

## Dispute Processes

ADR and the Primary Forms of Decision-making

*Third Edition*

This wide-ranging study considers the primary forms of decision-making – negotiation, mediation, umpiring, as well as the processes of avoidance and violence – in the context of rapidly changing discourses and practices of civil justice across a range of jurisdictions. Many contemporary discussions in this field – and associated projects of institutional design – are taking place under the broad but imprecise label of Alternative Dispute Resolution (ADR). The book brings together and analyses a wide range of materials dealing with dispute processes, and the current debates on and developments in civil justice. With the help of analysis of materials beyond those ordinarily found in the ADR literature, it provides a comprehensive and comparative perspective on modes of handling civil disputes. The new edition is thoroughly revised and is extended to include new chapters on avoidance and self-help, the ombuds, Online Dispute Resolution and pressures of institutionalisation, as well as offering a section including classroom role plays, and making extended suggestions for further (open-access) reading.

**Michael Palmer** is Emeritus Professor of Law at the University of London's School of Oriental and African Studies (SOAS). He is also Senior Research Fellow at the Institute of Advanced Legal Studies (IALS) and at the Hong Kong Institute of Asia-Pacific Studies (HKIAPS) at the Chinese University of Hong Kong. His publications are mainly in the field of comparative legal studies and give particular attention to Chinese law, both traditional and modern. Michael has been Joint Editor of the *Journal of Comparative Law* for more than a decade and is also Editor of the journal *Amicus Curiae*. He is a barrister at Serle Court and at McNair Chambers. He has been a special adviser to the Attorney-General of Hong Kong, the Office of the UN High Commissioner for Human Rights and the European Commission, and also recently served as (very probably) the first western dean of a mainland Chinese law school.

**Simon Roberts** (1941–2014) was Professor of Law at the London School of Economics and Political Science (LSE). A renowned legal anthropologist, his early career included two years' teaching in Malawi in the 1960s and three years as Adviser on Customary Law to the Botswana Government (1968–1971). He authored the seminal work *Order and Dispute: An*

*Introduction to Legal Anthropology* (1979, with a second edition in 2013), a study of law, order and dispute settlement and how they are conceptualised and socially founded. His analysis drew inter alia upon field research among the Kgatla in Botswana and later encouraged his work on issues in dispute processes in jurisdictions such as England and Wales. His most recent book was *A Court in the City: Civil and Commercial Litigation in London at the Beginning of the 21st Century* (2013), based on his ethnographic research at the Mayor's and City of London Court. This study examined the work of the court in sponsoring dispute settlement. He continued to teach ADR at the LSE long after retirement. Simon also served on the Lord Chancellor's family law advisory board which assisted in preparations for the Family Law Act (1996) and was General Editor of the *Modern Law Review* from 1988 until 1995. In 2011, Simon was elected an Honorary Fellow of the LSE.

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## ADR and the Primary Forms of Decision-making

Third Edition

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## Preface

This book grew out of more than two decades of teaching ‘Alternative Dispute Resolution’ 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 study is intentionally wide-ranging and comparative 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 litigation and adversarial proceedings should no longer be seen as the paradigmatic processes of decision-making in our civil justice systems. 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, umpiring and also avoidance and force. This is followed by an examination 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, as well as by consideration of other important contemporary developments.

In putting together this book, we have been given generous help by others. William Twining persuaded us to write this 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. Maria-Frederica Moscati has also been a constant source of advice and encouragement, as have Patricia Ng, Chen Yongzhu, Amy Kellam, Lin Yang, Li Jing and Cong Wanshu. Last, but by no means least, there are the many students who gave enthusiastic and critical response to our first and second editions, and whose observations have helped to make the third edition a better book.

**Michael Palmer and Simon Roberts**

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