Dispute Processes:
ADR and the Primary Forms of Decision-Making

This wide-ranging study considers the primary forms of decision-making – negotiation, mediation and umpiring – in the context of rapidly changing discourses and practices of civil justice recognisable across many jurisdictions. Much contemporary discussion in this field, and associated projects of institutional design, are taking place under the broad but imprecise label of Alternative Dispute Resolution (ADR). If a common, linking theme is sought, the authors argue that this must lie in a general shift of priorities, in ideological terms, as between judgment and settlement.

This new edition brings together and analyses a broad range of materials dealing with dispute processes and the current debates on civil justice. With the help of a selection of texts beyond those ordinarily found in the emerging alternative dispute resolution literature it provides a broad, comparative perspective on modes of handling civil disputes, with the principal focus on the central processes of negotiation and mediation. Mainly aimed at students of law, the book will also appeal to sociologists and anthropologists interested in the relationship between disputes and their management, and those concerned with the development of new ways of providing legal and other dispute resolution services.

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Dispute Processes

ADR and the Primary Forms of Decision-Making

Second Edition

Simon Roberts & Michael Palmer
For Marian and Mingwo
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Preface

This book has grown out of more than a decade of teaching Alternative Dispute Resolution (ADR) for postgraduate students in law at the University of London, as well as many years of research and writing in this field by both of us. The approach taken in assembling the text and materials is intentionally wide-ranging and comparative – indeed, more so than in the first edition – so that it can be read not only in its own right but also as a broader, contextualising companion to more conventional and jurisdiction-specific ADR texts. The present study is also informed by the view that adversarial litigation can no longer be seen as the paradigmatic process of decision-making in our civil justice system. Looking first at the sources of ADR ideas and the debates which have surrounded the rise of alternative approaches to dispute resolution, we then move on to examine the primary forms of decision-making: negotiation, mediation and umpiring. This is followed by an exploration of the emergence in contemporary Anglo-American practice of the fusions of the foundational modes of decision-making that are generally referred to as hybrid or mixed processes.

In putting together this book, we have been given generous help by others. First, we would like to acknowledge the inspiration we have derived from Hilary Astor and Christine Chinkin’s pioneering book *Dispute Resolution in Australia* (1992; 2nd edn, 2002). Beyond that, William Twining persuaded us to write it in the first place, and has throughout remained a source of wise counsel. Marian Roberts, has helped not only by teaching family disputes for our students but also by providing consistent support and excellent advice. Kiran Kothari has been a most helpful and efficient research assistant. Last, but by no means least, there are the many students who gave enthusiastic and critical responses to our first edition, and whose observations have helped to make the second edition a better book.

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