitive damage awards in securities arbitrations under the FAA.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Milana Koptsiovsky, Note, *A Right to Contract for Judicial Review of an Arbitration Award: Does Freedom of Contract Apply to Arbitration Agreements?*, 36 CONN. L. REV. 609 (2004).

This note argues that the Supreme Court will likely hold that parties are free to bargain for judicial review of arbitration decision in accordance with the private law of contracts. The author evaluates the current circuit splits regarding the issue of contractually agreeing to a standard of review that is not explicit in the Federal Arbitration Act. The author concludes that arbitration is a matter of contract law, enforcing the parties' wishes.

{44} ARBITRATION—GENERAL

Russell Korobkin & Chris Guthrie, *Heuristics and Biases at the Bargaining Table*, 87 MARQ. L. REV. 795 (2004).

Negotiators seem to, at times, unconsciously rely on heuristics and at other times, consciously employ them. The authors thoroughly explain how anchoring and adjustment, availability, self-serving evaluations, framing, the status quo bias, contrast effects, and reactive devaluation influence a negotiator's judgment and decisionmaking. By understanding these common heuristics, negotiators can make informed decisions to approach the normative model or exercise control over their counterparts.

{1} NEGOTIATION—GENERAL

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

{147} POWER IMBALANCE

William S. Koski, *The Politics of Judicial Decision-Making in Educational Policy Reform Litigation*, 55 HASTINGS L.J. 1077 (2004).

This article analyzes the inability of courts to fashion and enforce suitable remedies in the context of education that might be better suited for ADR procedures.

{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Kent M. Kostka, *Negotiating the Hospital Lien Minefield*, 68 TEX. B.J. 128 (2005).

Kostka advises that, under the Texas hospital lien statute, it is beneficial for personal injury claimants to involve medical lienholders in settlement

negotiations. Such a strategy should expedite settlements and avoid unnecessary litigation by hospitals to enforce their liens.

{1} NEGOTIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{144} LEGISLATION

Derek Kraft & Vincent Todarello, *Claims and Settlements at the Comptroller's Office*, 10 CITY LAW 73 (2004).

This article reviews how the New York City Comptroller processes claims. The article discusses the history of claims and notes that there are approximately 26,000 claims against the city annually. The article discusses how the city now uses an Internet portal to facilitate claims and how attorneys are incorporated into the settlement process.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{87} SUBJ MATTER: GOV'T

{136} ECONOMIC ADVANTAGES OF ADR

{149} QUALITY CONTROL

Ruben Kraiem, *Leaving Money on the Table: Contract Practice in a Low-Trust Environment*, 42 COLUM. J. TRANSNAT'L L. 715 (2004).

This article suggests that the level of trust present in a contract negotiation will affect the contracting practices that are considered standard, practical, or fair in any legal or business culture. These practices, in turn, will tend to shape the parties' positions as they approach their negotiation. The author suggests that low-trust environments often result in inefficient outcomes.

{1} NEGOTIATION—GENERAL

{81} SUBJ MATTER: CORPORATE

Peter J. Kreher & Pat D. Robertson, III, Comment, *Substance, Process, and the Future of Class Action Arbitration*, 9 HARV. NEGOT. L. REV. 409 (2004).

This comment analyzes how courts attempt to fit class-action arbitration within the preexisting jurisprudence regarding fairness and process in court class actions, as well as courts' growing faith in the ability of arbitrators to meet the due process needs that used to be reserved for complex litigation.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Nancy Kremers, *Speaking with a Forked Tongue in the Global Debate on Traditional Knowledge and Genetic Resources: Are U.S. Intellectual Property Law and Policy Really Aimed at Meaningful Protection for Native American Cultures?*, 15 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1 (2004).

Against a background of fragmented international discussion, this article examines the official U.S. policy position on traditional knowledge, genetic resources, and folklore, as reflected in intellectual property law. The article offers the possibility of contract negotiations with a third-party negotiator to enable a more equitable and transparent contracting process for indigenous communities.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

Jeffrey Krivis, *The Truth About Deception in Mediation*, 4 PEPP. DISP. RESOL. L.J. 251 (2004).

This article evaluates the use of deception in mediation. Against the backdrop of increased court-annexed mediation, many lawyers are now faced with developing negotiating skills for mediating their clients' disputes. The author discusses the role that deception has in the current competitive model of mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Kim David Kurodason & Donna Beck Weaver, *Collaborative Family Law: The Big Picture*, 4 PEPP. DISP. RESOL. L.J. 401 (2004).

This article discusses the benefits of collaborative lawyering in resolving disputants' family law issues.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

{151} ROLE OF LAWYERS

Maureen E. Laflin, *Remarks on Case-Management Criminal Mediation*, 40 IDAHO L. REV. 571 (2004).

This article examines the central issues surrounding the emerging topic of criminal mediation. Specifically, it address what criminal mediation is, and how voluntary settlement conference mediation differs from restorative models such as victim-offender mediation. It goes on to address various concerns, such as whether or not victims should be present, whether training is necessary for mediators, and how to avoid prosecutorial resistance to criminal mediation

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{102} SUBJ MATTER: PUBLIC POLICY

{92} SUBJ MATTER: INT'L

Jacob F. Lamme, Comment, *The Twelve Year Rain Delay: Why a Change in Leadership Will Benefit the Game of Baseball*, 68 ALB L. REV. 155 (2004).
 This comment discusses the need for a change in leadership within Major League Baseball. In coming to his conclusion, the author analyzes the history of the Office of the Commissioner of Major League Baseball, including highlights and critiques of some of the most controversial legal decisions regarding the governance of the game and the Commissioner's abuse of power in the collusion and contraction cases.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Ann Lamport-Hammitte, *Trademark Dispute Resolution*, 44 IDEA 325 (2004).

This article discusses the options available to a lawyer in attempting to help a client effectively resolve a trademark dispute. The author explores the benefits of using ADR forums, such as arbitration and mediation, to help identify issues and generate solutions that will benefit the client.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{75} SUBJ MATTER: COMMERCIAL

John Lande & Gregg Herman, *Fitting the Forum to the Family Fuss: Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, 42 FAM. CT. REV. 280 (2004).

This article analyzes the advantages and disadvantages of mediation, collaborative law, and cooperative law based on the parties' capabilities, attitudes about professional services, and the various risks and benefits of each procedure.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Robert H. Lande, *Why Antitrust Damage Levels Should Be Raised*, 16 LOY. CONSUMER L. REV. 329 (2004).

This article argues that, if the current antitrust damage levels are examined carefully, they are not high enough to deter antitrust violations. The article examines negotiations that result from damage cases, arguing for reform to raise the overall antitrust damage levels so that parties can start with real treble damages and negotiate down to single damages, thereby avoiding the problem of inadequate deterrence.

{1} NEGOTIATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

Joni Larson, *The IRS's Push Toward Settlement: New Programs Provide Opportunities for Resolving Disagreements*, 83 MICH. B.J. 34 (2004).

Larson discusses a number of new programs the IRS has implemented for quickly resolving disputes between the agency and the taxpayer before, during, or after an audit. She argues that these programs actually give the taxpayer advocate more power in resolving conflict.

{1} NEGOTIATION—GENERAL

{108} SUBJ MATTER: TAX

{87} SUBJ MATTER: GOV'T

{147} POWER IMBALANCE

Marty Latz, *The Five Golden Rules of Negotiation for Lawyers*, 65 OR. ST. B. BULL. 29 (2004).

Latz lists and explains her five golden rules for negotiation: ask questions and develop rapport to gain information; maximize leverage; employ fair objective criteria; create an offer-concession strategy; and control the negotiation agenda.

{1} NEGOTIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{151} ROLE OF LAWYERS

Marissa Dawn Lawson, Note, *Judicial Economy at What Cost? An Argument for Finding Binding Arbitration Clauses Prima Facie Unconscionable*, 23 REV. LITIG. 463 (2004).

This note examines the effects and popularity of binding arbitration clauses in commerce, and details the effects of such clauses on consumers. It calls for an extensive review of binding arbitration clauses in light of the Seventh Amendment right to trial by jury, and details the requisite findings necessary to declare a binding arbitration agreement unconscionable.

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

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Laurie Leader & Melissa Burger, *Let's Get a Vision: Drafting Effective Arbitration Agreements in Employment and Effecting Other Safeguards to Insure Equal Access to Justice*, 8 EMPLOYEE RTS. & EMPLOYMENT POL'Y J. 87 (2004).

This article compares success rates for employers and employees in litigation versus arbitration, noting that employees appear to fare better in arbitration as opposed to litigation. However, while employers may be more successful in federal court, that success comes at a high cost. This article explores why both employers and employees resist arbitration when arbitration can be a cost-effective alternative to litigation.

{44} ARBITRATION—GENERAL

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

Eric Yong-Joong Lee, *The Six-Party Talks and the North Korean Nuclear Dispute Resolution Under the IAEA Safeguards Regime*, 5 ASIAN-PAC. L. & POL'Y J. 101 (2004).

This article questions the relevancy of the current nuclear dispute resolution system under the International Atomic Energy Agency (IAEA). The author discusses the confrontation between North Korea and the international community, including North Korea's relationships with the IAEA and the United States. The article includes a discussion of the Geneva Agreed Framework and the process and prospects of the multilateral negotiation forum in regards to nuclear disputes.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Thomas H. Lee, *The Supreme Court of the United States as Quasi-International Tribunal: Reclaiming the Court's Original and Exclusive Jurisdiction Over Treaty-Based Suits by Foreign States Against States*, 104 COLUM. L. REV. 1765 (2004).

In this article, the author discusses an analogy between modern arbitration and the Supreme Court's jurisdiction, particularly suits brought by foreign states against states alleging violations of treaties of the United States. Furthermore, the article provides general comments on the underlying influence of arbitration throughout the United States' history dealing with disputes between states and disputes with foreign states.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

Michael J. Leech, *How Did You Do That? Trade Secrets of a Mediator*, 18 CHI. B. ASS'N REC. 37 (2004).

The state of Illinois has embraced the explosion of mediation by becoming one of the first states to adopt a uniform mediation act. The article describes the key aspects of mediation and the advantages it has over litigation. The author concludes that, if lawyers embrace the change in the legal culture offered by mediation, the needs and interests of their clients will be better served.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{128} REQUIREMENTS: STATUTORY OR RULES

{151} ROLE OF LAWYERS

Matthias Lehmann, Comment, *A Plea for a Transnational Approach to Arbitrability in Arbitral Practice*, 42 COLUM. J. TRANSNAT'L L. 753 (2004). In deciding the question of arbitrability, transnational arbitral tribunals have applied principles to the question of arbitrability without citing any specific legal system from which they have taken those principles. Other times, arbitrators have referred to laws on arbitrability that had been enacted by states with no connection to the dispute in question. The comment attempts to justify that approach by focusing on recent developments in national laws on arbitrability.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Kevin M. Lemley, *I'll Make Him an Offer He Can't Refuse: A Proposed Model for Alternative Dispute Resolution in Intellectual Property Disputes*, 37 AKRON L. REV. 287 (2004).

This article discusses the use of ADR in intellectual property disputes and the special problems that such disputes create. It examines the factors that go into the decision to litigate and the possible remedies for an infraction in light of traditional ADR procedures and the Alternative Dispute Resolution Act.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

{133} COURT REFORMS

Mark Lemley & R. Anthony Reese, *Reducing Digital Copyright Infringement Without Restricting Innovation*, 56 STAN. L. REV. 1345 (2004).

This article discusses the existing arbitration system for trademark conflicts over domain names. The authors argue it is a model in some respects—its speed and low cost—but a cautionary tale in others—its lack of some important procedural safeguards.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Michael H. LeRoy & Peter Feuille, *The Revolving Door of Justice: Arbitration Agreements that Expand Court Review of an Award*, 19 OHIO ST. J. ON DISP. RESOL. 861 (2004).

This article delves into the history of arbitration by examining its genesis and evolution. It analyzes various standards under the FAA and Labor-Management Relations Act. Additionally, it focuses on arbitration agreements which serve to expand court review of awards. It posits theories to explain why parties might want to expand judicial review of arbitration awards and suggests that such review encroaches on certain rights.

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION
 {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
 {133} COURT REFORMS
 {147} POWER IMBALANCE

John Leubsdorf, *Against Lawyer Retaining Liens*, 72 FORDHAM L. REV. 849 (2004).

This article examines attorneys' use of retaining liens. The author advocates for the abolition of retaining liens, deeming them unethical and contrary to public policy. As an alternative, the author proposes several other methods of settling attorney fee disputes, including the utilization of pre-dispute agreements to arbitrate fee disputes.

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

John Levin, *Informal Ethics Advice: Recent Opinions From the Professional Responsibility Committee*, 18 CHI. B. ASS'N REC. 44 (2004).

A portion of this article reviews the informal opinion of the Chicago Bar Association's Professional Responsibility Committee on arbitration clauses in retainer agreements. The informal opinion addresses the issues of enforceability and ethical prerequisites for these type of arbitration clauses. The Committee found binding arbitration clauses permissible in retainer agreements if certain factors were satisfied.

{44} ARBITRATION—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES
 {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Bryan A. Liang & LiLan Ren, *Medical Liability Insurance and Damage Caps: Getting Beyond Band Aids to Substantive Systems Treatment to Improve Quality and Safety in Healthcare*, 30 AM. J.L. & MED. 501 (2004).

This article discusses the current medical insurance liability crisis, reviews previous efforts to address it, and proposes a medical infrastructure paradigm, including the incorporation of early intervention mediation to address the problem.

{21} MEDIATION—GENERAL
 {98} SUBJ MATTER: MEDICAL MALPRACTICE

Seth H. Lieberman, Note, *Something's Rotten in the State of Party-Appointed Arbitration: Healing ADR's Black Eye That Is "Nonneutral Neutrals"*, 5 CARDOZO J. CONFLICT RESOL. 215 (2004).

The note argues that party-appointed arbitrators should be properly called party-appointed advocates so as to ensure expectational symmetry among participants in party-appointed arbitrations. The reason is because great uncertainty about the neutrality of party-appointed arbitrators exists. The note describes the history of arbitration in the United States, investigates the traditional definitions of roles played by advocates, and the characteristics of modern party-opponent arbitrators.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

Linda A. Liljedahl, *Lawyers Helping Lawyers: Mediation and Arbitration*, 51 LA. B.J. 433 (2004).

The author notes that mediation and arbitration are similar in that they attempt to resolve conflicts without a formal trial, but they should not be confused. Mediation is a process where the parties in conflict select a mediator to work with them in discussing their dispute, while arbitration is essentially a substitute for trial.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Angela R. Lilly, Comment, *Texas Residential Construction Commission: Do Texas Homeowners Really Need It?*, 57 SMU L. REV. 1587 (2004).

This comment presents an in-depth analysis of the Texas Residential Construction Commission Act, which the author concludes is unnecessary from a homeowner's standpoint because the act increases new home costs and imposes expensive procedures for resolving construction disputes on homeowners that ultimately make the dispute resolution process more difficult and more expensive.

{44} ARBITRATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

William F. Lincoln, *First the Context, Later the Challenge: Commercial Mediators Interface with the Volatile International Sector*, 4 PEPP. DISP. RESOL. L.J. 177 (2004).

This article outlines the many pitfalls and obstacles facing mediators who hear commercial disputes between international parties.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

Carlos Antonio Lopez, Note, *Revoking an Employer's License to Discriminate*, 56 RUTGERS L. REV. 513 (2004).

This note focuses on the effect of binding arbitration clauses on immigrant workers. It also discusses cases that have examined these clauses and possible avenues of reform.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{144} LEGISLATION

Steven Henry Lopez & Julie Sadler, *Labor-Management Relations: Reorganizing the Rust Belt: An Inside Study of the American Labor Movement*, 58 IND. & LAB. REL. REV. 282 (2004).

Lopez and Sadler provide an analysis of six separate, but related, organizing and collective bargaining campaigns. In their article, they examine private and contract negotiation struggles between union workers. The article concludes that a local union could adhere to the community coalitions and operate in a top-down fashion with minimal worker participation in company decisions.

