The title of this book, *Resolving Disputes*, reflects the active role of lawyers in representing clients who retain us to conclude their disputes favorably. This text is based on three key assumptions: First, in order to represent clients effectively and craft successful outcomes, the next generation of lawyers must be able to use the full spectrum of dispute resolution options and match the appropriate process to the dispute. Second, new lawyers are much more likely to encounter dispute resolution processes as advocates or advisors to clients rather than as professional neutrals. Finally, a textbook on dispute resolution should be interesting to read, should bring together the latest and best writing on the use and limits of alternative dispute resolution (ADR), and lend itself to interactive teaching.

Our book, therefore, has a different emphasis from most other ADR texts. It is written from the perspective of a lawyer representing clients, rather than focused on the reader’s own interests or serving as a neutral. The text is practical, while grounded in theory. The material is lawyer oriented, but enriched by interdisciplinary knowledge. The readings are current, yet do not neglect the historical roots of ADR.

Real-life disputes and literary examples are provided to illustrate vividly the readings and pique interest. Many questions are asked and problems posed to provoke critical thinking about the readings and stimulate class discussion. Accompanying exercises and role-plays allow students to apply the readings and bring the material to life. Most of the exercises and role-plays are based on the types of disputes in which lawyers are most likely to find themselves—significant legal disputes.

We begin the book with an overview of the disputing universe, including the “vanishing trial” and the importance of counseling clients to help them match their dispute to the appropriate resolution process. After an orientation to the full spectrum of dispute resolution and its context for lawyers, we study the lawyer’s role in the four categories of alternatives to trial—negotiation, mediation, arbitration, and stepped or hybrid processes. In each section we cover theory, techniques, policy, ethics, and law.

The negotiation section starts with the nature of conflict, the roles of perceptions, emotions, and psychological factors. We analyze both competitive and cooperative approaches, with a step-by-step explanation and comparison. The negotiation process and outcome-enhancing skills are covered in detail from preparation to writing the agreement. Students are guided to explore issues of style, gender, culture, and race. A rich selection of readings is provided, and additional notes enhance the negotiation coverage, including use of decision analysis, computer software, and Web assistance.

An inside look at the mediation of a prominent student death case and the Microsoft litigation introduces the mediation section. Readings and exercises highlight how lawyers can shape the mediation process to their clients’ advantage. We focus on caucus-based mediation because that is the format most
students will encounter in law practice, but also discuss and compare alternative approaches such as no-caucus and transformative mediation. In doing so we emphasize the lawyer’s role representing clients and ways in which attorneys can take advantage of the mediator’s presence to advance their clients’ interests. The application of mediation to several important categories of disputes and situations involving lawyers is examined, including family, employment, environmental, intellectual property, victim-offender, and business deals. Court-connected mediation and concerns about fairness are also covered.

In the expanded arbitration section we provide hands-on exercises that involve scenarios often encountered by new lawyers and narratives on what a lawyer needs to know to maximize clients’ interests when drafting agreements to arbitrate, choosing arbitrators, and advocating for a client. Students also have the opportunity to deliberate on and draft arbitration awards. This practice-oriented treatment includes many recent developments, including the Deflategate case, and insights from recent surveys of arbitrators and counsel. The section also includes an overview of different forms and applications of arbitration; comparisons with litigation and other dispute resolution processes; and coverage of the legal framework for arbitration. Special attention is given to problems of fairness in adhesion contracts, recent Supreme Court cases, and legislation.

The last section presents ways in which multiple conflict resolution approaches have been integrated in hybrid dispute resolution processes and multifaceted court programs, moved upstream to help prevent and resolve conflicts before they ripen into litigation, and designed into systems for more efficiently resolving a flow of cases. Finally, we look at new ways lawyers can apply dispute resolution knowledge and skills to better serve clients, the role of technology applied to ADR, and why the work of lawyers in helping to appropriately and peacefully resolve disputes is important.

This third edition follows the same organization that proved popular in prior editions and contains the same core elements. We have updated some of our narrative and included excerpts from the most recent ADR writings. We also take advantage of technology, and of students’ increasing preference for electronic and video formats. Items that have traditionally gone into the course book’s appendix now appear on this book’s Web site, including a list of references. This makes this book easier to carry without sacrificing depth and allows readers to download specific codes or standards for discussion. The Web site also provides streaming videos of negotiations and mediations to illustrate some of the points and techniques presented in the readings and to complement the role-plays. There are new arbitration games and lively exercises on the Web site to enhance the arbitration material.

A note about form: In order to focus discussion and conserve space, we have substantially edited the readings and have deleted most footnotes and case citations. Most reference sources are cited only by authors’ last name and date of publication, with full citations available in the reference list on the book’s web site. Deletions of material are shown by three dots, but omitted footnotes and other references are not indicated.
This book is the culmination of our combined decades of teaching, practicing, and shaping dispute resolution in legal contexts. Although our acknowledgments follow, we are especially grateful to the many students and lawyers we have had the pleasure of teaching. They have inspired us and guided what we have selected here to present to the next generation of lawyers.

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