{1} NEGOTIATION—GENERAL

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Janet E. Lord, *NGO Participation in Human Rights Law and Process: Latest Developments in the Effort to Develop an International Treaty on the Rights of People With Disabilities*, 10 ILSA J. INT'L & COMP. L. 311 (2004).

This article focuses on the emergence of human rights for people with disabilities in mainstream international human rights theory and in the work of international institutions. Specifically, it discusses the role of the international disabilities alliance within the United Nations. It recommends that the process by which the convention on the rights of persons with disabilities is developed must continue to be inclusive of people with disabilities to be successful.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: CIVIL RIGHTS

Andreas F. Lowenfeld, *Transatlantic Business Transactions: Some Questions for the Lawyers*, 26 HOUS. J. INT'L L. 251 (2004).

This article explores issues of choice of law, jurisdiction of courts and arbitral tribunals, and recognition of foreign judgments to common transactions in international commerce. In particular, it examines matters such as when a lawyer should zealously negotiate for terms in international

agreements related to specific goods, and when he should advise his client to take risks. The more a lawyer is familiar with cross-cultural agreements, the less likely he is to encounter disputes.

- {1} NEGOTIATION—GENERAL
- {92} SUBJ MATTER: INT'L
- {75} SUBJ MATTER: COMMERCIAL
- {151} ROLE OF LAWYERS

Houston Putnam Lowry, *Recent Developments in International Commercial Arbitration*, 10 ILSA J. INT'L & COMP. L. 335 (2004).

This article discusses arbitration as the preferred method of settling international commercial disputes. The article explores the issue of foreign counsel appearing at arbitrations within the United States, since various jurisdictions have unauthorized practice of law statutes that preclude the appearance of foreign counsel. It also discusses interim measures of protection commonly used in commercial arbitration.

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

Mara Kathryn Lucas, Comment, *The Missouri River Compromise: Negotiated Rulemaking as a Suggested Resolution to the River Basin Dispute*, 11 MO. ENVTL. L. & POL'Y REV. 240 (2004).

For disputes surrounding the Missouri River Compromise, the author strongly supports the use of negotiation in conformance with the Negotiated Rulemaking Act as opposed to litigation. Because parties affected by federal legislation can directly participate with agencies in the decisionmaking, negotiated rulemaking is an appropriate framework that offers the benefits of creative solutions, potentially higher compliance, and quicker disposition.

- {1} NEGOTIATION—GENERAL
- {84} SUBJ MATTER: ENVIRONMENT
- {102} SUBJ MATTER: PUBLIC POLICY
- {144} LEGISLATION

Robert W. Lueck, *The Collaborative Law (R)evolution an Idea Whose Time Has Come in Nevada*, 12 NEV. LAW. 18 (2004).

According to the author, the concept of collaborative divorce is that the parties and their counsel formally agree in writing not to go to court or even threaten to go to court. They agree to negotiate everything in their divorce. Each party is represented by counsel and can involve any other professional counselors or evaluators needed.

- {1} NEGOTIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Scott Luftglass, Note, *Crossroads in Cambodia: The United Nation's Responsibility to Withdraw Involvement From the Establishment of a Cambodian Tribunal to Prosecute the Khmer Rouge*, 90 VA. L. REV. 731 (2004).

The author discusses negotiations between the United Nations and Cambodia for the establishment of a criminal tribunal to try the former leaders of the Khmer Rouge. The negotiations culminated in March 2003, with both sides agreeing on an internationally supported, yet Cambodian-controlled, tribunal to prosecute the former members of the Khmer Rouge for genocide and crimes against humanity that occurred between 1975 to 1979.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Julie Macfarlane, *Experiences of Collaborative Law: Preliminary Results From the Collaborative Lawyering Research Project*, 2004 J. DISP. RESOL. 179 (2004).

This article discusses the complexity of the task faced by the collaborative law movement. From the research conducted, partial success has been made on the efforts to change the adversarial system into an ADR system. Collaborative law is also changing the roles played by the clients and their lawyers. The collaborative law movement must react to the changes and be humble so that it can be reformed.

{21} MEDIATION—GENERAL

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

{134} DISPUTE PREVENTION

Thomas J. Manley & Luis Lauredo, *International Labor Standards in Free Trade Agreements of the Americas*, 18 EMORY INT'L L. REV. 85 (2004).

This article explores international labor standards in free trade agreements. It also expounds on the importance of negotiators to focus on the unique opportunity presented by the Free Trade Agreements of the Americas to solidify into international precedent the idea that global labor standards can be effectively implemented and harmonized through trade agreements.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{87} SUBJ MATTER: GOV'T

Daniel Markovits, *The No-Retraction Principle and the Morality Of Negotiations*, 152 U. PA. L. REV. 1903 (2004).

This is a critique of the no-retraction principle, which states that, when a party manifests a willingness to enter into a contract at given terms, she should not be able to freely retract her acceptance. The article discusses this principle through the stages of contract negotiations.

{1} NEGOTIATION—GENERAL

Inga Markovits, *Law Reform—But Will it Travel*, 37 CORNELL INT'L L. J. 95 (2004).

This article describes whether a legal system will likely succeed in another country. One aspect of this article looks into the world of ADR, which American proponents have successfully exported to many countries of the world. It is argued that the system of ADR is likely to succeed because of its independence from the legal system of the countries where the legal system is going to be implemented.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{136} ECONOMIC ADVANTAGES OF ADR

{144} LEGISLATION

Paul Bennett Marrow, *Crafting a Remedy for the Naughtiness of Procedural Unconscionability*, 34 CUMB. L. REV. 11 (2004).

This article discusses occasions where techniques and strategies are used during the negotiating process that are subject to “procedural unconscionability.” If a party’s manipulation of the negotiating process causes the other party to be harmed and actual damages result therefrom, damages should be received by the injured party. The author further argues that society mandates the relief which may be granted in such occasions.

{1} NEGOTIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Gregory Mathews, Note, *Using Negotiation, Mediation, and Arbitration to Resolve IRS-Taxpayer Disputes*, 19 OHIO ST. J. ON DISP. RESOL. 709 (2004).

This note investigates the use of various forms of ADR for tax disputes between taxpayers and the Internal Revenue Service (IRS). The author finds that of all the procedures that the IRS could utilize, mediation would be the best.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{108} SUBJ MATTER: TAX

Alice L. Mattice, *The Fisheries Subsidies Negotiations in the World Trade Organization: A “Win-Win-Win” for Trade, the Environment, and Sustainable Development*, 34 GOLDEN GATE U. L. REV. 573 (2004).

This article addresses problems surrounding harmful fisheries subsidies, including the impact of the subsidies on trade and on the development of fisheries’ resources to feed those in developing countries. The author also

provides an overview of the negotiations surrounding fisheries' subsidies in the World Trade Organization. Additionally, the article considers the United States' and other WTO members' roles in the negotiation process to achieve improved disciplines on fisheries subsidies.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{87} SUBJ MATTER: GOV'T

David McCann, *First Head Revisited: A Single Industrial Relations System Under the Trade and Commerce Power*, 26 SYDNEY L. REV. 75 (2004).

This article suggests that, in Australia, interstate industrial disputes must be resolved only through a system of conciliation and arbitration.

{44} ARBITRATION—GENERAL

Michael A. McCann, *Illegal Defense: The Irrational Economics of Banning High School Players from the NBA Draft*, 3 VA. SPORTS & ENT. L.J. 113 (2004).

The author discusses negotiations between the NBA and the National Basketball Players' Association regarding a provision banning high school players from the NBA Draft, and possible court deference to their collective bargaining, even though high school players would not have had a seat at the negotiating table when such a rule was created.

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

James M. McCauley, *Professional Responsibility*, 39 U. RICH. L. REV. 315 (2004).

The author surveys professional responsibility developments in Virginia including the unauthorized practice of law. In the case of arbitration for a corporation, the Virginia State Bar Committee holds that a non-lawyer officer of a corporation may represent his corporation before the American Arbitration Association without being considered to be practicing law without a license.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

E. Patrick McDermott & Ruth Obar, *"What's Going On" in Mediation: An Empirical Analysis of the Influence of a Mediator's Style on Party Satisfaction and Monetary Benefit*, 9 HARV. NEGOT. L. REV. 75 (2004).

This article examines the different results that occur in mediation based upon the mediator's individual style.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{151} ROLE OF LAWYERS

Ted L. McDorman, *International Decision: Access to Information Under Article 9 of the Ospar Convention (Ireland v. United Kingdom)*, 98 AM. J. INT'L L. 330 (2004).

This article suggests that, through maintaining a litigational approach to international environmental law, a tribunal who gives an award will actually encourage states to make greater use of international arbitration in the future. Thus, the award given by a tribunal actually emphasizes a predictable remedy within international environmental disputes.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{92} SUBJ MATTER: INT'L

Andrea McDowell, *Real Property, Spontaneous Order, and Norms in Gold Mines*, 29 LAW & SOC. INQUIRY 771 (2004).

In the context of the California gold rush, this article tests the theory that order develops spontaneously where abiding by the rules minimizes the risk of costly confrontations with others and is in the interest of all parties. Disputes about the rules of the local mining code were submitted to arbitrators, whose decisions were accepted by parties and did not need to be enforced. About half of the mining codes specified a preferred means of dispute resolution, such as arbitration.

{44} ARBITRATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{125} COMPARISONS: HISTORICAL

Thomas M. McElroy, II, Note, *In Re Pure Resources: Providing Certainty to Attorneys Structuring Going-Private Transactions, or Not?*, 39 WAKE FOREST L. REV. 453 (2004).

The author explores the doctrinal tension between judicial review of negotiated mergers and tender offers, and concludes that corporate attorneys should take care to structure tender offer/short-form merger transactions to embody arm's length negotiations between the controlling and minority shareholders, or strongly consider proceeding by way of a negotiated merger transaction.

{1} NEGOTIATION—GENERAL

{81} SUBJ MATTER: CORPORATE

Sharlene McEvoy & William Windom, *SAG and AFTRA: The Case for Merger of the Entertainment Unions*, 12 U. MIAMI BUS. L. REV. 59 (2004).

The authors review the history of the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA), two of the main unions in the entertainment business, and recommend the merger of the two entities. The two unions have conducted negotiations to that end for over five years, and the authors encourage further negotiations.

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Jeff McGoff, Note, *Exploring the Boundary of the Noerr-Pennington Doctrine in the Adjudicative Process*, 34 U. MEM. L. REV. 429 (2004).

This note focuses on the Noerr-Pennington Doctrine and its uncertain application to certain disputes. Some of these disputes include settlement agreements between defendants and government entities. In particular, the author looks at how the Noerr-Pennington Doctrine applied to the private settlement agreement that the defendants and the State Public Service Commission agreed to in *In re New Mexico Natural Gas Antitrust Litigation*.

{1} NEGOTIATION—GENERAL

{87} SUBJ MATTER: GOV'T

{121} SETTLEMENT: AUTHORITY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Judith S. McIlwee, Comment, *Circuit City Meets the California Labor Commissioner: Does the FAA Preempt Administrative Claims?*, 40 CAL. W. L. REV. 383 (2004).

This article examines the development of California law regarding arbitration clauses in employment contracts. It argues that arbitration is not only expensive, time-consuming, and unpredictable, but that it also ultimately ends in litigation. This article also argues that, because California law on arbitration clauses in employment contracts is unsettled, workers' rights to pursue claims with the California Labor Commissioner or in court should be decided on a case-by-case basis.

{44} ARBITRATION—GENERAL

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

Fiona McKay, *U.S. Unilateralism and International Crimes: The International Criminal Court and Terrorism*, 36 CORNELL INT'L L. J. 455 (2004).

This article looks into the negotiation of international treaties which gave the U.S. the ability to cooperate in combating crimes of violence. In particular, the Geneva Convention, U.N. Convention Against Torture, and agreements relating to terrorism obligate parties to pursue those who have committed crimes, including killings, torture, and rape. Thus, the U.S. was allowed to deploy troops into Liberia for peacekeeping. Despite the current treaties

which the U.S. is involved in, however, the Rome Statute is noticeably absent.

{1} NEGOTIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Joseph McKnight, *Annual Survey of Texas Law: Family Law: Husband and Wife*, 57 SMU L. REV. 991 (2004).

This article discusses a family court case in Texas where the parties agreed to arbitrate before an Islamic court. The parties failed to reach an agreement, however, and Texas courts did not want to get involved. The trial court concluded that the parties' agreement was not binding under the Texas General Arbitration Act.

{44} ARBITRATION—GENERAL

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

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

Richard McLaren, *The CAS Ad Hoc Division at the Athens Olympic Games*, 15 MARQ. SPORTS L.J. 175 (2004).

To stress ethical standards of sport, the Court of Arbitration for Sport selected a panel of 12 arbitrators to preside over the Olympics in Athens. The author discusses three subject matters heard by the arbitration panel: doping, corruption, and sports administration by International Sports Federations. With the fifth appearance by the panel, principles are being clarified and the likelihood of appeals is decreasing.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Gerald T. McLaughlin, *Remembering the Bay of Pigs: Using Letters of Credit to Facilitate the Resolution of International Disputes*, 32 GA. J. INT'L & COMP. L. 743 (2004).

This article examines the features of letters of credit and the role they can play in resolving international disputes. The author describes commercial and standby letters of credit and sets forth the characteristics of each that would assist in facilitating the resolution of international disputes. The article advocates for a greater role for letters of credit in international dispute resolution.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

Donald M. McRae, *Fisheries: Fishers, Natives, Sportsmen, States, and Provinces*, 30 CAN.-U.S. L.J. 189 (2004).

This article provides an overview of the negotiating process between the United States and Canada in maritime issues, paying primary attention to the Pacific Salmon Treaty. The author highlights the negotiation process used by the Canadian government and discusses the difficulties that arose in the negotiation sessions on salmon.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{97} SUBJ MATTER: MARITIME

Steven G. Mehta, *How to Calculate an Opening Offer: Identifying the Right Offer Can Make the Difference in Settlement Negotiations*, 27 L.A. LAW. 44 (2004).

According to the author, one of the most common questions about negotiation and mediation is whether there is a secret to making initial offers or demands. The article explores the idea that the opening offer depends on a balanced judgment of numerous factors.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{114} 3D PARTY: PRACTICE OF LAW

Carrie J. Menkel-Meadow, *Remembrance of Things Past? The Relationship of Past to Future in Pursuing Justice in Mediation*, 5 CARDOZO J. CONFLICT RESOL. 97 (2004).

The author is worried that mediation as a process is too associated with a need to move forward in a variety of ways. Instead, the author suggests that mediators must pay proper attention to the relative history of a dispute in order for mediation to overcome its mixed reputation and serve its most valuable function of encouraging human encounters where the parties in dispute can settle and fix what has gone wrong before. The author is hopeful that by bringing the past and future together in mediation, the current process will improve.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Ana Maria Meric-Stephens, *Of Federalism, Human Rights, and the Holland Caveat: Congressional Power to Implement Treaties*, 25 MICH. J. INT'L L. 265 (2004).

This article is an overview of Congress's treaty-implementing powers. The author covers many treaties in general. In addition, the author includes a

detailed analysis of the negotiations that those treaties demanded before being ratified. Tales of negotiation play a large role in this article.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Thomas B. Metzloff, *Foreward*, 67 LAW & CONTEMP. PROBS. 1 (2004).

In this foreward, the author introduces concept of mandatory, binding arbitration and the debate surrounding its proper role in the United States legal system. He questions the Supreme Court's faith in the strongly pro-arbitration stance that they have developed and informs the reader of the insights into arbitration that the issue will discuss.

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

{73} SUBJ MATTER: GENERAL

Michael Dominic Meuti, *Legalistic Individualism: An Alternative Analysis of Kagan's Adversarial Legalism*, 27 HASTINGS INT'L & COMP. L. REV. 319 (2004).

This article compares the default adversarial system that is the norm in the United States with the multitude of nonadversarial dispute resolution systems that are the norm in other countries.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Linda E. Meyer, *Getting to the Heart of the Matter: Taking Risks That Honor Yourself and Your Work*, 4 PEPP. DISP. RESOL. L.J. 203 (2004).

This article discusses the role of the mediator in making the parties feel better about their dispute, enhancing party satisfaction, and the sense of self-worth possible from mediating disputes.

{21} MEDIATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{138} ETHICS: GENERAL

{151} ROLE OF LAWYERS

Suzanna M. Meyers, *Note, Doing Their Jobs: An Argument for Greater Media Access to Settlement Agreements*, 14 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 603 (2004).

This note explores the balancing interests of confidentiality in settlements and the public's right to know, advocating for greater media access to settlement agreements. The author discusses the history of confidentiality and the movement for greater access, specifically the role played by the courts and the press. As a compromise, the author proposes greater access to agreements under a new framework of court rules that can ensure privacy is maintained.

{44} ARBITRATION—GENERAL
 {21} MEDIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {132} CONFIDENTIALITY

Elizabeth W. Middleton & Dalton Roberts Ross, *Confidentiality in Mediation*, 52 LA. B.J. 283 (2004).

Roberts Ross discusses how far Louisiana's Mediation Act may go to protect confidentiality of all records and oral and written communications made during mediation. Although Louisiana courts have not faced this issue yet, the California Supreme Court recently tackled the issue under similar legislation.

{21} MEDIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {132} CONFIDENTIALITY
 {144} LEGISLATION

Brett Goldblatt Milbank, *Getting Out After It's Too Late: Exit Strategies in Chapter 11 Bankruptcies*, 23-8 AM. BANKR. INST. J. 26 (2004).

This article discusses the fact that, if a creditor negotiates with a company that is going through bankruptcy, it may pay off for them, if the creditor negotiates with the bankrupt company before the bankrupt company reaches a bankrupt settlement. However, if the creditors are too slow to negotiate their rights and settlement is already reached, then the creditor will likely lose any rights that they may have.

{1} NEGOTIATION—GENERAL
 {106} SUBJ MATTER: SECURITIES
 {79} SUBJ MATTER: CONSUMER

Laura A. Miles, Note, *Absolute Mediation Privilege: Promoting or Destroying Mediation by Rewarding Sharp Practice and Driving Away Smart Lawyers?*, 25 WHITTIER L. REV. 617 (2004).

This note discusses the evidentiary privileges in mediation in light of a pending case in the California Supreme Court. The author argues that, to encourage mediation, the court should affirm prior decisions which exempted pure evidence from absolute mediation privilege and kept such evidence governable by the ordinary rules of discovery and admissibility.

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

Jason Miller, *Arbitrator's Decision to Reinstate Narcotics Agent Upheld by Court*, 6 LAW. J. 2 (2004).

The author discusses a case where the Pennsylvania Supreme Court upheld the award of an arbitrator to reinstate a terminated narcotics agent's employment. The court upheld the arbitrator's decision that the undefined term "just cause" contained in a collective bargaining agreement should not be equated with a determination of employee misconduct.

{44} ARBITRATION—GENERAL

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

Katherine R. Miller, *Playground Politics: Assessing the Wisdom of Writing a Reciprocity Requirement into U.S. International Recognition and Enforcement Law*, 35 LAW & POL'Y INT'L BUS. 239 (2004).

This article examines the Hague Conference's ongoing negotiation of an international convention on jurisdiction and judgments, highlighting the American Law Institute's proposed federal statute entailing certain changes to the United States' international recognition and enforcement practice, namely the inclusion of a reciprocity provision. Part III of the article reviews the ongoing negotiations of the draft. In addition, the article discusses arbitration as an alternative to avoiding the issue of recognition of foreign judgments altogether.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Jon Mills, *Principles for Constitutions and Institutions in Promoting the Rule of Law*, 16 FLA. J. INT'L L. 115 (2004).

This article discusses establishing societal respect for the rule of law. In discussing the rule of law, the author examines ADR methods, noting that they have been expanding to Latin America. The article also notes the growing support and acceptance of Florida's court-annexed mediation programs.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{92} SUBJ MATTER: INT'L

Brent C. Moberg, *2003 Annual Survey: Recent Developments in Sports Law*, 14 MARQ. SPORTS L.J. 603 (2004).

This article highlights important 2003 sports law cases. In *East Coast Hockey League, Inc. v. Professional Hockey Players Association*, the Fourth Circuit held the dispute subject to arbitration. In *Office of the Commissioner of Baseball v. World Umpires Association*, however, a New York District Court held that the union's grievance fell outside of the arbitration provision's realm because they were not challenging a "policy, directive, or instruction."

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Amy S. Moeves & Scott C. Moeves, *Two Roads Diverged: A Tale of Technology and Alternative Dispute Resolution*, 12 WM. & MARY BILL RTS. J. 843 (2004).

This article discusses the use of information technology in the three major forms of ADR. It focuses on how technology enables the transaction of information and is revolutionizing the way that disputes are solved.

{1} NEGOTIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{125} COMPARISONS: HISTORICAL

Doug Moodie, *Thinking Outside the 20th Century Box: Revisiting "Mitchell"—Some Comments on the Politics of Judicial Law-Making in the Context of Aboriginal Self-Government*, 35 OTTAWA L. REV. 1 (2004).

This article includes the methods of ADR that Canada can employ to deal with the aboriginal people of North America.

{73} SUBJ MATTER: GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{92} SUBJ MATTER: INT'L

Cecilia H. Morgan, Symposium, *Peacemakers and the Law: Employment Dispute Resolution Processes*, 11 TEX. WESLEYAN L. REV. 31 (2004).

This article discusses how companies use Employment Dispute Resolution Systems (EDR Systems) to resolve intra-company disputes. The author argues that EDR Systems help parties devise creative and individualized solutions while allowing for the competing interests of employers and employees. The author also argues that EDR Systems benefit these parties because they are flexible, confidential, fair, and cost- and time-efficient.

{93} SUBJ MATTER: LABOR—GENERAL

{132} CONFIDENTIALITY

{136} ECONOMIC ADVANTAGES OF ADR

{146} ORGANIZATION POLICIES & RULES

Takako Morita, *Marine Sea Turtles and Shrimp Trawling: Interplay Between the U.S. Courts and the WTO Panels and Its Effect on the World Shrimp Industry*, 10 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 209 (2004).

This article discusses how the World Trade Organization's arbitration panel's decisions affect the world shrimp industry, as well as how this affects commerce in the United States.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Heather E. Morrow, Comment, *The Wide World of Sports Is Getting Wider: A Look at Drafting Foreign Players Into U.S. Professional Sports*, 26 HOUS. J. INT'L L. 649 (2004).

This comment focuses on the impact of drafting foreign athletes into professional sports leagues in the United States. It explains the legal backdrop, including immigration laws, which allow the athletes to play in the United States. It also examines the international athlete's ability to negotiate and challenge management on issues such as collective bargaining and antitrust law.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{93} SUBJ MATTER: LABOR—GENERAL

Forrest S. Mosten, *Institutionalization of Mediation*, 42 FAM. CT. REV. 292 (2004).

This article discusses how changes within the field of mediation are being driven by sources outside of the field, such as courts, legislatures, legal professionals, consumer groups, and the media. The article also includes a discussion of many of the "hot" topics in mediation, including regulation of mediators, certification, voluntary standards, and mandatory mediation.

{21} MEDIATION—GENERAL

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

Sue Ann Mota, *Internet Domain Name Dispute: Working Toward a Global Solution*, 7 COMPUTER L. REV. & TECH. J. 213 (2004).

The article examines the use of the Uniform Dispute Resolution Policy (UDRP) to address disputes concerning the registration of Internet domain names. The author discusses four areas of dispute resolution approved by the Internet Corporation for Assigned Names and Numbers (ICANN) organization and the success rates within each area. The author concludes by recommending improvements of the UDRP for effectiveness in an ever growing, global Internet market.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{146} ORGANIZATION POLICIES & RULES

Ewell E. Murphy Jr., *Charting The Transnational Dimension of Law: U.S. Free Trade Agreements as Benchmarks of Globalization*, 27 HOUS. J. INT'L L. 47 (2004).

This article explores the effect of globalization on the practice of law. It examines, in particular, five major transnational agreements including NAFTA, the U.S.-Israel Free Trade Agreement of 1985, the U.S.-Jordan Free

Trade Agreement of 2001, the U.S.-Chile Free Trade Agreement, and the U.S.-Singapore Free Trade Agreement. It uses these agreements and their interrelationships to illustrate some lessons about transnational law in the future.

{1} NEGOTIATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {87} SUBJ MATTER: GOV'T
 {124} COMPARISONS: CROSS-CULTURAL

Kevin Murphy, Note & Comment, *Conflict, Confusion, and Bias Under TRIPs Articles 22–24*, 19 AM. U. INT'L L. REV. 1181 (2004).

According to the author, the failure of the WTO to account for different conceptions of intellectual property as applied to geographic indicators signals the likely collapse of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The controversy over portions of the TRIPs agreement derives mainly from a collision of ideals in IP jurisprudence between the European Union and the United States regarding the appropriate role of geographic indicators within an IP rights regime.

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

Ronalda Murphy, *Is the Turn Toward Collaborative Law a Turn Away from Justice?*, 42 FAM. CT. REV. 460 (2004).

This article critiques collaborative family law from a theory of justice perspective. Specifically, the author criticizes collaborative law's inability to address power imbalances and ability to sacrifice justice for the sake of efficiency.

{1} NEGOTIATION—GENERAL
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)

Janice Nadler, *Rapport in Negotiation and Conflict Resolution*, 87 MARQ. L. REV. 875 (2004).

Establishing rapport builds the trust necessary to reach an integrative solution. Numerous studies reveal that visual access prior to decisionmaking increases rapport, which in turn encourages cooperation and mutually beneficial outcomes. Also, recognizing a prior positive relationship can set the stage for an effective negotiation. In the absence of either, the author suggests creating rapport through a prenegotiation, a getting-to-know-you chat, or a mutual self-disclosure.

{1} NEGOTIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {149} QUALITY CONTROL

James A.R. Nafziger, *Avoiding and Resolving Disputes During Sports Competition: Of Cameras and Computers*, 15 MARQ. SPORTS L.J. 13 (2004). The Court of Arbitration for Sport has declared a rule of non-interference in the rules of sports and their application. As computers and cameras are increasingly used, technology is seen by some as disruptive to competition, while others view it as necessary to ensure accuracy. Regardless, the author believes that technology will continue to grow as the modern-day arbiter of sports disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Dorothy W. Nelson, *Which Way to True Justice?—Appropriate Dispute Resolution (ADR) and Adversarial Legalism*, 83 NEB. L. REV. 167 (2004).

Adapted from one of her lectures, the author responds to critics of ADR and urges ADR to be used when the parties' respective interests can be served by settlement. Because ADR protects against excessive lawyer-dominated litigation and permits the parties to decide how their dispute is to be resolved, it is essential that more individuals be trained in ADR techniques.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{83} SUBJ MATTER: EDUCATION

{102} SUBJ MATTER: PUBLIC POLICY

Jerry Newsome & K. Alex Khoury, *Labor and Employment*, 55 MERCER L. REV. 1353 (2004).

This survey of U.S. Supreme Court and Eleventh Circuit decisions from 2003 covers labor and employment law cases. The authors highlight decisions involving negotiations and arbitration under the National Labor Relations Act. The main case the authors cover is *Marine Engineers Beneficial Ass'n v. GFC Crane Consultants, Inc.*

{1} NEGOTIATION—GENERAL

{44} ARBITRATION—GENERAL

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Jorge Santistevan de Noriega, *Reform of the Latin American Judiciary*, 16 FLA. J. INT'L L. 161 (2004).

This article considers legal systems in countries where constitutions and the judiciary have been systematically manipulated by the government. The article examines judicial reform in Latin America, and also looks at

alternative systems of dispute resolution that have been introduced, such as arbitration, mediation, and conciliation.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Timothy A. Ogden, *Contract Law: Recent Developments in Indiana Contract Law*, 37 IND. L. REV. 975 (2004).

This article discusses arbitration with respect to contracts. When faced with a dilemma, the Appellate Court of Indiana has often sought the counsel of other jurisdictions. In its decision in *Indiana CPA Society, Inc. v. GoMembers, Inc.*, the court held that the best course of action was to allow courts to use their own discretion when enforcing arbitration clauses in contracts based on the nature of the contested issues.

{44} ARBITRATION—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Major John N. Ohlweiler, *Equal Employment Opportunity Settlement Negotiations: Does the Union Have a Right to Attend?*, 2004 ARMY LAW. 49 (2004).

This article examines whether third-party union members have the right to be present at settlement negotiations concerning Army employee grievances. Determining factors include whether a complaint falls under the Federal Service Labor-Management Relations Statute, or exceptions carved out by case law. The article concludes that settlement negotiations should be treated as discussions with both parties present, barring a direct conflict of either party's rights.

{1} NEGOTIATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

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

Major John N. Ohlweiler, *De Minimis Conditions of Employment: Must Management Always Bargain?*, 2004 ARMY LAW. 18 (2004).

This article describes the Federal Labor Relations Authority's decision to apply a de minimis standard as an element of substantive negotiability. The author notes how this decision, in theory, will no longer require Army managers to negotiate over trivial changes to conditions of employment.

{1} NEGOTIATION—GENERAL

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

Susan M. Olson & Albert W. Dzur, *Revisiting Informal Justice: Restorative Justice and Democratic Professionalism*, 38 LAW & SOC'Y REV. 139 (2004).

This article reviews a model of restorative justice that incorporates a structure of professional involvement and offers an alternative example of democratic professionalism in action. Calling for community involvement and victim-offender mediation, this model reduces professional control of criminal justice. The article compares the alternative model to other contemporary democratic professional movements, such as bioethics and public journalism reform.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {82} SUBJ MATTER: CRIMINAL

Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 MICH. J. INT'L L. 605 (2004).

This article utilizes international law as a suggested means for solving the problem of sexual slavery throughout the world. The author highlights how negotiations among and within nations must play a role in eliminating the presence of sexual slavery in the world.

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

Hayden Opie, *Drugs in Sports and the Law—Moral Authority, Diversity, and the Pursuit of Excellence*, 14 MARQ. SPORTS L.J. 267 (2004).

The author traces the history of Australia's intolerant stance toward the use of performance-enhancing drugs in sport. Arbitration is one of the many paths used to deal with violators. For example, after Athletics Australia was criticized for favoring hometown sprint runner Dean Capobianco, an international arbitration panel reinstated charges against him for the use of anabolic steroids.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Adrienne J. Oppenheim, Note, *The Plight of the Patagonian Toothfish: Lessons From the Volga Case*, 30 BROOK. J. INT'L L. 293 (2004).

This note focuses on how the U.N. Convention on the Law of the Sea (UNCLOS) has not corrected the problem with illegal, unreported, and unregulated fishing (IUU fishing). The author includes a brief description of UNCLOS' dispute resolution procedures and determines that enforcement problems weaken their effectiveness in combating IUU fishing.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {92} SUBJ MATTER: INT'L
 {137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Diane Orentlicher, *Unilateral Multilateralism: United States Policy Toward the International Criminal Court*, 36 CORNELL INT'L L.J. 415 (2004).

This article discusses the negotiation process within the multilateral treaty-making system. Initially, the Clinton administration bound the U.S. to the Rome Statute. Thereafter, however, the Bush administration "unsigned" the Rome Statute. The European Union expressed that the unilateral action would have undesirable consequences in the international community, thus affecting the overall negotiating powers of the U.S.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Rabinovich-Einy Orna, *Balancing the Scales: The Ford-Firestone Case, the Internet, and the Future Dispute Resolution Landscape*, 6 YALE SYMP. L. & TECH. 1 (2004).

In this article, the author discusses the Internet's potential effect on dispute resolution institutions. In the author's view, the emergence of online dispute resolution mechanisms and virtual courts are the clearest manifestation of the Internet's influence on dispute resolution. However, the author maintains that the Internet's influence extends beyond the immediate online environment, as is demonstrated throughout the article by analyses of various examples and the specific case study of the Ford-Firestone debacle.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Dimitrios Panagiotopoulos, *International Sports Rules' Implementation—Decisions' Executability: The Bliamou Case*, 15 MARQ. SPORTS L.J. 1 (2004).

While discussing how the case of Greek swimmer Katerina Bliamou demonstrates the tension between national and international sport regulations, the author notes that dispute resolution processes are used at both levels. International conflicts are heard by the Court of Arbitration for Sport, while financial dispute resolution committees and other bodies exist within the context of the Greek Constitution.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Ron Paterson et al., *Investigating the Quality of Psychiatric Care: The New Zealand Experience*, 24 HEALTH L. CAN. 60 (2004).

This article discusses the use of mediation as one method employed by the New Zealand Health Commissioner in promoting consumers' rights through complaint resolution. The practice of mediation has proven to be a success when public safety, incompetence, or exploitation are not at issue.

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

Colter Paulson, *Compliance with Final Judgments of the International Court of Justice Since 1987*, 98 AM. J. INT'L L. 434 (2004).

Factors affecting compliance with final judgments of the International Court of Justice (ICJ) are analyzed in this article. Compliance is difficult to determine because judgments are varied, declarations may not reflect actual conduct, effects may only become apparent long after the judgment is given, and the legal/political situation may substantially change after the judgment. Empirical studies and cases which resulted in final judgments on the merits before the ICJ, with varying degrees of compliance, are discussed.

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

Scott Peppet, *Contract Formation in Imperfect Markets: Should We Use Mediators in Deals?*, 19 OHIO ST. J. ON DISP. RESOL. 283 (2004).

This article revolves around a single question: Would mediators be helpful in negotiating commercial deals as they are helpful in negotiating disputes? The author makes the case for several uses of mediators in transactional situations.

- {21} MEDIATION—GENERAL
- {75} SUBJ MATTER: COMMERCIAL
- {136} ECONOMIC ADVANTAGES OF ADR
- {151} ROLE OF LAWYERS

Drew Peterson, *Mediation's Big Secret is Coming Out in the Mass Media*, 28 ALASKA B. RAG 14 (2004).

This article contends that the use of mediation will ultimately lead to earlier resolutions of cases and less legal profits overall. The author stresses the advantages of mediation in family law over litigation. The article concludes by noting that an increased use of mediation will result in a higher volume of satisfied clients, even though a consequence of that is a reduction in fees.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {136} ECONOMIC ADVANTAGES OF ADR

Hansel T. Pham, *Developing Countries and the WTO: The Need for More Mediation in the DSU*, 9 HARV. NEGOT. L. REV. 331 (2004).

This article argues that mediation would help to resolve many of the problems that developing countries have with the World Trade Organization Dispute Settlement Understanding.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Edward M. Phelps, *Preparing for Court-Ordered Mediation*, 27 L.A. LAW. 10 (2004).

Court-ordered mediation is occurring with increasing frequency. Mediation is often a new lawyer's first hands-on experience in the litigation process. The author provides six tips for effective advocacy at a court-ordered mediation.

{21} MEDIATION—GENERAL

{151} ROLE OF LAWYERS

Gerald F. Phillips, *The Obligation of Attorneys to Inform Clients About ADR Mediation—A Win-Win Process "Try It You'll Like It"*, 31 W. ST. U. L. REV. 239 (2004).

This article focuses on the advantages of mediation over other forms of dispute resolution. The article first sets out to correct some common misconceptions, such as that mediation does not work, is costly, and is not good for all disputes. The article then shifts focus to the ethical issues surrounding the lawyer's duty to inform the client regarding mediation options.

{21} MEDIATION—GENERAL

{151} ROLE OF LAWYERS

{138} ETHICS: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Asconio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395 (2004).

This article examines the influence that French philosopher Michel Foucault has had on the collaborative law movement in the United States. The author discusses the theoretical principles of collaborative law, its impact on attorney-client relationships, and its strengths and weaknesses.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{125} COMPARISONS: HISTORICAL

{151} ROLE OF LAWYERS

Aaron M. Popelka, Note, *The Republican River Dispute: An Analysis of the Parties' Compact Interpretation and Final Settlement Stipulation*, 83 NEB. L. REV. 596 (2004).

In 1943, the affected states ratified the Republican River Compact, which allocated water supplies of the river and provided for the formation of an administrative body. In 1998, Kansas filed suit to enforce the Compact and the author discusses the mediations and negotiations that led up to the Final Settlement Stipulation, as well as evaluates whether its terms adhere to the original Compact.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

Rafael A. Porrata-Doria, Jr., *MERCOSUR: The Common Market of the Twenty-First Century*, 32 GA. J. INT'L & COMP. L. 1 (2004).

This article describes MERCOSUR, the successor to the Latin American Free Trade Agreement, which was adopted in March 1990 by the Treaty of Asuncion. It evaluates the goals and structure of MERCOSUR and goes on to discuss in detail the dispute resolution procedures provided by the agreement for resolving issues between member states. The article also provides a framework for accessing the effectiveness of MERCOSUR.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

Willibald Posch, *Resolving Business Disputes Through Litigation or Other Alternatives: The Effects of Jurisdictional Rules and Recognition Practice*, 26 HOUS. J. INT'L L. 363 (2004).

This article is concerned with differences between domestic rules governing jurisdictional issues and the recognition of foreign judgments and how those differences may impede international trade and commerce. The article offers arbitration as a possible solution, since it encourages parties in international transactions to choose a neutral venue and find an adequate solution that will be accepted on an international level.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{75} SUBJ MATTER: COMMERCIAL

Daniel Q. Posin, *Mediating International Business Disputes*, 9 FORDHAM J. CORP. & FIN. L. 449 (2004).

Mediation has increasingly been utilized to resolve international business disputes. This article attempts to reconcile the theories behind domestic mediation with those employed in the international corporate context. The author pays close attention to the role of potential cross-cultural impediments and how to overcome them and reach successful settlements.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{81} SUBJ MATTER: CORPORATE
 {124} COMPARISONS: CROSS-CULTURAL

Eric A. Posner & John C. Yoo, *Judicial Independence in International Tribunals*, 93 CAL. L. REV. 1 (2005).

This article theorizes that greater independence of international tribunals does not improve, and may in fact hinder, their success. The authors review the history of international dispute resolution, presenting their theory of independence and then testing that theory against historical data. They also provide counterexamples of European history and conclude with predictions about the future of international dispute resolution.

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

Pitman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465 (2004).

This article explores how China's legal reform might be examined in light of questions about institutional capacity and legal culture, and suggests that the performance of the Chinese legal regime in areas of economic regulation and dispute resolution might be understood by reference to a dynamic of selective adaptation. Informal mediation emerged as a preferred alternative to formalized litigation. The gradual emergence of arbitration reflects a lack of confidence in the informalities.

{21} MEDIATION—GENERAL
 {44} ARBITRATION—GENERAL
 {87} SUBJ MATTER: GOV'T
 {124} COMPARISONS: CROSS-CULTURAL

Van M. Pounds, *Promoting Truthfulness in Negotiation: A Mindful Approach*, 40 WILLAMETTE L. REV. 181 (2004).

This article examines the ancient Buddhist practice of mindfulness as it relates to potentially promoting truthfulness in negotiations. The author recognizes the problems in the fact that lawyers in negotiations are often not even expected to be truthful. The article posits the heightened awareness of mindfulness as a solution, as it frees the lawyer from limiting mindsets that tend to obfuscate opportunities to create value.

{1} NEGOTIATION—GENERAL
 {138} ETHICS: GENERAL
 {124} COMPARISONS: CROSS-CULTURAL

PollyBeth Proctor, *Toward Mythos and Mythology: Applying a Feminist Critique to Legal Education to Effectuate a Socialization of Both Sexes in Law School Classrooms*, 10 CARDOZO WOMEN'S L.J. 577 (2004).

This article suggests that, in order to combat the sexism in the law schools, professors should teach ADR techniques, as female students demand more care-oriented, contextual, and holistic law practices. Professors should also expose students to interpersonal and intrapersonal skills foundational in negotiation and in other ADR methods, and should foster creativity in problem solving.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

Eileen Pruett & Cynthia Savage, *Statewide Initiatives to Encourage Alternative Dispute Resolution and Enhance Collaborative Approaches to Resolving Family Issues*, 42 FAM. CT. REV. 232 (2004).

This article describes several current initiatives in various states that encourage ADR and collaborative approaches to resolving family disputes. The authors also discuss strategies to sustain these initiatives.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

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

Lauren Elizabeth Rallo, Comment, *The Medical Malpractice Crisis—Who Will Deliver the Babies of Today, the Leaders of Tomorrow?*, 20 J. CONTEMP. HEALTH L. & POL'Y 509 (2004).

This comment focuses on the national health care crisis, and specifically the high medical liability premiums forcing doctors in high-risk practice areas to stop practicing medicine. In exploring options for reform, the comment considers arbitration as an economical and expedient alternative to trial.

{44} ARBITRATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{110} SUBJ MATTER: TORTS—OTHER

Susan Randall, *Judicial Attitudes Toward Arbitration and the Resurgence of Unconscionability*, 52 BUFF. L. REV. 185 (2004).

This article discusses the judicial response to arbitration agreements under the Federal Arbitration Act, focusing more specifically on judicial use of unconscionability doctrine specific to arbitration in the continuing attempt to invalidate such agreements. The author examines the expansion of unconscionability in the arbitration context, and the perceived judicial hostility toward arbitration, in an effort to address the effect on claimants and propose restrained use of the doctrine to prevent preemption concerns.

- {44} ARBITRATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES
- {133} COURT REFORMS

Nancy Rapoport, *Recent Developments in Bankruptcy Law*, 35 TEX. TECH L. REV. 543 (2004).

This article discusses, among other cases, *Jimmy Swaggart Ministries v. Hayes*, a case where much litigation took place about the enforceability of an arbitration agreement. Ultimately, the court found the arbitration agreement non-applicable to the bankruptcy proceeding.

- {44} ARBITRATION—GENERAL

William A. Ratliff & Glenn G. Waddell, *Harbingers of Bad Tidings?: Recent Decisions from Florida Courts Affecting Mediation Confidentiality*, 65 ALA. LAW. 167 (2004).

This article discusses several recent decisions by Florida courts on the issue of confidentiality related to mediation and its possible implications on the practice of mediation in Alabama. The author identifies four areas of concern within mediated settlements and concludes by recommending statutory backing to assure confidentiality of the mediation process.

- {21} MEDIATION—GENERAL
- {73} SUBJ MATTER: GENERAL
- {132} CONFIDENTIALITY
- {121} SETTLEMENT: AUTHORITY

Howard Reben & Adrienne Hansen, *When Your Client Faces Firing: Analyzing, Negotiating, and Drafting Severance Agreements*, 20 ME. B.J. 36 (2005).

Reben and Hansen provide a practical guide for negotiating the best severance package for a client. Their advice includes learning the unique goals and interests of the client, ensuring confidentiality, and protecting the client's professional reputation.

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

John Redlingshafer, *Tonights Matchup—Workers' Compensation v. Medical Malpractice: What Should Lower-Paid, Inexperienced Athletes Receive When a Team Doctor Allegedly Aids in Ending Their Career*, 2 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 100 (2004).

This article discusses the lower standard of care in the area of sports, especially outside of the higher professional ranks, and the process for

arbitrating disputes that arise when injuries and the subsequent deficient health care lead to the end of an athletic career.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{93} SUBJ MATTER: LABOR—GENERAL

Toni Reed, *Annual Survey of Texas Law: Construction and Surety Law*, 57 SMU L. REV. 759 (2004).

This article discusses Texas court opinions between 2002 and 2003 discussing arbitration in the context of construction disputes. The courts as a whole emphasized the binding nature of arbitration, the broad powers of the arbitrators, the courts' very limited powers of review, and the parties' rights under that form of ADR. In addition, various courts of appeals issued opinions regarding the way arbitration clauses would be applied.

{44} ARBITRATION—GENERAL

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

{80} SUBJ MATTER: CONSTRUCTION

Amanda S. Reid, Note, *Play It Again, Sam: Webcasters' Sound Recording Complement as an Unconstitutional Restraint on Free Speech*, 26 HASTINGS COMM. & ENT. L.J. 317 (2004).

This note discusses the ramifications of the Copyright Arbitration Royalty Panel's decisions in the context of free speech concerns.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Timothy M. Reif & Julie Eckert, *Courage You Can't Understand: How to Achieve the Right Balance Between Shaping and Policing Commerce in Disputes Before the World Trade Organization*, 42 COLUM. J. TRANSNAT'L L. 657 (2004).

In this article, the authors makes several proposals in order to help the World Trade Organization (WTO) strike the right balance between policing and shaping international commerce. One of the authors recommendations is the use of professional, trained mediators to facilitate dispute resolution in conflicts between members of the WTO. The authors argue that this system will allow parties to reach resolution through mutually agreed upon solutions.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

Mathias Reimann, *From the Law of Nations to Transnational Law: Why We Need a New Basic Course for the International Curriculum*, 22 PENN ST. INT'L L. REV. 397 (2004).

This article considers the methods of teaching international law currently in place at law schools, but also charts the growth of dispute resolution processes in the field of international law, namely by the WTO and the World Bank, and how this growth should be reflected in law school curriculum.

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

Judith Resnik, *Competing and Complementary Rule Systems: Civil Procedure and ADR: Procedure as Contract*, 80 NOTRE DAME L. REV. 593 (2005).

The author uses a deep inquiry into the history of ADR procedures to demonstrate how the use and intentions of ADR have evolved into what they are today. The article traces the beginnings of ADR procedures in America and details how these procedures alter and reinforce the law of contract. The author attempts to question the use of ADR rather than litigation by pointing out various positives and negatives.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {73} SUBJ MATTER: GENERAL
 {121} SETTLEMENT: AUTHORITY
 {125} COMPARISONS: HISTORICAL

Robert Retherford, Comment, *A Local Development Agreement on Access to Sacred Lands*, 75 U. COLO. L. REV. 963 (2004).

This comment discusses a land agreement negotiated between the City of Boulder and local Indian Tribes. The author views this agreement as a model for how cross-cultural disputes can be resolved proactively before problems arise.

{1} NEGOTIATION—GENERAL
 {88} SUBJ MATTER: GOV'T CONTRACTS
 {124} COMPARISONS: CROSS-CULTURAL

Richard C. Reuben, *Democracy and Dispute Resolution: The Problem of Arbitration*, 67 LAW & CONTEMP. PROBS. 279 (2004).

This article explores the relationship between arbitration and a constitutional democracy. The author asks whether arbitration advances the goals of democratic governance and determines that, when entered voluntarily, arbitration acquires a democratic character. However, the author concludes that, in the context of mandatory arbitration, the goals of a democracy are frustrated and significant systemic costs are imposed on society.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {87} SUBJ MATTER: GOV'T

Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369 (2004).

The author asserts that low-income individuals should have access to dispute resolution systems that would maximize their ability to address law-related problems without expensive representation by attorneys. ADR procedures such as mediation should be used to deal with problems like domestic violence, homelessness, and misdemeanors such as prostitution, drug possession, and juvenile offences.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

Deborah L. Rhode, *Deborah L. Rhode's Access to Justice: Access to Justice: Again, Still*, 73 FORDHAM L. REV. 1013 (2004).

This article revisits the author's book, ACCESS TO JUSTICE, posing the question: How can America ensure reasonable access to justice for the vast majority of Americans with limited means who are priced out of the legal system? The author argues that individuals should have access to both legal services and dispute resolution processes that are fair, efficient, and affordable.

{21} MEDIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{147} POWER IMBALANCE

Stuart J. Riemer, Note, *Albert Pujols: Major League Baseball Salary Arbitration from a Unique Perspective*, 22 CARDOZO ARTS & ENT. L.J. 219 (2004).

This note explains the salary arbitration system used in Major League Baseball, using Albert Pujols of the St. Louis Cardinals as a focal point. The author gives an overview of the system's current operation, effects on the game, and effects on individual players. Additionally, the author discusses the general principles of final-offer arbitration, which is the system utilized by Major League Baseball.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{93} SUBJ MATTER: LABOR—GENERAL

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

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Leonard L. Riskin, *Teaching and Learning from the Mediations in Barry Werth's Damages*, 2004 J. DISP. RESOL. 119 (2004).

This article discusses the mediation techniques used in BARRY WERTH, DAMAGES. The author believes that the book is particularly valuable because it gives detailed descriptions of a disinterested third party who began with no

expectations or beliefs about the mediation process. The author also believes that the book is important because the book explains the people involved, including their personalities, situations, and aspirations in the mediation process..

{21} MEDIATION—GENERAL

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{121} SETTLEMENT: PRESSURES TO SETTLE

{155} TEACHING

Lisa Risner, *Family Law Corner: The Collaborative Divorce*, 46 ORANGE COUNTY LAW. 54 (2004).

This article gives the history and advantages of collaborative divorce.

{1} NEGOTIATION—GENERAL

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

Clark D. Robertson, *Corinthians Soccer Loses By Decision in Second Round Play-Off Over Corinthians.com in Sallen v. Corinthians*, 11 VILL. SPORTS & ENT. L. J. 49 (2004).

The article examines the interplay and tension between the Uniform Dispute Resolution Proceeding (UDRP) and the Anticybersquatting Consumer Protection Act in disputes involving the rights and registration of Internet domain names. The author argues that a recent case decided by the First Circuit that found UDRP decisions to be non-binding and open to collateral attack in federal court, may render the UDRP process useless.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

James L. Rogers, *Contemplating Your Next Move When Resolving Cross-Border Business Disputes*, 16 S.C. LAW. 14 (2004).

Rogers suggests that the New York Convention and the Inter-American Convention on International Commercial Arbitration provide significant advantage in arbitrating as opposed to litigating cross-border commercial disputes by providing mechanisms for enforcing arbitral awards. In addition, he identifies where South Carolina lawyers can go to advice on enforceable arbitration clause language.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Joshua S. Rogers, Comment, *Riner v. Newbraugh: The Role of Mediator Testimony in the Enforcement of Mediated Agreements*, 107 W. VA. L. REV. 329 (2004).

This comment addresses the continuing development of law regarding the place of mediator testimony in the enforcement of mediated agreements. It examines various strategies employed by states to permit the arbitrator to testify in enforcement proceedings, including an in-depth analysis of West Virginia.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{104} SUBJ MATTER: REGULATORY

Keith A. Rogers, *The Year in Review 2003: Selected Cases From the Alaska Supreme Court, the Alaska Court of Appeals, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States*, 21 ALASKA L. REV. 115 (2004).

The author gives a broad discussion of Alaska case law for the year 2003, citing cases discussing a wide variety of topics, including many cases discussing binding arbitration, non-binding arbitration, and mediation.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS INT'L & COMP. L. REV. 157 (2004).

This article discusses the effects of mediation and negotiation in the context of the International Criminal Tribunal for Rwanda in response to attacks and civil warfare inflicting the region.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{124} COMPARISONS: CROSS-CULTURAL

Elizabeth Roma, Comment, *Mandatory Arbitration Clauses in Employment Contracts and the Need for Meaningful Judicial Review*, 12 AM. U. J. GENDER SOC. POL'Y & L. 519 (2004).

The Supreme Court has held that mandatory arbitration clauses in employment contracts are enforceable even when they include a waiver of the right to bring a statutory claim in court. Lower courts have shown great deference to arbitration in the employment context. The author believes that individuals should not have their substantive rights denied merely because they have subjected their legal claims to arbitration, and that judicial review is required to protect employees' substantive rights.

{44} ARBITRATION—GENERAL

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

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

Stephen A. Rosenbaum, *Aligning or Maligning? Getting Inside a New IDEA, Getting Behind No Child Left Behind, and Getting Outside of It All*, 15 HASTINGS WOMEN'S L.J. 1 (2004).

This article analyzes how mediation may help parents refrain from involuntarily or unknowingly waiving rights associated with their child under the Improving Education Results for Children with Disabilities Act of 2003.

{21} MEDIATION—GENERAL

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

Joshua Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004).

This article pushes the importance of interpersonal skills in the practice of law. The author notes the shortcomings of the American legal education and the legal profession in general. Furthermore, the author asserts that skills of negotiation and mediation can be helpful to attorneys personally and to the legal profession. The author recommends that law students take classes in mediation, negotiation, and arbitration to further that end.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

{151} ROLE OF LAWYERS

Lee Rosenthal, *Competing and Complementary Rule Systems: Civil Procedure and ADR: One Judge's Perspective on Procedure as Contract*, 80 NOTRE DAME L. REV. 669 (2005).

The author of this article, a United States District Court Judge from Texas, offers his experience with the concept of "procedure as contract." The author has found that, when the gateway procedural issue is not one of contract, but of fundamental rights, the courts in Texas have maintained their role and have not deferred to the arbitrator. He draws many conclusions about the effects of using arbitration rather than litigation from the perspective of the bench.

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

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{125} COMPARISONS: HISTORICAL

Robert Rubinson, *Client Counseling, Mediation, and Alternative Narratives of Dispute Resolution*, 10 CLINICAL L. REV. 833 (2004).

In this article the author explores the differing narrative structures that describe both mediation and litigation. The author notes that, in the mediation narrative, the parties do not struggle against each other. Instead,

they struggle against the conflict. In order to have a successful mediation, the lawyer must “confront and dislodge” the litigation narrative.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Javier H. Rubinstein, *International Commercial Arbitration: Reflections at the Crossroads of the Common Law and Civil Law Traditions*, 5 CHI. J. INT’L L. 303 (2004).

This article discusses current confusion surrounding attorney-client privilege in international commercial arbitration as different countries and cultures have different standards. This article highlights the challenge of international arbitration and litigation at the crossroads of the common law and civil law traditions and concludes that the best alternative is for each counsel in each individual case to fashion procedural rules that best suit the particular proceeding and will serve the client’s interest.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT’L

{75} SUBJ MATTER: COMMERCIAL

Erin Ruble & Gerald Torres, *Pursuing Equal Justice in the West: “Perfect Good Faith”*, 5 NEV. L.J. 93 (2004).

This article provides a brief summary of the mediation process related to the Navajo-Hopi Land Settlement Act between the Navajo and Hopi tribes. The article describes the Solomonic approach taken by federal negotiators which required the parties to settle the dispute themselves.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV’T

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Peter B. Rutledge, *Toward a Contractual Approach for Arbitral Immunity*, 39 GA. L. REV. 151 (2004).

This article argues that legal immunity, which protects arbitrators and the arbitral institution from liability, should be limited or abolished in certain situations in favor of contractual immunity. The author states that the market, instead of regulatory regimes, should play the key factor in determining whether or not the arbitrator should be brought to trial. Furthermore, the author feels that allowing the market to determine immunity would produce superior outcomes.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

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

Jay V. Sagar, Note, *The Labor and Environment Chapters of the United States-Chile Free Trade Agreement: An Improvement Over the Weak Enforcement Provisions of the NAFTA Side Agreements on Labor and the Environment?*, 21 ARIZ. J. INT'L & COMP. L. 913 (2004).

This note provides a description of the negotiation of the United States-Chile Free Trade Agreement and criticizes the agreement's favorable treatment of negotiation and consultation over trade sanctions in its labor and environmental provisions.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{93} SUBJ MATTER: LABOR—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

David Sally, *Social Maneuvers and Theory of Mind*, 87 MARQ. L. REV. 893 (2004).

Theory of mind is an innate capability that develops over time and underlies interpersonal maneuvers. Because an advanced theory of mind is necessary to accurately decipher social situations such as false beliefs and misrepresentation, negotiators should be aware of its existence. The author offers many questions for negotiators to consider, including whether theory of mind is responsible for emotional entanglements and indirectness about interests and values.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

David Sally & Kathleen O'Connor, *Team Negotiations*, 87 MARQ. L. REV. 883 (2004).

After briefly discussing the benefits and disadvantages of teams versus solo work, the authors conclude that negotiating teams, without exception, reach deals of better quality. Teams are better because negotiating is a complex cognitive task, teams can engage in group tactics, and teams encourage the growth of a collective network. The authors close by offering advice on avoiding the potential pitfalls of team negotiations.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Ernest A. Sanchez & Sherrie Kibler Sanchez, *Empowering Children in Mediation: An Intervention Model*, 42 FAM. CT. REV. 554 (2004).

This article examines the intervention model as a means to interview, safeguard, integrate, and empower school-aged children in the context of mediation for child custody disputes. Additionally, the authors provide a methodology for protecting children while affording an opportunity for

parents to take into consideration their children's preferences, ideas, and feelings.

{21} MEDIATION—GENERAL

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

John Sanchez, *2004 Survey of Florida Public Employment Law*, 29 NOVA L. REV. 15 (2004).

This article is a survey of the developments in Florida public employment law over the past year. The author notes several Eleventh Circuit Court of Appeals cases that originated in other states, but nevertheless have major effects on Florida law. The author highlights certain cases involving the use of arbitration.

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

{93} SUBJ MATTER: LABOR—GENERAL

{87} SUBJ MATTER: GOV'T

Sarah R. Sandford-Smith, Note, *A Toothless Tiger: President Uribe's Proposed Amnesty Bill*, 28 HASTINGS INT'L & COMP. L. REV. 167 (2004).

This note critiques the bill proposed by Colombian President Alvaro Uribe that allows paramilitary leaders to avoid prison for human rights violations. Instead, the author argues for the creation of a truth commission to investigate these crimes. By establishing a commission to facilitate the resolution of these crimes, the author feels that Uribe will show the international community that Colombia is taking responsibility for human rights violations, thus inviting international assistance.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{92} SUBJ MATTER: INT'L

{82} SUBJ MATTER: CRIMINAL

Jordan Leigh Santeramo, Note, *Early Neutral Evaluation in Divorce Cases*, 42 FAM. CT. REV. 321 (2004).

This note discusses the development of early neutral evaluation and proposes the establishment of court-annexed mandatory early neutral evaluation programs to settle financial disputes in divorce cases.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Magnus Saxegaard, Comment, *Creditor Participation in the HIPC Debt Relief Initiatives: The Case of Guyana*, 32 GA. J. INT'L & COMP. L. 725 (2004).

This comment discusses creditor participation in the HIPC Debt Initiative, focusing its discussion on Guyana, a country whose economic growth has been severely hampered by public debt. Guyana has drawn the attention of

the international news media of late due to arbitration proceedings between its government and the Big Food Group. This comment highlights the issues raised by the arbitration proceedings and suggests improvements for future comprehensive debt relief operations.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

William A. Schabas, Symposium, *Rethinking Reconstruction After Iraq: Amnesty, the Sierra Leone Truth and Reconciliation Commission, and the Special Court for Sierra Leone*, 11 U.C. DAVIS J. INT'L L. & POL'Y 145 (2004).

This article examines the issues of amnesty, the Sierra Leone Truth and Reconciliation Commission, and the Special Court for Sierra Leone. The author examines these issues against the background of the civil unrest in Sierra Leone during the past 20 years. The author also discusses the general purpose of truth and reconciliation commissions.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{144} LEGISLATION

Stephen Schatz et al., *Annual Survey of Georgia Law: June 1, 2003–May 31, 2004: Insurance*, 56 MERCER L. REV. 253 (2004).

This article surveys the changes to Georgia insurance law from June 2003 to May 2004. Specifically, the authors highlight an appellate court's decision regarding the enforceability of a mandatory arbitration clause in an insurance policy. The Georgia Arbitration Code does not allow arbitration between insurers and insured. In the appellate case, the title company argued that the Federal Arbitration Act preempted the Georgia Code, but the court disagreed. Thus, mandatory arbitration clauses in insurance policies in Georgia are invalid and unenforceable.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

{128} REQUIREMENTS: STATUTORY OR RULES

Reuel E. Schiller, *The Emporium Capwell Case: Race, Labor Law, and the Crisis of Post-War Liberalism*, 25 BERKELEY J. EMPLOYMENT & LAB. L. 129 (2004).

This article is a historical recount of the process that led to the U.S. Supreme Court's 1975 decision in *Western Addition Community Organization v. Emporium Capwell*. The author shows how the American legal system attempted to reconcile disputes between African-Americans and organized labor and how it failed.

{1} NEGOTIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{125} COMPARISONS: HISTORICAL

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Sandra Schmieder, *Scope of Biotechnology Inventions in the United States and in Compulsory Licensing, Experimental Use, and Arbitration: A Study of Patentability of DNA-Related Inventions With Special Emphasis on the Establishment of an Arbitration Based Compulsory Licensing System*, 21 SANTA CLARA COMPUTER & HIGH TECH. L.J. 163 (2004).

The author proposes a mandatory global patent licensing system for DNA-related inventions relying upon an arbitration panel for enforcing both the grant of licenses and the protection of inventors. The proposed statutory arbitration scheme is expected to provide greater access to patent technology while still protecting the interests of the inventor in a more efficient manner than current litigation-based dispute resolution methods.

{44} ARBITRATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{136} ECONOMIC ADVANTAGES OF ADR

Amy J. Schmitz, *Refreshing Contractual Analysis of ADR Agreements by Curing Bipolar Avoidance of Modern Common Law*, 9 HARV. NEGOT. L. REV. 1 (2004).

According to the author, courts tend to analyze contractual ADR agreements under an “all-or-nothing” ideology. They either compel arbitration or believe any procedure not governed by statute is unenforceable under the common law. The author argues that courts should eliminate antiquated doctrines and narrow assumptions about private dispute resolution, and refresh contractual analysis of non-statutory ADR agreements.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Michael Schneiderei, Note, *A Cold Night: Unconscionability as a Defense to Mandatory Arbitration Clauses in Employment Agreements*, 55 HASTINGS L.J. 987 (2004).

This note analyzes the problems with mandatory employment arbitration, as well as potential solutions.

{44} ARBITRATION—GENERAL

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

Douglas Schnell, Note, *All Bundled Up: Bringing the Failed GE/Honeywell Merger in From the Cold*, 37 CORNELL INT’L L. J. 217 (2004).

This note discusses a failed merger caused by a disagreement between U.S. and European regulators. Generally, the note proposes the use of arbitration with respect to failed mergers and, more specifically, talks about arbitration during mergers in the context of differing jurisdictions whereby one jurisdiction approves the merger and another does not.

{44} ARBITRATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{92} SUBJ MATTER: INT'L

{104} SUBJ MATTER: REGULATORY

Erica F. Schohn, *The Uncertain Future of Mandatory Arbitration of Statutory Claims in the Unionized Workplace*, 67 LAW & CONTEMP. PROBS. 321 (2004).

This article critiques the nearly universal rejection of mandatory arbitration of statutory claims in the collective bargaining context. The author contends that the concerns expressed by the Supreme Court in *Alexander v. Gardner-Denver Co.* regarding mandatory arbitration have since been rejected. She concludes that no valid justification exists for the distinction between the application of mandatory arbitration to statutory claims brought by nonunion employees and the rejection of similar claims brought by union employees.

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

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

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

Thomas Schultz, *Does Online Dispute Resolution Need Governmental Intervention?*, 6 N.C. J.L. & TECH. 71 (2004).

The article argues against the view that online dispute resolution (ODR), a new and promising form of dispute resolution, should be left to self-regulation. The article describes the greater risks that are at stake with ODR. The author contends that ODR requires governmental intervention to develop fully, i.e., to lessen the gap between its potential and its actual use. The author argues that ODR is in need of trust, trust can be provided through architectures of control, and such control should be in the hands of the government in order to induce trust.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Nina Schuyler, *Voluntary Early Mediation: Provides Another Alternative Dispute Resolution Option*, 30 SAN FRANCISCO ATT'Y 34 (2004).

The author discusses the voluntary early mediation program offered by the Bar Association of San Francisco and endorsed by the San Francisco Superior Court. The program started in November 2003 and requires that all parties bringing claims to the San Francisco Superior Court first submit to

some form of ADR, with the particular form being left to the discretion of the parties.

{21} MEDIATION—GENERAL

William H. Schwab, *Collaborative Lawyering: A Closer Look at an Emerging Practice*, 4 PEPP. DISP. RESOL. L.J. 351 (2004).

The author constructs an in-depth exploration into the expanding practice of collaborative law. Through analysis of collaborative law's background, a look at various models, an examination of ethical concerns, and research in the area, the author paints a more comprehensive picture of collaborative lawyering, including stiff resistance to the new approach.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

{138} ETHICS: GENERAL

David S. Schwartz, *Correcting Federalism Mistakes in Statutory Interpretation: The Supreme Court and the Federal Arbitration Act*, 67 LAW & CONTEMP. PROBS. 5 (2004).

This article argues that the current judicial interpretation of the FAA is a federalism revolution that intrudes upon state lawmaking autonomy. The author determines that the case of *Southland Corp. v. Keating* was wrongly decided, and claims that the broad federal preemption rule supported in the decision erroneously undermines federalism values.

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

{73} SUBJ MATTER: GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{133} COURT REFORMS

David S. Schwartz, *State Judges as Guardians of Federalism: Resisting the Federal Arbitration Act's Encroachment on State Law*, 16 WASH. U. J.L. & POL'Y 129 (2004).

This article attacks the *Southland Corp. v. Keating* doctrine calling for the preemption of state contract law in favor of the Federal Arbitration Act. It argues that state court judges should interpret the FAA as narrowly as possible by interpreting federal statutes independently in the absence of controlling Supreme Court precedent and considering states' interests in the enforcement of state laws in the absence of a clear congressional mandate for preemption.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{133} COURT REFORMS

Steven L. Schwartz, *The Mediated Settlement: Is It Always Just About the Money? Rarely!*, 4 PEPP. DISP. RESOL. L.J. 309 (2004).

This article discusses the various factors that are considered when parties attempt to mediate a settlement agreement. Money is definitely a consideration, but there are many others as well.

{21} MEDIATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{123} SETTLEMENT: PRESSURES TO SETTLE

Stephen W. Schwebel, *The Reality of International Adjudication and Arbitration*, 12 WILLAMETTE J. INT'L L. & DISP. RESOL. 359 (2004).

This article begins by discussing some of the current trends and specific cases in the International Court of Justice. The article then turns to a review of international arbitration as an alternative to the International Court of Justice. Interstate arbitration, arbitration between states and companies, and international commercial arbitration are briefly discussed.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Jed Scully, Symposium, *The Virtual Professorship: Intellectual Property Ownership of Academic Work in a Digital Era*, 35 MCGEORGE L. REV. 227 (2004).

The growth of the Internet has significantly affected the traditional view of ownership and copyright interests in intellectual property at the university level. For 150 years, the contract negotiation model was followed, in which the university administration acted as a go-between to negotiate favorable terms for all and ownership was vested in the inventor. The author believes that adjustments should be by negotiating contract revisions with academic staff.

{1} NEGOTIATION—GENERAL

{78} SUBJ MATTER: COMPUTER

Phillip Seckman, *Invigorating Enforcement Mechanisms of the International Labor Organization in Pursuit of U.S. Labor Objectives*, 32 DENV. J. INT'L L. & POL'Y 675 (2004).

This article explores why U.S. jobs are moving overseas and how the World Trade Organization's dispute resolution process could be used to further U.S. labor objectives.

{44} ARBITRATION—GENERAL

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

{93} SUBJ MATTER: LABOR—GENERAL

{92} SUBJ MATTER: INT'L

Paul M. Secunda, *Getting to the Nexus of the Matter: A Sliding Scale Approach to Faculty-Student Consensual Relationship Policies in Higher Education*, 55 SYRACUSE L. REV. 55 (2004).

The author evaluates labor arbitration cases which applied the “nexus test” and analogizes that this nexus principle, which states that an employer should not interfere with the private lives of its employees unless such conduct adversely affects the employer’s interest in some relevant manner, would appropriately apply to faculty-student consensual relationships.

{44} ARBITRATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{93} SUBJ MATTER: LABOR—GENERAL

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

David Sedlak, Comment, *ICSID’s Resurgence in International Investment Arbitration: Can the Momentum Hold?*, 23 PENN ST. INT’L L. REV. 147 (2004).

This comment discusses the problems that arise when companies from different countries see their business relationship collapse into a dispute. Also, the article considers how arbitration has effectively solved many of these problems—i.e., the potential for an agreed-upon and predetermined body of governing law—particularly in the area of investing, where the World Bank has created the International Convention for the Settlement of Investment Disputes (ICSID).

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT’L

{81} SUBJ MATTER: CORPORATE

{106} SUBJ MATTER: SECURITIES

Mark Seidenfeld & Janna Satz Nugent, *“The Friendship of the People”:* *Citizen Participation in Environmental Enforcement*, 73 GEO. WASH. L. REV. 269 (2005).

This article examines and suggests some possible approaches to reconcile the conflicts between the enforcement of goals of regulators and citizen groups, examines why modern enforcement efforts fail to achieve universal compliance, and outlines the debate on whether deterrence, cooperation, or some other method of control should stand as the model for environmental enforcement.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

R. Perry Sentell, Jr., *Annual Survey of Georgia Law: June 1, 2003– May 31, 2004: Local Government Law*, 56 MERCER L. REV. 351 (2004).

The author notes certain changes in Georgia's local government law from June 2003 to May 2004. Specifically, the author deals with *Macon Water Authority v. City of Forsyth*, which involved a mandatory arbitration clause in a government contract. At the request of the city, the trial court ordered arbitration, and the appeals court affirmed.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{88} SUBJ MATTER: GOV'T CONTRACTS

Jeffrey R. Seul, *Settling Significant Cases*, 79 WASH. L. REV. 881 (2004).

The author argues that two types of negotiation, bargaining and moral deliberation, should be viewed as legitimate alternatives to litigation for processing disputes involving deep moral disagreement and discusses how deliberative dispute resolution processes present important opportunities for democratic participation. Settlements resulting from them may benefit both the parties and society in ways that litigation cannot.

{1} NEGOTIATION—GENERAL

Angelito Remo Sevilla, Comment, *The End of Duffield and the Rise of Mandatory Arbitration: How Courts Misinterpreted the Civil Rights Act's Arbitration Provision*, 93 CAL. L. REV. 323 (2005).

This comment examines the growing popularity of ADR processes to adjudicate employment discrimination suits. The comment highlights the evolution of the Federal Arbitration Act then explores the social, political, and legislative history of the Civil Rights Acts of 1990 and 1991, including arguing that courts have misinterpreted § 118 of the 1991 Act to mandate arbitration. The comment concludes by exploring the current legal battle lines.

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

{94} SUBJ MATTER: LABOR—DISCRIMINATION

{127} REQUIREMENTS: MANDATE TO USE

{128} REQUIREMENTS: STATUTORY OR RULES

Aashit Shah, *Using ADR to Resolve Online Disputes*, 10 U. RICH. J.L. & TECH. 25 (2004).

This article summarily discusses some of the online ADR providers and the type of online disputes that are amenable to online ADR. Thereafter, this article analyzes the effectiveness of using ADR in the online context and weighs its pros and cons. This paper also addresses some of the models proposed for an online ADR process and suggests some of the issues online businesses and online ADR providers should keep in mind to boost consumer confidence and make online ADR more effective.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL
 {44} ARBITRATION—GENERAL
 {78} SUBJ MATTER: COMPUTER

Daniel L. Shapiro, *Identity is More than Meets the "I": The Power of Identity in Shaping Negotiation Behavior*, 87 MARQ. L. REV. 809 (2004).

The author argues against the assumptions that a negotiator's identity is consistent across both time and context, and rather believes that how an individual sees himself is at least somewhat dependent on the person with whom he is interacting. By becoming more self-aware, a negotiator can actively modify his identity to better serve him during the bargaining process.

{1} NEGOTIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {147} POWER IMBALANCE

Benedict Sheehy, *International Marine Environment Law: A Case Study in the Wider Caribbean Region*, 16 GEO. INT'L ENV'T'L L. REV. 441 (2004).

This article discusses arbitration provisions of the Cartagena Convention, an agreement of the Regional Seas Programme of the United Nations. Dispute settlement concerning issues of interpretation of the Cartagena Convention are specifically and repeatedly required to be resolved by peaceful means. The convention also permits any party unilaterally to submit the dispute for arbitration (pursuant to the terms of the Arbitration Annex to the Convention).

{44} ARBITRATION—GENERAL
 {84} SUBJ MATTER: ENVIRONMENT

Donna Beck Shestowsky, *Procedural Preferences in Alternative Dispute Resolution: A Closer, Modern Look at an Old Idea*, 10 PSYCHOL. PUB. POL'Y & L. 211 (2004).

This article addresses the basic question of method preference in ADR through an examination of three experiments that attempt to discover which mode of dispute resolution is favored. The author discusses implications resulting from the findings of the studies suggesting that mediation, and more specifically facilitative mediation, is the preferred method of ADR.

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

J. Gregory Sidak & Hal J. Singer, *Überregulation Without Economics: The World Trade Organization's Decision in the U.S.-Mexico Arbitration on Telecommunications Services*, 57 FED. COMM. L.J. 1 (2004).

This article examines the World Trade Organization (WTO) arbitration panel's decision finding that Mexico failed to meet its General Agreement on Trade in Services with respect to telecommunications services to be supplied to the United States. This article analyzes and critiques the U.S. complaint as well as the WTO arbitration panel from an economic perspective.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Autumn Smith, Comment, *You Can't Judge Me: Mental Capacity Challenges to Arbitration Provisions*, 56 BAYLOR L. REV. 1051 (2004).

This comment explores why a court instead of an arbitrator should decide a mental capacity defense to a contract that includes an arbitration clause governed by the FAA. The comment explores the rules governing who decides challenges to a contract with an arbitration clause and concludes by setting forth reasons that a mental capacity defense to a contract is outside the scope of the rule articulated by the Supreme Court.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{133} COURT REFORMS

Larry A. Spain, *Collaborative Law: A Critical Reflection on Whether Orientation Can Be Ethically Incorporated Into the Practice of Law*, 56 BAYLOR L. REV. 141 (2004).

This article deals with a form of ADR known as collaborative law and discusses its use among lawyers in family law disputes.

{21} MEDIATION—GENERAL

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

{138} ETHICS: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

Thomas J. Speiss, III & Stephen M. Levine, *An Analysis of the Factors That Determine When and How to Resolve a Trademark Dispute*, 11 U. RICH. J.L. & TECH. 1 (2004).

The authors present a strategic framework for deciding whether to pursue a trademark claim through litigation or negotiation. After making a threshold determination that the value of a remedy will be greater than the cost of vindicating, they suggest several factors to consider. The authors propose that strategy development, the negotiation process, and obstacles to settlement all contribute to a case-by-case assessment of the likely success of negotiation in achieving desired goals.

{1} NEGOTIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{136} ECONOMIC ADVANTAGES OF ADR

Theodore St. Antoine, *Labor and Employment Law in Two Transitional Decades*, 42 BRANDEIS L.J. 495 (2004).

This article explores the evolving field of labor and employment law, concentrating the analysis on two primary decades of change. Government intervention has seen the rise of employment law while a decline in organized labor has resulted in a shift away from traditional labor law. A look into applications of arbitration, as well as collective bargaining, represents one aspect of the overall discussion focusing on recent legal developments in the employment law arena.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{125} COMPARISONS: HISTORICAL

Benjamin Staherski, Comment, *Contraction in Major League Baseball: Do Owners Have a Duty to Bargain in Good Faith with the Union Before Shutting Down or Relocating a Team?*, 108 PENN ST. L. REV. 881 (2004).

This comment looks at the Minnesota Twins and the Montreal Expos baseball franchises and considers whether the owners of these franchises needed to bargain with the union prior to relocating. In short, Major League Baseball owners believed that they had a right to shut down a team that was not operating profitably without negotiating with the union just as a business owner could shut down a plant without negotiations. The issue was not resolved, since neither team relocated at the time of the comment, so the author instead looks at how the issue might be resolved.

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

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

Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579 (2004).

This article discusses the mediation options available to employees with disabilities who wish to accuse an employer of disability discrimination.

{21} MEDIATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Paul Steinberg & Gerald Lescatre, *Beguiling Heresy: Regulating the Franchise Relationship*, 109 PENN ST. L. REV. 105 (2004).

The major focus of the article is on franchising and, more specifically, the abusive conduct perpetrated by individuals once a franchise begins. As part of this abuse, the article briefly discusses binding arbitration and how employers attempt to implement the process to the detriment of employees.

The article also considers Korean franchise arbitration systems and the Subway system.

- {44} ARBITRATION—GENERAL
- {81} SUBJ MATTER: CORPORATE
- {92} SUBJ MATTER: INT'L
- {75} SUBJ MATTER: COMMERCIAL

Richard Steinberg, *Judicial Lawmaking at the WTO: Discursive, Constitutional, and Political Constraints*, 98 AM. J. INT'L L. 247 (2004).

This article discusses the fact that, since the establishment of the World Trade Organization (WTO), several commentators have discussed replacing the model of political-diplomatic disputes under the General Agreement on Tariffs and Trade (GATT). These critics argue that the judicial lawmaking that arises through the older GATT model undermines democracy and political support by shifting the balance of rights and responsibilities of trade negotiators and WTO agreements.

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

Jeffrey Stempel, *Arbitration, Unconscionability, and Equilibrium: The Return of Unconscionability Analysis as Counterweight to Arbitration Formalism*, 19 OHIO ST. J. ON DISP. RESOL. 757 (2004).

The author focuses on arbitration agreements and the law of contract. In the creation of arbitration agreements between adversarial parties, the law of contract plays a large role in whether arbitration will be an effective method of dispute resolution. The author focuses on unconscionability in the creation of valid arbitration agreements and how that analysis may change the future use of arbitration.

- {44} ARBITRATION—GENERAL
- {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES
- {133} COURT REFORMS

Nat Stern & Karen Oehme, *Toward a Coherent Approach to Tort Immunity in Judicially Mandated Family Court Services*, 92 KY. L.J. 373 (2004).

This article proposes that greater legal protection should be afforded to domestic relations mediators in order to best protect the interests of the child in family disputes. The author emphasizes the role that mediators can play in stabilizing family conflict and examines state legislation that grants mediators at least some degree of immunity from civil liability.

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

{133} COURT REFORMS

Jean R. Sternlight, *In Search of the Best Procedure for Enforcing Employment Discrimination Laws: A Comparative Analysis*, 78 TUL. L. REV. 1401 (2004).

This article compares the procedures used by the United States, Great Britain, and Australia in resolving individual claims of employment discrimination. It explains that jurisdictions use many devices including ordinary litigation, formal adversarial processes in specialized tribunals or before governmentally appointed arbitrators, privately-imposed binding arbitration, nonbinding administrative or arbitral processes, and variations on mediation or conciliation. It offers a way to piece together beneficial aspects of all procedures.

{44} ARBITRATION—GENERAL

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

{124} COMPARISONS: CROSS-CULTURAL

Jean R. Sternlight & Elizabeth J. Jensen, *Using Arbitration to Eliminate Consumer Class Actions: Efficient Business Practice or Unconscionable Abuse?*, 67 LAW & CONTEMP. PROBS. 75 (2004).

This article explores the increasingly common business practice of using arbitration clauses to prevent consumers from bringing class actions. The authors examine the use of the unconscionability doctrine to invalidate such clauses and discuss the public policy implications of allowing companies to avoid class actions in this way. The article concludes by stating that, from both a policy and efficiency standpoint, arbitral class-action preclusion should not be permitted.

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

{79} SUBJ MATTER: CONSUMER

{102} SUBJ MATTER: PUBLIC POLICY

Jean R. Sternlight & Judith Resnik, Symposium, *Competing and Complementary Rules Systems: Civil Procedure and ADR: Foreward*, 80 NOTRE DAME L. REV. 481 (2005).

This article comments on the relationship between litigation and non-litigation approaches to dispute resolution. It discusses a conference hosted by the ADR and Civil Procedure sections of the Association of American law schools held in January of 2004 and provides brief introductions and themes to many of the different published written papers of the speakers who were able to contribute to the symposium.

{44} ARBITRATION—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

Katherine Stone, *Competing and Complementary Rule Systems: Civil Procedure and ADR: Procedural Justice in the Boundaryless Workplace: The Tension Between Due Process and Public Policy*, 80 NOTRE DAME L. REV. 501 (2005).

This article was presented at the 2004 Annual Meeting of the Association of American Law Schools. In noting the rapid increase in the use of ADR in the workplace, the author investigates the procedures utilized and the results of those procedures. The author suggests that the use of certain ADR procedures may actually lead to the need for outside judicial procedures, rather than decreasing such a reliance.

{21} MEDIATION—GENERAL
 {44} ARBITRATION—GENERAL
 {93} SUBJ MATTER: LABOR—GENERAL
 {134} DISPUTE PREVENTION

Sumathi Subbiah, Note, *Security Council Mediation and the Kashmir Dispute: Reflections on its Failures and Possibilities for Renewal*, 27 B.C INT'L & COMP. L. REV. 173 (2004).

This note discusses the role of the U.N. Security Council's dispute resolution capacity under Article 36, and its role in mediating a resolution to the India and Pakistan dispute over Kashmir.

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

Sabrina M. Sudol, Note, *The U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Issue Preclusion: A Traditional Collateral Estoppel Determination*, 65 U. PITT. L. REV. 931 (2004).

This note attempts to reconcile enforcement of international arbitration awards under the U.N. Convention and the doctrine of collateral estoppel in the courts of the United States. In exploring the guidelines arising from the convention, the author suggests an integrated approach, where principles of issue preclusion remain intact while also giving credence to the convention's purpose and goals.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD
 {133} COURT REFORMS

Frederick L. Sullivan, *Accepting Evolution in Workplace Justice: The Need for Congress to Mandate Arbitration*, 26 W. NEW ENG. L. REV. 169 (2004).

This article examines the current problem of using traditional litigation to resolve workplace-related disputes and argues that the use of pre-dispute agreements to arbitrate workplace-related disputes offers the most promising,

fair, and effective vehicle for solving the issues involved with litigating claims. It also asserts that legislation should mandate the use of arbitration for all employment-related disputes.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

Matthew J. Sullivan, *Ethical, Legal, and Professional Practice Issues Involved in Acting as a Psychologist Parent Coordinator in Child Custody Cases*, 42 FAM. CT. REV. 576 (2004).

Several family courts have begun to use "Parent Coordinators," where judges delegate their decisionmaking powers to an expert in order to determine the best interests of a child when a dispute arises between divorced parents concerning day-to-day decisions. With the increased use of this ADR process, the article examines several ethical, legal, and professional issues surrounding the parent coordinators and calls for a better defined standard of practice.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Michael G. Sullivan & A. Camden Lewis, *Class-Wide Arbitration After Green Tree*, 15 S.C. LAW. 20 (2004).

This article discusses the Supreme Court's plurality decision in *Green Tree Financial Corp. v. Bazzle*, a case that was previously heard by the Supreme Court of South Carolina, and the impact that the decision has on the availability of class-wide arbitration. The author contends that, for the most part, the decision of the Supreme Court of South Carolina was left intact.

{44} ARBITRATION—GENERAL

Clyde W. Summers, *Mandatory Arbitration: Privatizing Public Rights, Compelling the Unwilling to Arbitrate*, 6 U. PA. J. LAB. & EMP. L. 685 (2004).

This author argues that the result of contracts with arbitration clauses regarding the resolution of future disputes has had the effect of privatizing justice by substituting privately constructed arbitration for publicly established courts.

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

{93} SUBJ MATTER: LABOR—GENERAL

Imre S. Szalai, *The New ADR: Aggregate Dispute Resolution and Green Tree Financial Corp. v. Bazzle*, 41 CAL. W. L. REV. 1 (2004).

This article examines how the U.S. Supreme Court decision in *Bazzle* did not set binding precedent and examines how others have erroneously construed the decision as authoritative. The article continues by examining whether a

court or arbitrator should determine whether an arbitration agreement provides for class arbitration. It concludes by examining concerns about aggregate dispute resolution and proposed amending the Federal Arbitration Act to address issues that may arise in class arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{144} LEGISLATION

Mary C. Szto, *Ethical Guideposts for the Christian Attorney: Strategic Alliances: Legal and Ethical Challenges*, 16 REGENT U. L. REV. 351 (2003). This article discusses the moral and legal implications surrounding ADR procedures, namely mediation and arbitration, in the context of the Christian religion.

{44} ARBITRATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{138} ETHICS: GENERAL

Maki Tanaka, *Lessons from the Protracted Mox Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea*, 25 MICH. J. INT'L L. 337 (2004).

The author reviews international law by taking a deep look into the Mox Plant dispute as a case study. The article highlights the role of the International Tribunal for the Law of the Seas in settling this dispute. The Tribunal used various forms of ADR, arbitration in particular, to resolve the disagreement.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{97} SUBJ MATTER: MARITIME

Georgette H. Tarnow, *www.yourname.com: How Useful is the Uniform Domain Name Dispute Resolution Policy ("UDRP") in Protecting Personal Names from Cybersquatters?*, 22 J. MARSHALL J. COMPUTER & INFO. L. 535 (2004).

The Internet Corporation for Assigned Names and Numbers (ICANN) handles most internet domain name disputes and created the Uniform Domain Name Dispute Resolution Policy (UDRP). Under the UDRP, a panelist or panelists hear complaints and are able to render a non-binding decision. This article analyzes disputes handled under the UDRP, focusing on disputes handled by the World Intellectual Property Organization and the National Arbitration Forum.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{78} SUBJ MATTER: COMPUTER-INTERNET

Barry R. Temkin, *Misrepresentation by Omission in Settlement Negotiations: Should There Be a Silent Safe Harbor*, 18 GEO. J. LEGAL ETHICS 179 (2004).

This article examines ethical constraints on a lawyer's misleading statements and omissions during settlement negotiations, suggesting that the current trend toward disclosure has been overextended in the hopes of increasing ethical behavior in settlement negotiations.

{1} NEGOTIATION—GENERAL

{139} ETHICS: MISREPRESENTATION & FAILURE TO DISCLOSE

Amy Terry, Note, *Tasini Aftermath: The Consequences of the Freelancers' Victory*, 14 DEPAUL-LCA J. ART & ENT. L. & POL'Y 231 (2004).

In *New York Times v. Tasini*, the U.S. Supreme Court affirmed the right of freelance authors to post their works on electronic databases or to transfer that right. This note explores the aftermath of the *Tasini* decision and discusses court-ordered mediation that is being used to try and resolve three law suits relating to pre-*Tasini* infringement.

{21} MEDIATION—GENERAL

{78} SUBJ MATTER: COMPUTER-INTERNET

Pauline H. Tesler, *Collaborative Family Law*, 4 PEPP. DISP. RESOL. L.J. 317 (2004).

This article discusses various issues in connection with the collaborative approach to family law. The author argues that the collaborative approach, as the least litigious of alternatives, provides the best possible method for initial resolution of family disputes.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

{151} ROLE OF LAWYERS

William Tetley, *Good Faith in Contract: Particularly in the Contracts of Arbitration and Chartering*, 35 J. MAR. L. & COM. 561 (2004).

This article discusses the role of good faith in the promotion of viable arbitration and chartering agreements. In doing so, it examines the prevalent practice of resolving chartering disputes through arbitration and reflects on the uncertainty that results from the general absence of a good faith requirement in chartering contracts.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

Peter N. Thompson, *Enforcing Rights Generated in Court-Connected Mediation—Tension Between the Aspirations of a Private Facilitative*

Process and the Reality of Public Adversarial Justice, 19 OHIO ST. J. ON DISP. RESOL. 509 (2004).

This article discusses the role of judges in court-connected mediation. Specifically, it suggests that an evaluation of judges' lack of supervision and regulation regarding such mediations is necessary. Additionally, it posits that judicial involvement would allow for the creation of vital parameters that would serve to keep the mediators and parties from engaging in practices that undermine the process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{147} POWER IMBALANCE

Robert W. Thompson, *Attention to Detail Crucial in Mediating Class Action Disputes*, 46 ORANGE COUNTY LAW. 22 (2004).

Class-action mediation involves a number of unique concerns and requires a great deal of planning and preparation. Special attention must be given to the timing of the mediation, the adequacy of information available prior to the meeting, selection of a mediator, determining the attendance of various individuals, handling issues unique to class-action lawsuits, and documenting any settlement prior to the conclusion.

{21} MEDIATION—GENERAL

{114} 3D PARTY: PRACTICE OF LAW

{81} SUBJ MATTER: CORPORATE

Elizabeth G. Thornburg, *Contracting with Tortfeasors: Mandatory Arbitration Clauses and Personal Injury Claims*, 67 LAW & CONTEMP. PROBS. 253 (2004).

This article examines the use of mandatory arbitration clauses to resolve personal injury claims in which the parties' primary relationship is contractual. The author discusses various contexts in which binding arbitration provisions have been applied to both personal injury and contractual claims. She suggests that the mandatory arbitration of personal injury claims is remarkably unfair and proposes reform of existing law governing personal injury arbitration.

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

{110} SUBJ MATTER: TORTS—OTHER

{102} SUBJ MATTER: PUBLIC POLICY

Joel Timmer, *Broadcast, Cable, and Digital Must Carry: The Other Digital Divide*, 9 COMM. L. & POL'Y 101 (2004).

The article discusses the constitutionality of the "must carry" rights impeding broadcasters. The author suggests that, instead of a law mandating

broadcasters to carry a digital signal, the broadcasters and the cable operators should have the right to negotiate whether those services will be carried.

- {1} NEGOTIATION—GENERAL
- {104} SUBJ MATTER: REGULATORY
- {103} MATTER: PUBLIC UTILITIES

E. Wendy Trachte-Huber, *Mediating Multi-Party Disputes: Reflections on Leadership in Mediation*, 4 PEPP. DISP. RESOL. L.J. 195 (2004).

This article addresses the concept of leadership in ADR—multi-party mediation more specifically—and why it is an important trait. In conducting an analysis on the vital nature of leadership, the author discusses the facets of leadership that prove to be beneficial skills in mediation of complex disputes.

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

Melissa C. Tronquet, Comment, *There's No Place Like Home . . . Until You Discover Defects: Do Prelitigation Statutes Relating to Construction Defect Cases Really Protect the Needs of Homeowners and Developers?*, 44 SANTA CLARA L. REV. 1249 (2004).

The author presents and evaluates the California residential construction dispute statute. It requires parties to attempt to negotiate their dispute before being allowed into the court system to litigate. Suggestions for improvement include expanded emphasis on the builder's right to repair, which should lead to earlier and more cost-effective resolution at the negotiation stage. Additional suggestions for more complex disputes include an arbitration option in addition to negotiation.

- {21} MEDIATION—GENERAL
- {80} SUBJ MATTER: CONSTRUCTION
- {128} REQUIREMENTS: STATUTORY OR RULES

Nicole Trudeau, *United Nations Update*, 11 HUM. RTS. BRIEF 34 (2004).

This article focuses on the advisory opinion that is set to be given by the International Court of Justice on the legal consequences of Israel's construction of a barrier between itself and the West Bank and East Jerusalem. The opinion will not be legally binding, but will provide guidance to both Israel and Palestine on how to resolve the situation and proceed with constructive negotiations.

- {38} NON-BINDING RECOMMENDATION PROC—GENERAL
- {92} SUBJ MATTER: INT'L
- {87} SUBJ MATTER: GOV'T
- {134} DISPUTE PREVENTION

Rodney J. Uphoff, *Relations Between Lawyer and Client in Damages: Model, Typical, or Dysfunctional?*, 2004 J. DISP. RESOL. 145 (2004).

This article discusses the work DAMAGES and its implication towards ADR techniques. The author argues that DAMAGES shows poor lawyering, as differentiated from good lawyering. In particular, the author points to the client-centered or collaborative lawyer.

{21} MEDIATION—GENERAL
 {98} SUBJ MATTER: MEDICAL MALPRACTICE
 {99} SUBJ MATTER: OTHER PROF MALPRACTICE
 {151} ROLE OF LAWYERS

Richard A. Van Kalker, *Law Division Mediation: A Primer*, 18 CHI. B. ASS'N REC. 49 (2004).

The article addresses the new mediation program established by the Cook County Law Division. The author identifies the local rules and Illinois Mediation Statute that will govern the court-annexed mediation process and provides an overview of the standard mediation process.

{21} MEDIATION—GENERAL
 {38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {82} SUBJ MATTER: CRIMINAL

Christine Ver Ploeg, *Terminating Public School Teachers for Cause Under Minnesota Law*, 31 WM. MITCHELL L. REV. 303 (2004).

This article examines the use of arbitrations in the termination process for public school teachers in Minnesota. It notes that the process has increased teacher perceptions about the fairness of the termination process and has led to a decrease in the number of terminations in that state.

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

Kenneth M. Vorrasi, Note, *England's Reform to Alleviate the Problems of Civil Process: A Comparison of Judicial Case Management in England and the United States*, 30 J. LEGIS. 361 (2004).

April 26, 1999 marked the day in which England's new civil procedure code took effect. The new Civil Procedure Rules of 1998 revolutionized civil litigation. While implementing the new Civil Procedure Rules, the drafters believed that the adversarial system must be removed in favor of an ADR system, only to be surpassed by an adversarial system as a last resort.

{1} NEGOTIATION—GENERAL
 {92} SUBJ MATTER: INT'L
 {124} COMPARISONS: CROSS-CULTURAL
 {136} ECONOMIC ADVANTAGES OF ADR

Cara Waldman, Note, *The Future of German Labor Relations: Lessons German Unions Can Learn From American Failures*, 19 CONN. J. INT'L L. 631 (2004).

This article compares the different roles negotiation plays within the organized unions of the United States and Germany. The author identifies the differences between how the United States and Germany unions use negotiations within the context of collective bargaining agreements. Overall, the author finds that the German unions will not experience the same future as American unions, because they negotiate for all employees, not just union members.

{1} NEGOTIATION—GENERAL

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

{93} SUBJ MATTER: LABOR—GENERAL

Ellen Waldman, Symposium, *Healing Hearts or Righting Wrongs?: A Meditation on the Goals of "Restorative Justice"*, 25 HAMLINE J.L. & POL'Y 355 (2004).

This article discusses both retributive and restorative justice. It further discusses righting wrongs and restoring moral order through mediation by mentioning South Africa's Truth and Reconciliation Commission as a lesson for mediators.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543 (2004).

This article describes Western youth justice systems. Under the Western youth justice systems, restorative justice has shown potential for gaining a larger role with respect to treating offending youths. One experiment used with restorative justice programs is victim-offender mediation. By using this, restorative justice incorporates procedural fairness and proportional sentences. The article, in the end, suggests that the Western youth justice system may be extended beyond children.

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L

{100} SUBJ MATTER: PRISONS

John R. Walk, *Civil Practice and Procedure*, 39 U. RICH. L. REV. 87 (2004).

The author summarizes several civil procedure developments for cases brought in the Virginia, including grounds for relief from an arbitration

award. Under the Virginia Code, an award may be vacated if it is procured (1) through corruption, fraud, or undue influence, (2) due to arbitrator partiality, (3) due to exceeding arbitrator powers, or (4) if the arbitrator refused to hear evidence. The Virginia Supreme Court held that the statute provides the exclusive grounds for relief.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

Lorenn Walker & Leslie A. Hayashi, *Pono Kaulike: A Pilot Restorative Justice Program*, 8 HAW. B.J. 4 (2004).

The article focuses on a method of ADR called a “restorative conference.” Restorative conference are used in the criminal context and focus on the needs of the victims, offenders, and the community after wrongdoing. The author illustrates the differences between restorative conferences and mediation and predicts the success of this type of program.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{82} SUBJ MATTER: CRIMINAL

{134} DISPUTE PREVENTION

{155} TEACHING

Judith Wallace, Note, *Corporate Nationality, Investment Protection Agreements, and Challenges to Domestic Natural Resources Law: The Implications of Glamis Gold's NAFTA Chapter 11 Claim*, 17 GEO. INT'L ENV'T L. REV. 365 (2005).

This note examines the extremely restrictive test used to define nationality that has the potential to dramatically limit the number of companies that could obtain mining permits or access investor-state arbitration. It further explores implications of the resultant definition of citizenship on claims that ultimately will be decided in private arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

James Robert Ward, III, *The Endowment Effect and Empirical Case for Changing the Default Employment Contract from Termination “At Will” to “For-Cause” Discharge*, 28 LAW & PSYCHOL. REV. 205 (2004).

This note describes the strengths of the new empirically-based arguments for changing the default employment contract rule to “for-cause” discharge. In addition to surveying the background of the traditional law and economics approach to studying law, it examines nuances of human behavior, such as the endowment effect. In examining lack of bargaining power in negotiations with employers, the author argues for a change to “for-cause” discharge.

{1} NEGOTIATION—GENERAL

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

Stephen J. Ware, *Arbitration Clauses, Jury-Waiver Clauses, and Other Contractual Waivers of Constitutional Rights*, 67 LAW & CONTEMP. PROBS. 167 (2004).

This article responds to the argument that the Federal Arbitration Act (FAA) is unconstitutional because it requires only a contract-law standard of consent to arbitration agreements rather than the knowing-consent standard generally governing jury-waiver clauses. The author defends the constitutionality of the FAA's consent standard by examining the contexts in which both standards are employed and questioning whether the knowing-consent standard is even constitutionally mandated for jury-waiver clauses.

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

{73} SUBJ MATTER: GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

Lionel D. Warhauser, Note, *The Munich Pact of 1938: ADR Strategies for Our Time?*, 5 CARDOZO J. CONFLICT RESOL. 247 (2004).

This note examines the Munich Pact as an example of failed negotiation and the product of terribly flawed ADR mechanisms. It suggests that Mussolini was a failure as a mediator between Hitler and Chamberlin because of his alliance with Hitler and, as a result, was incapable of serving as a neutral mediator.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

Deirdre Warner-Kramer, *Control Begins at Home: Tackling Flags of Convenience and IUU Fishing*, 34 GOLDEN GATE U. L. REV. 497 (2004).

This article deals with attempts at controlling illegal, unreported, and unregulated fishing activities from global, regional, and national perspectives. The author addresses global instruments negotiated in the 1990s to deal with these problems. Additionally, the article discusses various regional and national initiatives to control illegal fishing activities.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Elizabeth Warren & Jay L. Westbrook, *Pinning the Tail on the Lenders*, 23-3 AM. BANKR. INST. J. 38 (2004).

According to the authors, negotiations have limitations. If a party blackmails another party, the party's actions may be deemed by a court to be improperly coercive, even if the party was legally allowed to conduct the activity that was threatened.

{1} NEGOTIATION—GENERAL
 {76} SUBJ MATTER: CIVIL RIGHTS

C. Hansell Watt, IV, Comment, *Who Gets the Hooch?: Georgia, Florida, and Alabama Battle for Water from the Apalachicola-Flint River Basin*, 55 *MERCER L. REV.* 1453 (2004).

This comment covers a tri-state dispute over water from the Apalachicola-Flint River basin. The author reviews the ongoing disagreement among the three states and the methods of conflict resolution that the states are using to settle the dispute. Negotiation plays a prominent role among all of those methods.

{1} NEGOTIATION—GENERAL
 {87} SUBJ MATTER: GOV'T
 {121} SETTLEMENT: AUTHORITY
 {123} SETTLEMENT: PRESSURES TO SETTLE

Donna Beck Weaver, *The Collaborative Law Process for Prenuptial Agreements*, 4 *PEPP. DISP. RESOL. L.J.* 337 (2004).

This article addresses the use of the collaborative approach in the process of constructing prenuptial agreements. In arguing that the traditional adversarial model creates a disincentive toward the use of the planning process, the author examines the pre-nup process and illustrates the benefits of collaborative methods.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
 {134} DISPUTE PREVENTION

David C. Webb, *Representing Clients in Mediation: Balancing Our Role as Advisor and Advocate*, 19 *ME. B.J.* 106 (2004).

Each mediation is as different and unique as the personalities involved in the session. Techniques that work well in one session may be completely ineffective in another. This article highlights practices and techniques that can be used for effective mediation.

{21} MEDIATION—GENERAL
 {114} 3D PARTY: PRACTICE OF LAW

Dennis Webb, Jr. et al., *Annual Survey of Georgia Law: June 1, 2003– May 31, 2004: Construction Law*, 56 *MERCER L. REV.* 109 (2004).

In this survey of Georgia construction law from June 1, 2003, to May 31, 2004, the authors devote one of five sections of their article to arbitration. Within the arbitration section of Georgia construction law, the authors highlight several areas of the state's construction law as it deals with arbitration. These areas include validity and enforceability of agreements to

arbitrate, waiver by inconsistent conduct, vacation or modification of arbitration award, and arbitrability of appellate attorney fees.

{44} ARBITRATION—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

Robert M. Webb, *There Is a Better Way: It's Time to Overhaul the Model for Participation in Private Standard-Setting*, 12 J. INTELL. PROP. L. 163 (2004).

Webb's article discusses negotiating licenses from patent holders. The article argues that a negotiated license is needed between the participants, and, prior to deliberations, they must adopt a standard under which a technology license can be granted.

{1} NEGOTIATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Nancy A. Welsh, *The Place of Court-Connected Mediation in a Democratic Justice System*, 5 CARDOZO J. CONFLICT RESOL. 117 (2004).

The article examines mediation as one innovation within the much larger evolution of the judicial system in the United States. The article considers the possibility that mediation, which so far has played a relatively small role in the judicial system's evolution, can play a much more significant part in helping the courts reconcile the need for delegation and accountability.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Nancy A. Welsh, *Stepping Back Through the Looking Glass: Real Conversations With Real Disputants About Institutionalized Mediation and Its Value*, 19 OHIO ST. J. ON DISP. RESOL. 573 (2004).

The author looks deeply into the value of mediation by sharing the experiences of those who have actually gone through mediation, using disputes about special education. The author evaluates the costs and benefits of mediation from opposing parties in disputes.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{83} SUBJ MATTER: EDUCATION

Lisa Wenzel, *ERISA and the Exhaustion Dilemma: When Must Plaintiffs Exhaust Administrative Remedies Before Filing Suit?*, 16 REGENT U. L. REV. 417 (2003).

This article discusses the dispute resolution options, namely arbitration, for employees who wish to sue employers for alleged ERISA violations.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

Jared Wessel, Note, *Relational Contract Theory and Treaty Interpretation: End-Game Treaties v. Dynamic Obligations*, 60 N.Y.U. ANN. SURV. AM. L. 149 (2004).

According to this author, when interpreting an international treaty, courts should take into account the nature of the relationships between countries by using the relational contract theory in order to better reflect the true intent of the parties. The Vienna Convention should be modified to incorporate relational contract principles when interpreting dynamic interactions among treaty signatories.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

J. Richard White & Jeffrey T. Arnold, *Annual Survey of Texas Law: Real Property*, 57 SMU L. REV. 1157 (2004).

This article discusses a Texas Supreme Court case, *CVN Group, Inc. v. Delgado*, where the court held that the parties affected by a mechanic's lien can agree to arbitrate its existence. The court overruled the arbitration award, stating the evidence did not support a valid mechanic's and materialman's lien, and that allowing the foreclosure of such liens would be against the public policy of protecting homesteads.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

Denton Whitney, Comment, *Spahr v. Secco*, 19 OHIO ST. J. ON DISP. RESOL. 1127 (2004).

This comment analyzes the *Spahr* case, in which the court held that lack of mental capacity voided both the contract and arbitration clause at issue. It examines this case in light of past decisions, and explains that *Spahr* is a departure from the general line of cases. Moreover, it suggests that *Spahr* could encourage courts to address some of the public policy issues associated with arbitrability.

{44} ARBITRATION—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Wendy L. Wilcox & Thomas H. Schelly, *Compelling Arbitrations and Confirming an Arbitration Award*, 27 L.A. LAW. 10 (2004).

The authors note that parties typically opt to include an arbitration clause to avoid the expense of litigation. However, keeping a dispute “out” of a courtroom often involves going to court to compel and manage the arbitration and confirm the arbitration award. The authors believe that a brief step-by-step guide can help effectuate an arbitration rather than defeat its purpose.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David A.R. Williams, *Arbitration and Dispute Resolution*, 2004 N.Z. L. REV. 87 (2004).

This article provides a commentary on the Law Commission’s final report, entitled Improving the Arbitration Act 1996. The article focuses on the proposed reforms and most important cases from a burgeoning volume of the decisions of the Act. The article comments on three primary cases as they represent the first examples of plainly erroneous or problematic decisions under the Act.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{87} SUBJ MATTER: GOV’T

Paul R. Williams & Karen Heymann, *Earned Sovereignty: An Emerging Conflict Resolution Approach*, 10 ILSA J. INT’L & COMP. L. 437 (2004).

There are currently over 50 sovereignty-based conflicts throughout the world, and nearly a third of the Specially Designated Global Terrorists listed by the U.S. Treasury Department are associated with sovereignty-based conflicts and self-determination movements. According to the authors, in order to best utilize the process of earned sovereignty, which allows for negotiation on individual sovereign rights and responsibilities, the international community has begun to re-shape the historical concept of sovereignty.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT’L

Paul R. Williams & Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 STAN. J. INT’L L. 347 (2004).

This article discusses how determining a nation’s sovereignty may involve a negotiated settlement between the state and substate entity, often with

international mediation. States seeking recognition by the European Community must seek a determination from the Arbitration Commission as to whether the applicant states fulfilled the criteria for recognition.

{21} MEDIATION—GENERAL

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Brenda M. Williamson, Comment, *Baxter International, Inc. v. Abbott Laboratories*, 19 OHIO ST. J. ON DISP. RESOL. 1119 (2004).

In analyzing the decision in *Baxter*, this comment argues that the court's holding was dangerous. Specifically, the author suggests that, because decisions in antitrust cases, such as the instant case, affect the public, there should be sufficient protections of the appeals process in the event of binding decisions in such cases.

{44} ARBITRATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{92} SUBJ MATTER: INT'L

Jack Wilson, "No-Class-Action Arbitration Clauses," *State-Law Unconscionability, and the Federal Arbitration Act: A Case for Federal Judicial Restraint and Congressional Action*, 23 QUINNIPIAC L. REV. 737 (2004).

This article addresses the issue of federal law preemption over no-class-action arbitration clauses (NCAAC). Although the author argues that the Federal Arbitration Act should not preempt state court decisions holding NCAACs unconscionable under reasonable applications of state law, he concludes that a long-term legislative solution is needed.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

Martin M. Wilson, *Annual Survey of Georgia Law: June 1, 2003–May 31, 2004: Administrative Law*, 56 MERCER L. REV. 31 (2004).

This survey of Georgia law focuses on the changes made in that state's administrative law from June 1, 2003 to May 31, 2004. The author includes *Macon Water Authority v. City of Forsyth*, which was an appellate decision that dealt with an arbitration agreement between the parties of the lawsuit. The trial court ordered the parties to arbitrate their dispute, and the court of appeals affirmed the lower court. The author also highlights several cases that ended in settlements.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

Ted Winokur, *Jets and Sharks—A Mediation “Rumble”: (Or: “Mob of Mediators Makes Merry”)*, 30 VT. B.J. 45 (2004).

This article discusses an informal event in which Vermont’s professional mediators (the Vermont Mediators Association) met with the attorneys participating in the Vermont Bar Association’s Alternative Dispute Resolution Committee, the underlying conflict that exists between the two parties, and the parties’ shared passion for conflict resolution.

{21} MEDIATION—GENERAL

David Wissbroecker, *Six Klimts, a Picasso, & a Schiele: Recent Litigation Attempts to Recover Nazi Stolen Art*, 14 DEPAUL-LCA J. ART & ENT. L. & POL’Y 39 (2004).

This article explores attempts to regain art taken from families by the Nazis during World War II. While the article focuses on the history of the Nazi’s taking the art and how the art escaped return to its rightful owners after the war, it also discusses the attempts to resolve complaints through litigation and alternative means, such as negotiation.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT’L

Roselle L. Wissler, *Barriers to Attorneys’ Discussion and Use of ADR*, 19 OHIO ST. J. ON DISP. RESOL. 459 (2004).

This article examines the frequency with which attorneys present ADR options to their clients voluntarily. Through a survey of Arizona litigators, the Article explores the obstacles that surround attorneys’ discussion and use of ADR with clients, finding that many attorneys view reliance on ADR as a weakness in litigating a case. It also addresses the implications of the survey’s findings and suggests ways to increase ADR use.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Roselle L. Wissler & Robert W. Rack, Jr., *Assessing Mediator Performance: The Usefulness of Participant Questionnaires*, 2004 J. DISP. RESOL. 229 (2004).

The authors propose participant assessments of mediator performance as one method for monitoring mediator quality. This article reports an empirical study that examined attorneys’ assessments of mediators in a federal appellate civil mediation program. The findings of the study suggest that

participant assessments could be an effective means of monitoring mediator performance. The article concludes by considering various factors that could affect the usefulness of participant assessments.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Jennifer L. Wright, *Protecting Who from What, and Why, and How?: A Proposal for an Integrative Approach to Adult Protective Proceedings*, 12 ELDER L.J. 53 (2004).

This article discusses adult protective proceedings and concludes that currently there are many ways in which current statutes fail to achieve the underlying values that justify the existence of adult protective proceedings. The author suggests a proposal for an improved approach to adult protective proceedings, which includes a section on court-provided mediation services.

{21} MEDIATION—GENERAL

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

Douglas Yarn, *The Death of ADR: A Cautionary Tale of Isomorphism Through Institutionalization*, 108 PENN ST. L. REV. 929 (2004).

This article begins with the notion that arbitration has become more similar to the actual court system as arbitration has matured from its beginning as a government supported and business supported non-adjudicative system. It then moves to discussions on the English arbitration system and the rise of arbitration as an adjudicative system in which control and power has been stripped from the parties.

{44} ARBITRATION—GENERAL

Peter Cleary Yeager, *Law Versus Justice: From Adversarialism to Communitarianism*, 29 LAW & SOC. INQUIRY 891 (2004).

This article explores the assertion that historic trends in social control have run toward restorative justice. Restorative justice plays a great role in a number of Western nations' move toward ADR. As with other modes of ADR, restorative justice shares an interest in moving disputes from the adversarial procedures of courts toward more natural, deliberative processes. The review explores whether restorative justice produces theorized results.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{82} SUBJ MATTER: CRIMINAL

Peter K. Yu, *The Escalating Copyright Wars*, 32 HOFSTRA L. REV. 907 (2004).

This article analyzes the relationship between copyright infringement law and dispute resolution processes, focusing on the nonadversarial nature of the

dispute resolution process as a viable alternative to taking copyright claims to litigation.

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Susan Zaidel, *Taking Divorce Out of the Context of Dispute Resolution*, 42 FAM. CT. REV. 678 (2004).

In responding to the call for moving divorce to ADR systems, the author argues that divorce needs to be “reframed” as an administrative process that views divorce as a problem-solving process, not a conflict-ridden process. The article also examines the practice of divorce in Denmark, which approaches the process as a “joint problem solving” exercise assisted by an interdisciplinary staff.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

Sandra B. Zellmer, *A New Corps of Discovery for Missouri River Management*, 83 NEB. L. REV. 305 (2004).

In addition to complex organic legislation, the author recommends that the Missouri River basin states negotiate an interstate compact. A compact would give the states a more active role as to the details or ambiguities of the contract. The contract could eventually be ratified by Congress, whereby states would be more entrenched than unilateral federal legislation.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT