

ARTICLE ENTRIES ALPHABETIZED BY AUTHOR LAST NAME

Roger I. Abrams, *Keep Your Eye on the Pelota: Sports Arbitration at the Jai-Alai Fronton*, 16 MARQ. SPORTS L. REV. 1 (2005).

A veteran sports arbitrator recounts a labor grievance proceeding in a sport of Basque origins called jai-alai. The adjudication turned on whether players cut from a team in Miami failed to maintain their competitive edge and could be dropped from the roster.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{124} COMPARISONS: CROSS-CULTURAL

{146} ORGANIZATION POLICIES & RULES

Harold Abramson, *Problem-Solving Advocacy in Mediations: A Model of Client Representation*, 10 HARV. NEGOT. L. REV. 103 (2005).

The article addresses how attorneys participating in mediation can represent their clients in a way that takes full advantage of the problem-solving opportunities offered by mediation. A successful advocate can solicit the mediator to use different techniques throughout the mediation process. The author discusses how an attorney may use a problem-solving approach that involves the analysis of interests, impediments, and ways mediators' assistance may be used during mediation.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Robert M. Ackerman, *The September 11th Victim Compensation Fund: An Effective Administrative Response to National Tragedy*, 10 HARV. NEGOT. L. REV. 135 (2005).

The September 11th Victim Compensation Fund is analyzed from both a procedural and substantive viewpoint. The author looks at how the fund was enacted and how the rules of the fund developed. A detailed analysis about how claims are resolved and compensation paid is also provided. The fund, as an administrative process, is compared with traditional legal remedies.

{60} ADR—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{134} DISPUTE PREVENTION

{136} ECONOMIC ADVANTAGES OF ADR

Brenda Star Adams, Note, *"Unbundled Legal Services": A Solution to the Problems Caused by Pro Se Litigation in Massachusetts's Civil Courts*, 40 NEW ENG. L. REV. 303 (2005).

Adams' Note calls attention to the numerous problems posed by an increasing number of pro se litigants appearing in Massachusetts courts and suggests that Massachusetts follow the lead of other states and implement programs to aid pro se litigants. Furthermore, the Note calls attention to the problems encountered by pro se litigants engaging in mediation against experienced attorneys.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{133} COURT REFORMS

Robert S. Adler, *Flawed Thinking: Addressing Decision Biases in Negotiation*, 20 OHIO ST. J. ON DISP. RESOL. 683 (2005).

In this article, Adler talks about the biases associated with the negotiation process. The primary focus is on heuristics and related biases, cognitive biases associated with heuristics, egocentric biases, and mixed and miscellaneous biases. It concludes by suggesting steps to avoid the biases discussed in this article as well as other negotiation biases that may exist.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Kevin H. Anderson, *International Law and State Succession: A Solution to the Iraqi Debt Crisis?*, 2005 UTAH L. REV. 401 (2005).

This article proposes that the doctrine of odious debts be applied to solve the potential debt crisis in Iraq. The author discusses the sources of international law, including the ADR techniques adopted in international law. The principles behind the odious debts doctrine were developed from an arbitration in which Supreme Court Justice William Howard Taft presided. The article also discusses debt negotiation for successor nations, including Germany and the former Yugoslavia.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

Zachary Z. Annable, Comment, *Beyond the Thunderdome—The Search for a New Paradigm of Modern Dispute Resolution: The Advent of Collaborative Lawyering and its Conformity with Model Rules of Professional Conduct*, 29 J. LEGAL PROF. 157 (2005).

The author discusses the advents of collaborative lawyering and suggests that collaborative lawyering is not appropriate for every case because it focuses on the use of participation agreements which may limit the lawyer's abilities to advocate the client's cause with the kind of commitment and dedication

required by the Model Rules of Professional Conduct. She recommends creation of new ethical standards that accommodate collaborative lawyering rather than using the MRPC, which was developed around an adversarial model of advocacy.

{53} COLLABORATIVE LAW—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Thomas A. Baker, III & Dan Connaughton, *The Role of Arbitrability in Disciplinary Decisions in Professional Sports*, 16 MARQ. SPORTS L. REV. 123 (2005).

The authors examine court precedents that give an arbitrator authority to review disciplinary decisions. They specifically focus on an arbitrator's decision to reduce NBA player Jermaine O'Neal's suspension following the Pacers-Pistons melee in 2004. The authors conclude that express language in collective bargaining agreements can take away an arbitrator's jurisdiction, but most players' associations would be reluctant to do so.

{44} ARBITRATION—GENERAL

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

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Richard A. Bales, *The Employment Law Due Process Protocol at Ten: Twenty Unresolved Issues, and a Focus on Conflict of Interest*, 21 OHIO ST. J. ON DISP. RESOL. 165 (2005).

This article urges the drafters of the Due Process Protocol for Mediation and Arbitration of statutory disputes arising out of the employment relationship to revise and update the protocol. Discussed are twenty issues that the protocol did not address or that might be reconsidered in light of subsequent developments. The author focuses on one such issue in particular: the issue of how employment arbitrators handle potential conflicts of interest.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

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

{128} REQUIREMENTS: STATUTORY OR RULES

Steven J. Balla, *Between Commenting and Negotiation: The Contours of Public Participation in Agency Rulemaking*, 1 INFO. SOC'Y J. L. POL'Y 59 (2004).

The author contends that rulemaking, which are laws that executive agencies formulate, has traditionally involved negotiations between agency officials and parties from outside the government with a stake in the action. However, the author argues that contemporary public policy in the United States falls in

between commenting on proposed rules and serving on negotiated rulemaking committees. The author uses examples from the Department of Transportation to support his argument.

- {1} NEGOTIATION—GENERAL
- {102} SUBJ MATTER: PUBLIC POLICY
- {104} SUBJ MATTER: REGULATORY
- {146} ORGANIZATION POLICIES & RULES

Ben Barlow, *Divorce Child Custody Mediation: In Order to Form a More Perfect Disunion?*, 52 CLEV. ST. L. REV. 499 (2004).

This article discusses the use of mediation in divorce child custody cases. It discusses concerns about mediation in family law settings, especially those involving domestic abuse, as well as a discussion of the mediation framework in several states. The article suggests that, with appropriate safeguards, mediation is a better way to handle specific cases of divorce child custody than the adversarial process.

- {21} MEDIATION—GENERAL
- {85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
- {133} COURT REFORMS

Jaclyn Barnao, *In Pursuit of Settlement: Deciphering Judicial Activism*, 18 GEO. J. LEGAL ETHICS 583 (2005).

In discussing judicial involvement in settlement, the author argues that even though Rule 16 of the Federal Rules of Civil Procedure authorizes judges to order settlement conferences, the Model Code of Judicial Conduct should include guidelines to help define what the court can do ethically to encourage settlement of cases without being coercive. Barnao provides historical background information regarding the current rules of judicial involvement in settlement, a discussion of proposed changes to those rules and their implications, case law and ethics opinions that limit judicial behavior, and suggested judicial tactics for use in settlement negotiations.

- {1} NEGOTIATION—GENERAL
- {104} SUBJ MATTER: REGULATORY
- {123} SETTLEMENT: PRESSURES TO SETTLE
- {138} ETHICS: GENERAL

Richard L. Barnes, *Rediscovering Subjectivity in Contracts: Adhesion and Unconscionability*, 66 LA. L. REV. 123 (2005).

The author's premise is that the concept of objectivity has made both the adhesion and unconscionability doctrines of convenience helpful in fine-tuning the concept of objectivity in the libertarian model. The article asserts that the purpose of both doctrines is to save the objective theory of contracts

from troublesome over breadth. One of its illustrations discusses the role of arbitration clauses in employment contracts in the *Armendariz* and *Carnival Cruise Lines* cases.

{44} ARBITRATION—GENERAL

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Matthew P. Barry et al., *Judicial Opinions on the Criminality of Sports Violence in the United States*, 15 SETON HALL J. SPORTS & ENT. L. 1 (2005).

This article discusses the question of whether extreme violence in sports should be handled in the justice system or by individual sports' governing boards. It mentions proposed legislation including the Sports Violence Arbitration Act, which proposes the creation of a "sports court" to handle the violence. The Act failed because of various uncertainties regarding, among other things, the application of the arbitration process.

{1} NEGOTIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{144} LEGISLATION

Scott R. Belhorn, Note, *Settling Beyond the Shadow of the Law: How Mediation Can Make the Most of Social Norms*, 20 OHIO ST. J. ON DISP. RESOL. 981 (2005).

Belhorn argues that law and economic theories have ignored empirical research and had a negative effect on the negotiation process. Next, Belhorn looks to history and identifies the Law Merchant as having a profound influence on contemporary developments in mediation. Finally, he encourages research of social norms to create a better mediation practice.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{125} COMPARISONS: HISTORICAL

{149} QUALITY CONTROL

Pierre H. Bergeron, *At the Crossroads of Federalism and Arbitration: The Application of Prima Paint to Purportedly Void Contracts*, 93 KY. L.J. 423 (2004).

This article argues that rather than focusing on whether a contract containing an arbitration clause is void, courts should ask whether the challenge to arbitration is connected to the underlying agreement. If it is, then courts should focus on whether the party opposed to arbitration can raise a credible issue of signatory assent. This framework for addressing the void contract question more closely adheres to the structure and purpose of the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Joshua F. Berry, Note, *The Trouble We Have with the Iraqis is US: A Proposal for Alternative Dispute Resolution in the New Iraq*, 20 OHIO ST. J. ON DISP. RESOL. 487 (2005).

In this Note the author expresses a belief that the emerging democracy of Iraq should implement mediation as an alternative form of dispute resolution. It also explores the role that dispute resolution has played historically in Islamic society. The Note concludes that mediation is the most suitable method of ADR available to Islamic Iraqi people. The author proposes ways in which persons from non-Islamic backgrounds can approach mediation in Islamic Iraq.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Raj Bhala & David A. Gantz, *WTO Case Review 2004*, 22 ARIZ. J. INT'L & COMP. L. 99 (2005).

This article is a review of cases from the World Trade Organization for the year 2004. It discusses several situations in which trade negotiations played a prominent role. The author examines these negotiations primarily through the lens of the Doha Development Round which deals with the proliferation of regional trade agreements.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

Ann Black, *Survival or Extinction? Animistic Dispute Resolution in the Sultanate of Brunei*, 13 WILLAMETTE J. INT'L L. & DISP. RESOL. 1 (2005).

The animistic dispute resolution mediation practices of the Iban, a small, indigenous, non-Muslim, ethnic minority in Brunei, are being threatened by absorption and integration into Islamization. Under the Sultanate's current policy of Islamization, animistic dispute resolution processes are threatened by a process of integration and cultural extinction characteristic of post-colonial situations, wherein the dominant indigenous ethnic group consumes the smaller groups.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Laureve Blackstone, Note, *Courting Islam: Practical Alternatives to a Muslim Family Court in Ontario*, 31 BROOK. J. INT'L L. 207 (2005).

This Note examines the failure of the Canadian democratic system of government to adequately address minority concerns, particularly the concerns of the Muslim community. It proposes that Canada establish Muslim arbitration tribunals. These tribunals would enable Muslims to consent to jurisdiction for resolving family disputes, including marriage, divorce, inheritance, and custody. The tribunals would issue binding, court-enforceable decisions based on Muslim family law, subject to review in limited circumstances only.

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

{76} SUBJ MATTER: CIVIL RIGHTS

{124} COMPARISONS: CROSS-CULTURAL

{147} POWER IMBALANCE

Roger D. Blair & Kristine L. Coffin, *Physician Collective Bargaining: State Legislation and the State Action Doctrine*, 26 CARDOZO L. REV. 1731 (2005).

The legislatures in Alaska, New Jersey, and Texas enacted laws that charged the Attorney General with the responsibility for authorizing joint negotiations among health care providers when the market structure indicated it was warranted. This legislation was enacted in response to the fear that access to high quality health care services at reasonable prices would be threatened by the monopsony power of large managed care plans.

{1} NEGOTIATION—GENERAL

{74} SUBJ MATTER: ANTITRUST

{89} SUBJ MATTER: HOSPITALS

Kristen M. Blankley, *Class Actions Behind Closed Doors? How Consumer Claims Can (and Should) Be Resolved by Class-Action Arbitration*, 20 OHIO ST. J. ON DISP. RESOL. 451 (2005).

Blankley argues that class-action suits would be more efficient if arbitration was available. Highlighting the changes in the arbitration system that would make this possible (more review power for courts, increased control of the hearings for the arbitrator, and higher standards for qualifications to be an arbitrator), Blankley proposes that arbitration can better serve unnamed class members than the current system.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

Matthew P. Bock, Casenote, *A Few Circuit Citys Back, One Giant Luce Forward: A Review of the Ninth Circuit's Interplay with the National Policy Favoring Arbitration in the Employment Contract Setting*, 41 WILLAMETTE L. REV. 535 (2005).

This Casenote surveys the Ninth Circuit's evolving view of arbitration, specifically in employment contracts. The author details the Ninth Circuit's early reliance on state contract law principles and subsequent decisions which indicate the shifting view of the court. Finally, the Casenote discusses what employment contract drafters should consider based on the court's most recently articulated principles.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

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

Michael Joachim Bonell, *Soft Law and Party Autonomy: The Case of the UNIDROIT Principles*, 51 LOY. L. REV. 229 (2005).

Bonell discusses contractual incorporation of the UNIDROIT Principles by parties and the positions of domestic courts and arbitral tribunals on such conflict-of-law rules. The author argues that in the context of international disputes, arbitrators may settle disputes based on the UNIDROIT Principles as the "rules of law." The author also discusses party autonomy in the context of international commercial arbitration.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robert C. Bordone, *Fitting the Ethics to the Forum: A Proposal for Process-Enabling Ethical Codes*, 21 OHIO ST. J. ON DISP. RESOL. 1 (2005).

The author proposes that negotiation, like mediation, arbitration, and litigation, should have its own set of mandatory ethical guidelines. By framing ethical codes as enabling rather than constraining forces, the author maintains that ethical rules for negotiators can help create conditions between parties that are likely to facilitate a positive outcome. Also offered are some basic guidelines for drafters of the new model rules of negotiation.

{1} NEGOTIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{128} REQUIREMENTS: STATUTORY OR RULES

{138} ETHICS: GENERAL

Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573 (2005).

This comprehensive article discusses international conflict resolution related to treaties and the limitations of the Vienna Convention on the Law of Treaties (VCLT) in addressing current conflicts. In emphasizing the need for applying more than one technique to such difficulties, the article provides a five-part analysis, including a description of treaty conflicts, conflict resolution techniques as alternatives to the application of the VCLT, the strengths and weaknesses of the VCLT conflict resolution rules, analogies to other types of textual conflicts, and the implications of current and proposed conflict resolution strategies on international law as a coherent legal system.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{151} ROLE OF LAWYERS

Karen J. Borgstrom, *Mediated Divorce Agreements: Reconciling Equal Versus Equitable*, 46 N.H.B.J., Summer, at 60 (2005).

In this article Borgstrom provides reasons why mediation is more effective than litigation in resolving divorce cases. Mediation provides a forum for each party to come to understand the grievances of the other and allows the parties themselves, with the assistance of mediators, to determine equitable arrangements regarding issues such as alimony and child custody.

{21} MEDIATION—GENERAL

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

Nathan S. Bracken, Note, *Providing a Comprehensive View of Family Mediation Divorce and Family Mediation: Models, Techniques, and Applications*, 7 J. L. FAM. STUD. 217 (2005).

Bracken reviews a book by Jay Folberg and others which contains extensive collections of articles on a variety of family and divorce mediation topics. He argues that the book did not address issues on how a mediator should decide whether mediation is appropriate for his or her client and argues some other sections of the book need more detailed discussion on issues such as power imbalance. However, overall, the author approved the book as a great supplement for practioners.

{21} MEDIATION—GENERAL

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

Penny Brooker & Anthony Lavers, *Mediation Outcomes: Lawyers' Experience with Commercial and Construction Mediation in the United Kingdom*, 5 PEPP. DISP. RESOL. L.J. 161 (2005).

This article focuses mainly on the role of lawyers in the development of alternative dispute resolution following the implementation of the Civil Procedure Rules in 1999. It focuses on mediation in particular, and contains

information gained in part from interviews with lawyers in the United Kingdom specializing in commercial and construction related law.

{21} MEDIATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{80} SUBJ MATTER: CONSTRUCTION

Charles H. Brower, II, *Mitsubishi, Investor-State Arbitration, and the Law of State Immunity*, 20 AM. U. INT'L L. REV. 907 (2005).

The author argues that the effectiveness of international arbitration is questionable. Six issues that need to be resolved in improving the image of international arbitration are: suppressing traditional litigation tactics, limiting discretion of arbitrators, giving the benefit of doubt to the state, promoting uniformity of decisions, rejecting post-judgment proceedings, and eliminating political entities' participation in the decision-making process. Optimism in arbitrations will return once these issues are addressed.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{138} ETHICS: GENERAL

Carole J. Buckner, *Due Process in Class Arbitration*, 58 FLA. L. REV. 185 (2006).

The author analyzes three due process issues in class arbitration. The United States Supreme Court has not addressed whether the law requires due process in class arbitration. The author addresses whether due process is required in class action arbitration under the state action doctrine, whether due process in class arbitration is appropriate even if not required, and sufficiency of the three existing approaches to providing due process in class arbitration.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Scott J. Burnham, *The War Against Arbitration in Montana*, 66 MONT. L. REV. 139 (2005).

The author discusses mandatory arbitration clauses in contracts, and Montana's repeated efforts to marginalize and prohibit their use. He criticizes the Montana Supreme Court for prohibiting pre-dispute arbitration clauses in the name of freedom of contract. Freedom of contract, he concludes, must allow parties to agree to mandatory arbitration clauses because they may be willing to forgo some of the procedural protections in litigation for a faster, cheaper resolution.

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

{75} SUBJ MATTER: COMMERCIAL
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES
 {136} ECONOMIC ADVANTAGES OF ADR

Cindy G. Buys, *The Arbitrator's Duty to Respect the Parties' Choice of Law in Commercial Arbitration*, 79 ST. JOHN'S L. REV. 59 (2005).

The author aims to demonstrate that mutually agreed-upon choice of law made by parties to an arbitration agreement arising out of a commercial transaction cannot be disregarded, provided there are no extenuating circumstances. She argues that domestic commercial arbitration is more similar to international commercial arbitration than to domestic litigation, and conflict of law rules that apply in international commercial arbitration should therefore apply domestically.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {75} SUBJ MATTER: COMMERCIAL

James A. Cannatti III, *Recent Development, Citizens Bank v. Alafabco, Inc.*, 20 OHIO ST. J. ON DISP. RESOL. 1027 (2005).

Cannatti analyzes *Alafabco*, which reached the United States Supreme Court after the Alabama Supreme Court ruled that a transaction between two Alabama residents was beyond the scope of the Federal Arbitration Act (FAA). He provides an overview of the history of the FAA and analyzes cases in which the U.S. Supreme Court defined the Act's scope. He also explains how *Alafabco* resolves questions posed by the Court's decision in *United States v. Lopez*.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {75} SUBJ MATTER: COMMERCIAL

Joanna M. Canter, *Note, Nonjudicial Alternatives for Resolving End-of-Life Decisions for Minors*, 43 FAM. CT. REV. 527 (2005).

This Note advocates mediation as an alternative to judicial decision-making in right-to-die cases involving minors. The judicial and legislative systems have both proven to be ineffective tools in helping families find resolution in end-of-life decisions. This Note maintains that such decisions are more appropriate for the patient's family and medical providers, possibly through mediation.

{21} MEDIATION—GENERAL
 {89} SUBJ MATTER: HOSPITALS
 {138} ETHICS: GENERAL

Daniela Caruso, *Bargaining and Distribution in Special Education*, 14 CORNELL J.L. & PUB. POL'Y 171 (2005).

This article discusses the role and impact of negotiation in the field of special education. While the Individuals with Disabilities Education Act mandates a free and appropriate education in the least restrictive environment, this article points out the inherent advantage given to families with superior bargaining skills when forming students' Individualized Education Plans.

{1} NEGOTIATION—GENERAL
{83} SUBJ MATTER: EDUCATION

David Castleberry, *Beginning a Relationship with the Break Up in Mind: Drafting Valid Arbitration Clauses in an Employment Agreement*, 13 NEV. LAW. 26 (2005).

As a practicing attorney, Castleberry presents a realistic view of the costs and benefits of arbitration clauses in employment contracts and when an employer should consider having an arbitration clause. Additionally, he highlights that not all arbitration clauses are enforceable and gives advice on how to avoid possible pitfalls.

{44} ARBITRATION—GENERAL
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
{114} 3D PARTY: PRACTICE OF LAW
{155} TEACHING

Gary Chartier, *Toward a New Employer-Worker Compact*, 9 EMP. RTS. & EMP. POL'Y J. 51 (2005).

In Part II of this article, the author explains why collective bargaining is appropriate and necessary, but why it does not need to be conducted by unions and why it might make sense to separate the collective bargaining function from the other functions unions perform. As an alternative, the author proposes a workforce negotiation team as a non-collective bargaining mechanism.

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

Tai-Heng Cheng, *Power, Authority and International Investment Law*, 20 AM. U. INT'L L. REV. 465 (2005).

This article discusses the benefits of having foreign courts enforce arbitral decisions regarding international investment agreements. The benefits of active foreign courts include the participating states adjusting their behavior to avoid or minimize the costs of non-compliance, thereby bolstering international investment law's credibility and promoting international investments. The author argues that shifting the power from foreign states and into the hands of other decisionmakers will only partially support global policies.

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

Pat K. Chew, *The Rule of Law: China's Skepticism and the Rule of People*, 20 OHIO ST. J. ON DISP. RESOL. 43 (2005).

Chew compares the history and current state of the Western idea of the rule of law to that of the Chinese perspective of the rule of the people. Chew argues that the most effective balance for nation building in China would be a society that values a legalistic approach and a legal system that parallels cultural norms.

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

Carl J. Circo, *When Specialty Designs Cause Building Disasters: Responsibility for Shared Architectural and Engineering Services*, 84 NEB. L. REV. 162 (2005).

In this article, Circo argues that specialty design-build practices in the construction industry mandate a fresh consideration of the allocation of risk of a building disaster. In his view, the allocation of risk should correspond with the expectations of the involved parties while also addressing overarching public policy considerations. The article raises policy concerns that should inform mediators and arbitrators as they examine risk allocation of design-build construction projects.

- {44} ARBITRATION—GENERAL
- {80} SUBJ MATTER: CONSTRUCTION

Rhys Clift & Robert Gay, *The Shifting Nature of Salvage Law: A View from a Distance*, 79 TUL. L. REV. 1355 (2005).

This article discusses the development of salvage law. Once governed by general maritime law, salvage law is increasingly being governed by private contracts between vessel owners and those who salvage. Leading the way in this development is the use of Lloyd's Open Form. In reviewing Lloyd's Open Form, this article notes that the Form advocates arbitration. This article considers the possibility of U.S. courts recognizing arbitration awards rendered under Lloyd's Open Form.

- {44} ARBITRATION—GENERAL
- {97} SUBJ MATTER: MARITIME
- {122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{124} COMPARISONS: CROSS-CULTURAL

Jack J. Coe, Jr., *The State of Investor-State Arbitration—Some Reflections on Professor Brower's Plea for Sensible Principles*, 20 AM. U. INT'L L. REV. 929 (2005).

This article describes how the limited mandate for commercial arbitration tribunals is also present in arbitrations performed under international investment treaties. The author acknowledges the benefits of addressing the six issues that Professor Brower described in improving international arbitrations and examines their application under NAFTA. Upon this application, the author concludes that arbitrations in the NAFTA context favor protecting states as opposed to claimants.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{144} LEGISLATION

Jonathan R. Cohen, *The Culture of Legal Denial*, 84 NEB. L. REV. 247 (2005).

Cohen argues that attorneys are misguided in frequently counseling their clients to deny any wrongdoing and he urges lawyers to more regularly explore the option of a client taking responsibility for bad acts. Additionally, Cohen analyzes the structures of the legal system that entrench the culture of denial and asserts that face-to-face dispute resolution mechanisms like mediation and Navajo "circling" promote the acceptance of responsibility by the wrongdoer.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Sarah Rudolph Cole, *Arbitration and State Action*, 2005 BYU L. REV. 1 (2005).

This article examines whether different forms of arbitration are subject to the Constitution's due process requirement. Cole summarizes the Supreme Court's state action doctrine and applies it to three different forms of arbitration to determine which constitute state action and therefore require that due process considerations be met. Cole also examines the effects that a potential constitutionalization of arbitration agreements would have on protected groups and contract law.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{93} SUBJ MATTER: LABOR—GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Sarah Rudolph Cole, *Fairness in Securities Arbitration: A Constitutional Mandate?*, 26 PACE L. REV. 73 (2005).

The author argues that the relationship between the SEC and private self-regulatory organizations administering securities arbitrations is such that arbitration is transformed into state action. As a result, the process should be reformed to satisfy constitutional requirements of due process and equal protection.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{128} REQUIREMENTS: STATUTORY OR RULES

Michaelbrent Collings, *Using Collateral Estoppel After Arbitration*, 28 L.A. LAW., July/Aug., at 20 (2005).

This practice tip discusses the difficulties that can arise when asserting collateral estoppel based on the outcome of an arbitration. There are exceptions to the general rule and this article explores how those exceptions apply to third parties.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

J. Bradley Compere, *Dispute Resolution Center Serves Entire Community*, 42 HOUS. LAW., May/June, at 20 (2005).

The Dispute Resolution Center (DRC) in Harris County, staffed by lawyer and non-lawyer volunteers, has been a tremendous asset to the community. The Center provides mediation services to the community at large and currently focuses on children's needs. Any person in Harris County has access to DRC's free services.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

Diana P. Cortes, Comment, *Same Injury; Different Coverage: How Privatized Insurance Policies Affect Injured Elite and Non-Elite Professional Athletes*, 13 VILL. SPORTS & ENT. L.J. 133 (2006).

When professional athletes suffer career-threatening injuries they often rely on their Leagues' Collective Bargaining Agreement disability insurance provisions which union officials negotiate with team owners and managers. Collective Bargaining Agreements afford protections differing in scope and limitation—grievance procedures usually involve arbitration rather than trial.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES
 {146} ORGANIZATION POLICIES & RULES

John R. Crook, *NAFTA Panel Rules in U.S. Favor in Methanex Case*, 99 AM. J. INT'L L. 920 (2005).

In August 2005, an arbitral panel created under NAFTA found in favor of the United States and rejected the claims of Methanex, a Canadian corporation. Methanex alleged that a California state ban on a product made by Methanex violated provisions of NAFTA. The arbitral panel found in favor of the United States, citing an ability to establish jurisdiction over the California measures. The panel ordered Methanex to pay all arbitration costs related to the proceedings.

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

Zeb-Michael Curtin, Note, *Rethinking Prima Paint Separability in Today's Changed Arbitration Regime: The Case for Inseparability and Judicial Decisionmaking in the Context of Mental Incapacity Defenses*, 90 IOWA L. REV. 1905 (2005).

This Note discusses whether the doctrine of separability applies where a consumer asserts a mental incapacity formation-based defense in response to a motion to compel arbitration. The author compares the Supreme Court's decision in favor of separability to two recent circuit court opinions that seem to distinguish this prior ruling. The author argues that courts should look to other considerations like the nature of a parties' defense, policies under the Federal Arbitration Act, and the parties' expectations of the legal process, rather than relying on the Supreme Court ruling.

{44} ARBITRATION—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {133} COURT REFORMS

Matthew Daiker, *No J.D. Required: The Critical Role and Contributions of Non-Lawyer Mediators*, 24 REV. LITIG. 499 (2005).

The author argues that mediation experts' position that non-lawyers lack the skill to evaluate the legal positions of parties and thus cannot effectively mediate is erroneous. The article contends that possession of a law degree is not necessary for effective mediation, and that non-lawyers can make important contributions to the mediation field.

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

Hon. Howard H. Dana, Jr., *Court-Connected Alternative Dispute Resolution in Maine*, 57 ME. L. REV. 349 (2005).

The author scrutinizes Maine's experiment with "court-connected alternative dispute resolution," whereby most categories of civil claims must attempt an alternative dispute resolution procedure. Based on empirical data, the author concludes that mandatory, mid-discovery mediation speeds up the pace of resolutions, increases the likelihood of settlement, and may reduce party costs. He recommends keeping the program mandatory, and urges cautious expansion into other categories of courts.

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

{73} SUBJ MATTER: GENERAL

{128} REQUIREMENTS: STATUTORY OR RULES

{133} COURT REFORMS

Bob Dauber & Roselle Wissler, *Lawyer Views on Mandatory Arbitration*, 41 ARIZ. ATT'Y, July/Aug., at 32 (2005).

The Supreme Court of Arizona commissioned a study of local lawyers' views of arbitration in Arizona. The majority of lawyers surveyed believed that the arbitration process was fair, but not efficient. Lawyers believed the process could be improved in many ways including, but not limited to, arbitrator selection and compensation.

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

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

Erin Davies, *Recent Development, Green Tree Financial Corp. v Bazzle*, 20 OHIO ST. J. ON DISP. RESOL. 597 (2005).

This recent development discusses the Supreme Court's decision in *Green Tree v Bazzle*. This opinion placed the decision of whether to permit class-wide arbitration in the hands of arbitrators, rather than the courts. The holding resolved an issue that created a split between the federal circuits as well as state courts. The decision in *Green Tree* was based on two sources of law: the Federal Arbitration Act (FAA) and a line of Supreme Court decisions regarding arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

Andrew de Lotbiniere McDougall, *International Arbitration and Money Laundering*, 20 AM. U. INT'L L. REV. 1021 (2005).

This article examines the impact of increased legal attention on money laundering and its impact on international arbitrations. Because arbitration is

implicated, the characteristics of confidentiality, flexibility in the proceeding, and choosing the arbitrator may undermine the effective resolution of money laundering claims. Because some procedural characteristics of arbitration could potentially allow fraud, more disputes arising from money laundering transactions will be before arbitral tribunals.

{44} ARBITRATION—GENERAL
 {82} SUBJ MATTER: CRIMINAL
 {92} SUBJ MATTER: INT'L
 {128} REQUIREMENTS: STATUTORY OR RULES

Jeremy Delibero, *Copyright Arbitration Royalty Panels and the Webcasting Controversy: The Antithesis of Good Alternative Dispute Resolution*, 5 PEPP. DISP. RESOL. L.J. 83 (2005).

Delibero argues that the Copyright Arbitration Royalty Panel, convened to settle disputes about proper royalty rates between providers of Internet radio, has outlived its usefulness for several reasons. The high cost of participation excludes small webcasters from the process, the members of the Panel lack necessary expertise, and it is very easy to set aside the Panel's decisions. The author calls for new legislation aimed at solving these problems.

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

Robert N. Dobbins, *The Layered Dispute Resolution Clause: From Boilerplate to Business Opportunity*, 1 HASTINGS BUS. L.J. 161 (2005).

Almost every lawyer-drafted contract has some form of a dispute resolution clause. The author suggests that drafters should exercise creativity in crafting a tailored clause that serves the client's objectives—such as a “layered” dispute resolution clause. The article discusses the segments of the layered clause, policy considerations, and possible case law influences on the drafter.

{60} ADR—GENERAL
 {73} SUBJ MATTER: GENERAL
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Janet L. Dolgin, *Method, Mediations, and the Moral Dimensions of Preimplantation Genetic Diagnosis*, 35 CUMB. L. REV. 519 (2004).

This article discusses the moral debate surrounding reproductive technologies, including the use of preimplantation genetic diagnosis. The article then describes a “mediative” approach to these moral conundrums that allows parties to become conscious of their own beliefs by situating themselves in positions that are ideologically different from their own.

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. POVERTY L. & POL'Y 55 (2005).

The author discusses Community Lawyering, a problem-solving approach that is built on productive, inclusive relationships, as a method of negotiation and integrative bargaining. Dominguez argues that the Community Lawyering approach, unlike litigation, encourages collaborative justice and active participation in problem resolution by community members. The article discusses the particular problems of a community and how Community Lawyering became involved. It also provides a description of Community Lawyering's philosophical foundation and mission, how it expands on traditional negotiation approaches, and the impact of raising the expectations of people involved in these negotiations.

{1} NEGOTIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{151} ROLE OF LAWYERS

John H. Donboli & Farnaz Kashefi, *Doing Business in the Middle East: A Primer for U.S. Companies*, 38 CORNELL INT'L L.J. 413 (2005).

This article discusses how companies in the United States should approach doing business with the Middle East. It is essential for U.S. companies to understand the fundamental legal and practical implications of doing business in the region. American companies must understand the Middle East and acquaint themselves with the region's history, culture, and religion.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Dan Downey, *Trial by Special Judge: The Ignored Stepchild of ADR*, 68 TEX. B.J., June, at 480 (2005).

Judge Downey draws attention to a program and system that he argues is misunderstood and underused. He explains that trial by special judge, as compared to trial by jury and arbitration, is more cost effective, more convenient, gives a right to an appeal, and removes the uncertainty of a jury.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{146} ORGANIZATION POLICIES & RULES

Leonard D. DuBoff & Christy O. King, *Cyber Troubles: Resolving Domain Name Disputes*, 65 OR. ST. B., May, at 33 (2005).

A user's guide to dealing with infringement on URL addresses, DuBoff and King compare federal litigation and online arbitration. The authors look at the Internet Corporation for Assigned Names and Numbers (ICANN) and the mandatory arbitration for those using accredited registers. They highlight the speed and possible cost benefits of the arbitration, but suggest that each person must weigh all the costs and benefits on her own with the help of a knowledgeable attorney.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{151} ROLE OF LAWYERS

{155} TEACHING

Demetra Edwards, *New Amendments to Resolving Special Education Disputes: Any Good IDEAs?*, 5 PEPP. DISP. RESOL. L.J. 137 (2005).

The article discusses the Individuals with Disabilities Education Improvement Act of 2004 which amends key sections of the existing federal special education law. The Act focuses on alternative dispute resolution, instead of the due process hearings of the earlier version, for resolving conflicts arising when parents disagree with services offered to their children. The author argues that the newly required ADR method will have significant impact on special needs children.

{60} ADR—GENERAL

{83} SUBJ MATTER: EDUCATION

{127} REQUIREMENTS: MANDATE TO USE

{144} LEGISLATION

Teresa L. Elliott, *Conflicting Interpretations of the One-Year Requirement on Motions to Confirm Arbitration Awards*, 38 CREIGHTON L. REV. 661 (2005).

This article examines a circuit court split over the meaning of Section 9 of the Federal Arbitration Act. The split concerns whether Section 9 imposes a one-year statute of limitations on applications to confirm an arbitration award. The article examines the history of the Act and court cases interpreting Section 9, concluding that Section 9 should not impose a one-year statute of limitations.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Theresa E. Ellis, Note, *Loved and Lost: Breathing Life Into the Rights of Noncustodial Parents*, 40 VAL. U. L. REV. 267 (2005).

This Note examines life-support and burial disputes involving children of divorced parents. The author discusses the increasing role of mediation in

resolving child custody disputes, and recommends the use of mediation in life-support and burial disputes. The Note proposes statutes for resolving life-support and burial disputes between the child's parents. Both statutes impose mandatory mediation on parents with the hope of quick dispute resolution.

{21} MEDIATION—GENERAL

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

{134} DISPUTE PREVENTION

{144} LEGISLATION

Thomas G. Eron, *Employment Law*, 55 SYRACUSE L. REV. 919 (2005).

This article discusses several issues relating to employment law, including the use of arbitration in employment disputes. It specifically focuses on the ability of parties to challenge the arbitrability of disputes and under what circumstances an arbitration award may be vacated.

{44} ARBITRATION—GENERAL

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

Samuel Estreicher, *Beyond Cadillacs and Rickshaws: Towards a Culture of Citizen Service*, 1 N.Y.U. J. L. BUS. 323 (2005).

The author notes how rising costs in litigation should result in employment disputes being resolved in alternative methods, such as arbitration. Once publication of arbitration awards moves toward preserving anonymity and arbitration proceedings do not compromise substantive rights, resorting to arbitration in resolving employer disputes should be welcomed because arbitration offers more access to justice and is much cheaper than resorting to traditional forms of litigation.

{44} ARBITRATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Susan Nauss Exon, *California's Opportunity to Create Historical Precedent Regarding a Mediated Settlement Agreement's Effect on Mediation Confidentiality and Arbitrability*, 5 PEPP. DISP. RESOL. L.J. 215 (2005).

This article discusses the issue of construing arbitration clauses to be binding and enforceable pursuant to the California Evidence Code Section 1123(b). It examines whether the arbitration clause of the Settlement Terms Documents constitutes a valid agreement to arbitrate. It also questions whether Section 1123 needs to be revised so that mediation is not subject to the general mediation confidentiality rules.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{132} CONFIDENTIALITY

Christopher M. Fairman, *A Proposed Model Rule for Collaborative Law*, 21 OHIO ST. J. ON DISP. RESOL. 73 (2005).

This article proposes a solution to the conflict between collaborative law and the professional rules of ethics in the form of a new Model Rule. In addition to presenting the text for the new Model Rule, the article explores the value of professional ethical rules, surveys collaborative law practices, and examines the central ethical concerns in collaborative law practice, as well as attempting to provide more control over the practice.

{53} COLLABORATIVE LAW—GENERAL

{104} SUBJ MATTER: REGULATORY

{128} REQUIREMENTS: STATUTORY OR RULES

{138} ETHICS: GENERAL

Lisa B. Feinstein, Note, *The Forgotten Public Policies Behind the Family and Medical Leave Act: Burden of Proof Structures Placing Unnecessary Burdens on Employees' Statutory Entitlement*, 73 FORDHAM L. REV. 2561 (2005).

This Note discusses the areas of confusion that exist in current FMLA jurisprudence and offers a framework for analysis more consistent with congressional intent. The author discusses the manner in which work-family issues have supported tort claims and how these issues are analyzed in arbitration.

{44} ARBITRATION—GENERAL

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

{128} REQUIREMENTS: STATUTORY OR RULES

{144} LEGISLATION

Hilary A. Findlay, *Rules of a Sport-Specific Arbitration Process as an Instrument of Policy Making*, 16 MARQ. SPORTS L. REV. 73 (2005).

While sport-specific arbitration has the advantages of expert adjudicators and timely hearings, Findlay stresses that the arbitration process should be designed to support and facilitate the desired function of independent arbitration. This article focuses on rules adopted for Canadian sport arbitration.

{44} ARBITRATION—GENERAL

{101} SUBJ MATTER: PROBATE

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{146} ORGANIZATION POLICIES & RULES

Dimitrios Fiotakis, *The Impact of Information Technology Upon the Shipbroking Profession*, 29 TUL. MAR. L.J. 237 (2005).

This article focuses on the effects that the increasing use of Internet Technology has on the shipbroking industry. In review of the shipbroker's role in the maritime industry, this article discusses the practice of negotiation and the broker's utilization of negotiation when chartering a ship.

{1} NEGOTIATION—GENERAL

{97} SUBJ MATTER: MARITIME

William S. Fiske, Comment, *Should Small and Medium-Size American Businesses "Going Global" Use International Commercial Arbitration?*, 18 TRANSNAT'L LAW. 455 (2005).

This comment discusses the role of international commercial arbitration in small and medium-size businesses in today's global economy. The author examines both the increasing use of arbitration in resolving international commercial disputes and how small and medium-size businesses negotiate arbitration clauses. Although common law litigation may have some advantages for small and medium-size businesses in international commercial disputes, most will choose arbitration for resolving international commercial disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

H. Scott Flegal, *Advocating for Understanding: Why the Understanding-based Mediation Model Works*, 46 N.H.B. J., Summer, at 18 (2005).

The author contrasts "understanding-based" mediation with more "traditional" forms of mediation, and concludes that understanding-based mediation is more conducive to dispute resolution. Specifically, he highlights the "non-caucus" nature of understanding-based mediation. Keeping everyone in the same room reduces perceived mediator bias, and reduces mediator control over the proceedings.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

{155} TEACHING

Hon. Jeremy Fogel, *How to Take Control of the Runaway Litigation Train*, 5 PEPP. DISP. RESOL. L.J. 377 (2005).

The author discusses how informed and appropriate use of alternative dispute resolution can benefit parties in business disputes, both by reducing costs and by producing qualitatively better results.

{60} ADR—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{136} ECONOMIC ADVANTAGES OF ADR

Chris Ford, Note, *What Are 'Friends' For? In NAFTA Chapter 11 Disputes, Accepting Amici Would Help Lift the Curtain of Secrecy Surrounding Investor-State Arbitrations*, 11 SW. J. L. & TRADE AM. 207 (2005).

NAFTA, with its provision for investor-state arbitrations, has gone beyond protecting investors from third world style nationalization of assets and created a system by which multinational corporations may punish governments where regulatory legislation is construed as a regulatory taking. But unlike regulatory-takings cases heard in public courts, NAFTA disputes are heard in private and potentially provide only for the investor's point of view to be fully considered.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Susan D. Franck, *The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions*, 73 FORDHAM L. REV. 1521 (2005).

This author addresses the recent increase in arbitrating conflicts of investment treaties. Arbitrations in these contexts can lead to conflicting decisions on the same points of law that never come before a single body with the capacity to resolve inconsistencies. This author argues that the present system of investment treaty arbitration is inadequate and proposes reforms that will prevent inconsistencies in decisions from occurring.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{134} DISPUTE PREVENTION

Trippe S. Fried, *Maintaining the Home Court Advantage: Forum Shopping and the Small Business Client*, 6 TRANSACTIONS 419 (2005).

This article discusses the importance for small business clients to litigate their suits as close to home as possible. The article talks about the several means through which lawyers representing small business clients can attempt to litigate the suits in the closest possible forum and points to arbitration clauses in contracts as a means of saving the small business clients from the costly and inefficient ordeal of litigation. It provides a brief summary of arbitration clauses and their benefits.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{136} ECONOMIC ADVANTAGES OF ADR

James J. Friedberg, *Ambiguity, Sovereignty, and Identity in Ireland: Peace and Transition*, 20 OHIO ST. J. ON DISP. RESOL. 113 (2005).

The author describes the development of peace between Ireland and Great Britain through compromise negotiations among political leaders. The ambiguity in positions allows competing sides to maintain differing views of the future, but also allows the parties to negotiate an agreement on that future. An effect of such negotiations has been recognizing the rights of minority populations, which is proving to be vital in enhancing the peace.

{1} NEGOTIATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

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).

The author argues that the arbitration demand approach is the only way to determine the amount in controversy in a petition to vacate an arbitration award that remains true to traditional notions of jurisdiction. It does so by determining the amount in controversy at the initiation of the controversy, not at the point of what essentially amounts to an appeal.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Henry Gabriel & Anjanette H. Raymond, *Ethics for Commercial Arbitrators: Basic Principles and Emerging Standards*, 5 WYO. L. REV. 453 (2005).

Recognizing the increase in commercial arbitration, this article discusses the rules of ethics that govern commercial arbitrators. Arbitrators are fundamentally different from judges—they have unique duties, including but not limited to fiduciary duties.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Floyd D. Gaines & Andrew P. Walsh, *After the Battle Over Arbitration: An Analysis of Post-Enforceability Issues Confronting Lawyers and Litigants in Actual Arbitration Proceedings*, 66 ALA. LAW., Nov., at 442 (2005).

The Alabama courts have long ignored the appeals of actual arbitration awards due to preoccupation with the enforceability of arbitration agreements

in general. New state laws have created a necessity for evaluating the appropriateness of arbitration in many types of cases and not simply a focus on enforceability.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{128} REQUIREMENTS: STATUTORY OR RULES

{138} ETHICS: GENERAL

James M. Gaitis, *Interstate Commerce: The Ongoing Federalization of Commercial Arbitration in Montana*, 30 MONT. LAW., Apr., at 12 (2005).

Gaitis discusses how in the last decade the courts in Montana have attempted to limit the Federal Arbitration Act's effects on parties in Montana. He argues that recent Supreme Court decisions along with decisions of the Ninth Circuit have increased the power of arbitrators at the expense of Montanans.

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

{73} SUBJ MATTER: GENERAL

{144} LEGISLATION

Marc Galanter, *The Hundred-Year Decline of Trials and the Thirty Years War*, 57 STAN. L. REV. 1255 (2005).

This article discusses the recent decline in the number of cases that reach trial. As explanations for this decline, Galanter offers a lack of court resources and the length of time it takes cases to reach trial. Galanter also points to the increase in ADR forums (as well as judges' increasing approval in these forums) as another explanation for the decline in the number of cases reaching trial.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Peter J. Gardner, *A Conversation with Leonard L. Riskin*, 46 N.H.B.J., Summer, at 5 (2005).

In an interview, Professor Leonard L. Riskin characterizes a "successful" mediation as one that, at the very least, resolves the dispute, but could instead achieve "cognitive or emotional" resolution. Riskin also warns of the pitfalls that may be encountered when a mediator gives his or her own views on how a dispute should be resolved, but believes that sometimes such discussion may be warranted.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Nina Gardner, *Report of the Task Force on Family Law*, 45 N.H.B.J., Winter, at 20 (2005).

The article provides a summary of a report authored by the Task Force on Family Law. The Task Force was created by statute to provide recommendations to incorporate alternative dispute resolution methods into emotionally sensitive court proceedings like divorce cases. Among the recommendations were (1) to make ADR available early in family law cases and (2) to encourage the referral of parties to mediation in order to avoid highly litigated family disputes.

{60} ADR—GENERAL

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

{133} COURT REFORMS

John Burwell Garvey, *“Mediator” is an Action Noun: Action Steps for Conducting an Effective Mediation*, 46 N.H.B.J., Summer, at 7 (2005).

This article describes the tactics an effective mediator uses to assist parties in reaching a voluntary resolution. Walking through a hypothetical conflict, the author offers numerous ideas to help potential mediators before and during the mediation process. These ideas include preliminary questions to ask attorneys, suggested physical arrangements for the mediation session, and the best way to manage private caucus sessions.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Jesse Gary, Note, *The Demise of Sport? The Effect of Judicially Mandated Free Agency on European Football and American Baseball*, 38 CORNELL INT’L L.J. 293 (2005).

This Note suggests that F.I.F.A. and the U.E.F.A. should look to baseball for a solution. Part I of this Note examines the international transfer system and the decisions that have begun to dismantle it. Part II examines baseball’s battles with and solutions to many of the transfer system’s “problems.” Part III examines the feasibility of implementing baseball’s solutions in European football.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Frederick Mark Gedicks, *Suitability Claims and Purchases of Unrecommended Securities: An Agency Theory of Broker-Dealer Liability*, 37 ARIZ. ST. L. J. 535 (2005).

This article examines a line of arbitration decisions occurring in the last decade indicating that stock brokers are liable for client losses on unrecommended investments. The article examines these decisions in light of

the growing market presence of online trading groups who offer market tips and information over the internet. These discount brokers push for a per se discount broker immunity from these arbitration decisions.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

Melinda S. Gehris, *Good Mediators Don't Ignore Emotion*, 46 N.H.B.J., Summer, at 28 (2005).

This article stresses the importance of recognizing emotion—often hidden behind facts—in mediation. The author presents ways for mediators to address emotional concerns, including active listening, and taking negative statements and placing them in a more positive context (referred to as “reframing” and “paraphrasing”). A mediator may be empathetic, and should acknowledge emotion, but must remain neutral throughout the mediation process.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{155} TEACHING

Fabien Gelinas, *Dispute Resolution as Institutionalization in International Trade and Information Technology*, 74 FORDHAM L. REV. 489 (2005).

In discussing the central role of dispute settlement to the functioning of the World Trade Organization (WTO), this article provides a discussion of the effect of adjudicative institutionalization on the WTO's dispute settlement system. The article specifically discusses the role of precedent in the resolution of WTO disputes.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{121} SETTLEMENT: AUTHORITY

Kenneth Jeremy Geniuk, Note, *Untipping the Scales: Using State Contract Law to Protect At-Will Employees from Unfair Mandatory Arbitration Agreements*, 74 U. MO. KAN. CITY L. REV. 197 (2005).

Geniuk begins with the premise that many at-will employees submit to unfair arbitration agreements either unwittingly or because of their relative weakness compared to the employer. The author believes that the Supreme Court's broad interpretation of the Federal Arbitration Act means that states are prevented from limiting arbitration agreements, but he argues that state contract law could ensure that at-will employees are subject to fair arbitration agreements.

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

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

{147} POWER IMBALANCE

Walter J. Gershenfeld, *The Changing Face of Employment/Workplace Dispute Resolution*, 43 BRANDEIS L. J. 135 (2004).

This article examines the expanding nature of employment and workplace arbitration. Gershenfeld argues that the 1991 case of *Gilmer v. Interstate/Johnson Lane* has encouraged a substantial increase in employment arbitration. Despite this growth, there are problems, especially regarding due process. However, with the increasing trend toward outsourcing job opportunities, employment dispute resolution is becoming even more important with regard to arbitrary dismissals.

{44} ARBITRATION—GENERAL

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

Catherine A. Giambastiani, *Lex Loci Arbitri and Annulment of Foreign Arbitral Awards in U.S. Courts*, 20 AM. U. INT'L L. REV. 1101 (2005).

This article describes how those countries with secondary jurisdiction under the New York Convention should not prevent enforcement elsewhere when they annual an arbitral award. The author contends that U.S. courts should recognize broader ability to vacate foreign arbitral awards rendered in countries of primary jurisdiction. The exception to this suggestion is when such an award is not covered in an international covenant that approaches vacatur in a more limited manner.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{104} SUBJ MATTER: REGULATORY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Gennie Gieselmann, Casenote, *Arbitration Provisions: Subject to Enforcement (A Two Case Analysis)*, 6 TRANSACTIONS 481 (2005).

This article reviews two cases: *Vickery v. HEPACO* and *Benton v. Vanderbilt Univ.* These two cases demonstrate that the Tennessee courts prefer to enforce arbitration provisions. If the arbitration provision is part of a sound and enforceable contract, the courts will bind the parties to their agreement. Such provisions are also enforceable against third-party beneficiaries when that party files suit to enforce the contract.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

Stephen Gillers & Richard W. Painter, *Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements*, 18 GEO. J. LEGAL ETHICS 291 (2005).

The authors argue against the standard prohibition of “no-sue agreements” in settlement negotiations used to prevent later suits against the defendant. After discussing the history of the prohibition rule as well as analysis of both sides of the argument, Gillers and Painter defend no-sue agreements because they promote settlement.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{138} ETHICS: GENERAL

Rebecca K. Glatzer, Note, *Equality at the End: Amending State Surrogacy Statutes to Honor Same-Sex Couples’ End-of-Life Decisions*, 13 ELDER L.J. 255 (2005).

This Note evaluates various statutory approaches to surrogate decisionmaking for their ability to effectuate the health care wishes of gay and lesbian couples in the end-of-life decision-making process. The author addresses the New York Health Care Proxy Law and the state’s dispute resolution system, which is authorized to mediate any dispute about a patient’s health care decision-making process.

{21} MEDIATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{134} DISPUTE PREVENTION

Robert S. Glenn, Jr. et al., *Admiralty*, 56 MERCER L. REV. 1169 (2005).

The Eleventh Circuit’s *Bautista v. Star Cruises* decision involved the enforcement of arbitration clauses. Arbitration has become an increasingly popular procedure for resolving maritime disputes. The court examined issues regarding the Federal Arbitration Act (FAA) and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards before it ultimately ruled in favor of arbitration.

{44} ARBITRATION—GENERAL

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

{97} SUBJ MATTER: MARITIME

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Daniel Glimcher, *Legal Dentistry: How Attorney’s Fees and Certain Procedural Mechanisms Can Give Rule 68 Teeth to Effectuate its Purposes*, 27 CARDOZO L. REV. 1449 (2006).

Rule 68, which promotes settlement and discourages litigation, can be used to relieve congested court dockets. The Rule enables defendants who make offers of judgment to plaintiffs to recover their post-offer costs when such plaintiffs reject the offer, proceed to trial, win, and receive a judgment less favorable than the original offer. Declaratory judgment motions and court ordered mediation can make Rule 68 a viable litigation tool.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{133} COURT REFORMS

Howard N. Gorney, *BAPCPA Impact on Preference Mediation*, 24-6 AM. BANKR. INST. J., July/Aug., at 46 (2005).

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 triggered changes to federal bankruptcy laws, creating several implications related to the “ordinary course defense” to preference actions. Gorney believes that the defense will lead to increased mediation activity and concludes that this result was probably not intended by Congress when it enacted the reformed laws.

{21} MEDIATION—GENERAL

{74.5} SUBJ MATTER: BANKRUPTCY

{79} SUBJ MATTER: CONSUMER

{144} LEGISLATION

Jack M. Graves, *Party Autonomy in Choice of Commercial Law: The Failure of Revised U.C.C. 1-301 and a Proposal for Broader Reform*, 36 SETON HALL L. REV. 59 (2005).

Graves discusses a variety of critiques of expanded party autonomy as it relates to choice-of-law arbitration, various state choice-of-law statutes, and international approaches to choice-of-law.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Michael Z. Green, *Addressing Race Discrimination Under Title VII After Forty Years: The Promise of ADR as Interest-Convergence*, 48 HOW. L.J. 937 (2005).

While highlighting recent approaches that embrace ADR as an option in response to amendments to Title VII, this article explores how ADR can be used as a mechanism to focus on racial justice in the workplace while also acting as an instrument to accomplish employer incentives. Green offers a

balance of various court and ADR procedures to resolve discrimination claims as part of an overall approach to workplace conflict resolution.

{60} ADR—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Martin J. Greenberg, *Alternative Dispute Resolution in Sports Facility Leases*, 16 MARQ. SPORTS L. REV. 99 (2005).

Sports facility leases often include provisions for ADR processes to resolve landlord-tenant disputes. Greenberg focuses on arbitration because the majority of leases use arbitration as the dispute resolution method of choice. However, he notes that mediation is a growing first-choice method of leasehold dispute resolution.

{44} ARBITRATION—GENERAL

{87} SUBJ MATTER: GOV'T

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Mary Jane Groff, Note, *Where Can Unconscionability Take Arbitration? Why The Fifth Circuit's Conscience Was Only Partially Shocked*, 2005 J. DISP. RESOL. 131 (2005).

The Fifth Circuit considers unconscionability in the context of arbitration clauses. Groff examines this circuit's decisions and argues that it is working to counter the Supreme Court's "pro-arbitration stance" by policing the fairness of arbitration clauses using the doctrine of unconscionability.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{144} LEGISLATION

Jill I. Gross & Ronald W. Filante, *Developing a Law/Business Collaboration Through Pace's Securities Arbitration Clinic*, 11 FORDHAM J. CORP. & FIN. L. 57 (2005).

The interdisciplinary program shared by the Securities Arbitration Clinic at Pace's Law School and the Pace School of Business is intended to provide a co-curricular learning experience to both J.D. and graduate business students while enhancing legal services provided by the clinic. The authors illustrate how the program meets the needs of clients as well as students, and offers guidance for other schools considering a similar collaboration.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{149} QUALITY CONTROL

Haini Guo & Bradley Klein, *Bargaining in the Shadow of the Community: Neighborly Dispute Resolution in Beijing Hutongs*, 20 OHIO ST. J. ON DISP. RESOL. 825 (2005).

Because existing extralegal bargaining research was conducted in economically robust democratic societies, Guo and Klein try to balance the literature by exploring the question of societal norms in extralegal bargaining within the urban neighborhoods of China. The authors' study finds that residents in Hutongs rely on informal societal norms to resolve their conflicts. Guo and Klein also explore unique ADR practices occurring within Chinese neighborhoods.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 STAN. L. REV. 1275 (2005).

This article distinguishes individual and organizational litigants and discusses how "party makeup" can affect the rate at which cases are addressed. Hadfield illustrates that little attention is paid to the differences in the types of cases that are handled in ADR forums.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

Michael J. Hanagan, *If You Lose, It Is Binding, But If You Win—They Get A New Trial: Illinois Uninsured Motorist Arbitration*, 2005 J. DISP. RESOL. 93 (2005).

Illinois has a unique binding/non-binding threshold in arbitration cases dealing with uninsured motorists. This article explains the history of arbitration in this context, the cases that influenced the current statute, and why this law has negative public policy implications.

{44} ARBITRATION—GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{144} LEGISLATION

Honey Hastings, *Dispute Resolution Options in Divorce and Custody Cases*, 46 N.H.B.J., Summer, at 48 (2005).

ADR techniques in divorce and custody cases create a continuum from complete party autonomy to complete procedural control through litigation. These techniques include: direct negotiation, mediation, collaborative practice, negotiation through lawyers, neutral evaluation and parental

coordination. The author examines these techniques with an emphasis on mediation in New Hampshire.

{21} MEDIATION—GENERAL

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

{133} COURT REFORMS

James C. Hathaway, *The Right of States to Repatriate Former Refugees*, 20 OHIO ST. J. ON DISP. RESOL. 175 (2005).

Considering the practical difficulties associated with taking in refugees, Hathaway argues that states need to work harder at balancing the protection of the oppressed and persecuted with repatriating refugees. Hathaway highlights that without a fundamental change in the state of origin, individuals should not be repatriated.

{60} ADR—GENERAL

{92} SUBJ MATTER: INT'L

{149} QUALITY CONTROL

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Daniel J. Hendy, Note, *Is a Truth Commission the Solution to Restoring Peace in Post-Conflict Iraq?*, 20 OHIO ST. J. ON DISP. RESOL. 527 (2005).

This Note suggests that the new Iraqi government should use truth commissions to deal with members of Saddam Hussein's former regime. The author first discusses the definition and development of truth commissions. Next he addresses the pros and cons of using a truth commission as an alternative form of dispute resolution to deal with those who are responsible for human rights abuses in Iraq.

{60} ADR—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L

Gerald F. Hess, *The Trail Smelter, the Columbia River, and the Extraterritorial Application of CERCLA*, 18 GEO. INT'L ENVTL. L. REV. 1 (2005).

The author discusses the international arbitral decisions pertaining to the Trail Smelter, a facility that lies just north of the border between the United States and Canada. In discussing the various dispute resolution forums that were employed in the Trail Smelter dispute, the author outlines the structure of a transboundary environmental dispute, the types of claims available under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and an analysis of the policy implications for the extraterritorial application of CERCLA and U.S. statutes to CERCLA cases.

{44} ARBITRATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT
 {133} COURT REFORMS

Rebecca H. Hiers, *Navigating Mediation's Uncharted Waters*, 57 RUTGERS L. REV. 531 (2005).

This article addresses the development of the mediation privilege. The author contends that the boundaries of this protection are unclear and attempts to bring together perspectives of various jurisdictions which interpret the reach of the privilege, the U.M.A.'s proposed approach, and general privilege law. The author demonstrates the hidden dangers of practicing in the mediation field and how the courts may interpret the limits of this privilege.

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

Eden E. Hifo, *ADR-Advisory Jury Trials*, 9 HAW. B.J., May, at 4 (2005).

Since 2000, the First Circuit has been experimenting with "ADR-Advisory" trials. The article explains how these trials are conducted. Once the jurors are assembled they read materials about the case, hear statements from lawyers, and occasionally hear statements from the parties to the controversy. After the jury verdict is returned, counsel convenes to attempt to reach a settlement. This method often, but not always, helps the parties to settle.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL
 {73} SUBJ MATTER: GENERAL
 {133} COURT REFORMS

Elizabeth A. Hoffmann, *Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice*, 39 LAW & SOC'Y REV. 51 (2005).

This article examines how workers' perceptions of procedural justice influence their decisions regarding which kinds of grievance strategies to pursue. Based on findings obtained through interviews and observations, the article concludes that women find that cooperative identity empowers them to use formal grievance procedures, while men prefer informal dispute resolution strategies. Hoffman recommends that policymakers and scholars consider the circumstances in which employees encounter potential grievances.

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

Andrew J. Hosmanek, *Cutting The Cord: Ho'oponopono And Hawaiian Restorative Justice In The Criminal Law Context*, 5 PEPP. DISP. RESOL. L.J. 359 (2005).

Ho'oponopono is a traditional Hawaiian dispute resolution system in which both the offender and victim participate in a type of guided mediation along with other stakeholders in the offense. Ho'oponopono is different from typical mediations because after the session is successfully completed, the participants figuratively cut the "cord" of legal and psychological entanglement that binds them. In other words, the dispute is put to rest forever. The author explores the application of Ho'oponopono in the criminal law context.

{21} MEDIATION—GENERAL

{77} SUBJ MATTER: COMMUNITY

{82} SUBJ MATTER: CRIMINAL

Chuck Hurd, *How Important is Subject Matter Expertise in a Mediator?*, 9 HAW. B.J., May, at 6 (2005).

The author argues that a mediator's subject matter expertise may be useless. Expertise causes mediators to make premature conclusions that may harm the mediation process. Expert mediators should only be chosen when "really necessary."

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

Joshua Isaacs, *A New Way to Avoid the Courtroom: The Ethical Implications Surrounding Collaborative Law*, 18 GEO. J. LEGAL ETHICS. 833 (2005).

In his discussion of collaborative law, the author argues that this new field of alternative dispute resolution lacks both authoritative and comprehensive responses to ethical concerns regarding its practice. Isaacs specifically focuses on three ethically-charged areas of collaborative law: the disqualification agreement, the level of consent required by the client to approve the initiation of this approach, and the ability of a practitioner to both work within the collaborative law process and serve as a zealous advocate for the practitioner's client.

{53} COLLABORATIVE LAW—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Justin M. Jackson, Comment, *Unlicensed to Drill: Proposed Renovations to the Texas Residential Construction Commission Act*, 36 ST. MARY'S L.J. 753 (2005).

In this article, ADR is discussed as a viable option to use under the Texas Residential Construction Commission Act. It specifically touches on the fact that homeowners must pay significant sums to the Texas Residential Construction Commission to initiate ADR under the Act. The author uses this fact to illustrate an instance of consumer protection being sacrificed for growth in the economy.

{60} ADR—GENERAL

{80} SUBJ MATTER: CONSTRUCTION

{123} SETTLEMENT: PRESSURES TO SETTLE

J. Steven Jarreau, *NAFTA Arbitration*, 52 LA. B.J., Feb./Mar., at 389 (2005).

A three member arbitration panel established by the North American Free Trade Agreement issued a final award in *GAMI Investments Inc. v. Mexico*.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Per Jebsen, *How to Fix Unpaid Arbitration Awards*, 26 PACE L. REV. 183 (2005).

This article identifies the problem of unpaid arbitration awards in cases in which brokers or brokerage firms misuse investors' funds and offers several possible solutions for ameliorating the investors' plight. The author suggests that the regulatory void on the matter needs to be filled by mandating that brokers acquire some type of bonding or insurance, establishing a separate fund for satisfaction of awards, or enhancing net capital rules for brokers.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Anik L. Jodouin, *The Sport Dispute Resolution Centre of Canada: An Innovative Development in Canadian Amateur Sport*, 15 J. LEGAL ASPECTS OF SPORT 295 (2005).

This article discusses the importance of alternative dispute resolution within the Canadian amateur sport community. It explains the passage and impact of Bill C-12, which resulted in the creation of the Sport Dispute Resolution Centre of Canada (SDRCC). Jodouin provides a thorough analysis of the SDRCC and argues that the SDRCC's structure allows it to avoid "weak" aspects of arbitration as identified by Slaikeu and Hasson's (1998) dispute resolution model.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT

Jennifer J. Johnson, *Wall Street Meets the Wild West: Bringing Law and Order to Securities Arbitration*, 84 N.C. L. REV. 123 (2005).

This article analyzes the current NASD arbitration system that virtually all investors utilize to resolve disputes with their brokers. The author's analysis suggests that the current system needs reform in order to live up to the claim that the system is a true alternative to adjudication.

{44} ARBITRATION—GENERAL
 {106} SUBJ MATTER: SECURITIES

Nicholas S. Johnson, Note, *Arbitration of Employer Violations of the West Virginia Human Rights Act: West Virginia Should Make Like Ants Marching and Continue Its Pursuit of Bliss*, 108 W. VA L. REV. 205 (2005).

Pre-dispute arbitration clauses have become common in employment contracts. This Note examines arguments for and against such clauses. The author then compares the conflict between the U.S. Supreme Court and West Virginia decisions regarding the enforceability of the clauses.

{44} ARBITRATION—GENERAL
 {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
 {125} COMPARISONS: HISTORICAL
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ethan Katsh, *Bringing Online Dispute Resolution to Virtual Worlds: Creating Processes Through Code*, 49 N.Y.L. SCH. L. REV. 271 (2005).

Katsh calls for the enhancement of Online Dispute Resolution (ODR). He provides examples of mediation and arbitration in disputes arising from E-Bay transactions and domain name registrations. He further argues that virtual worlds provide a unique opportunity to explore methods of dispute resolution that could be valuable in resolving disputes in the physical world.

{60} ADR—GENERAL
 {78} SUBJ MATTER: COMPUTER—INTERNET
 {105} SUBJ MATTER: SCIENCE & TECHNOLOGY

Lucy V. Katz, *Arbitration as a Bridge to Global Markets in Transitional Economies: The Republic of Cuba*, 13 WILLAMETTE J. INT'L L. & DISP. RESOL. 109 (2005).

Cuba serves as a case study for examining how transitional economies incorporate international arbitration in foreign trade transactions. Arbitration is a key factor in the economic liberalization of transitional economies. International commercial arbitration for foreign trade acts as a bridge

between transitional economies like Cuba and global commerce. This article studies Cuba's arbitration system against the backdrop of the country's centralized political, economic, and legal systems.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

{125} COMPARISONS: HISTORICAL

Elizabeth Kennedy, Comment, *Freedom from Independence: Collective Bargaining Rights for "Dependent Contractors"*, 26 BERKELEY J. EMP. & LAB. L. 143 (2005).

Independent contractors, or "dependent contractors" as Kennedy favors, are too broadly exempt from the scope of the National Labor Relations Act and protection from unfair labor practices. By creating a dependent contractor relations board similar to the NLRB, contractors can have a neutral third-party body determine whether they are appropriately classified as independents, or whether they fall into the new category. After classification as "dependent contractors," laborers can establish their legal rights and obtain an appropriate forum for the adjudication of grievances.

{1} NEGOTIATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

Elizabeth Kent, *Privacy and Confidentiality in Mediation—What is the Best Way to Protect It?*, 9 HAW. B.J., May, at 34 (2005).

This article discusses the Uniform Mediation Act (UMA) and its treatment of mediation communications in court proceedings. Although the general rule under the UMA is that communications are private, there are specific exceptions to the privilege against disclosure.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{132} CONFIDENTIALITY

{138} ETHICS: GENERAL

Mara Kent, *"Forced" vs. Compulsory Arbitration of Civil Rights Claims*, 23 LAW & INEQ. J. 95 (2005).

When the legislative history of a statute clearly provides for a right to jury trial and damages in discrimination cases, courts should not allow employers to force employees to choose between their civil rights and their jobs. Kent criticizes both the Second and Ninth Circuits for ignoring clear legislative intent when deciding such cases.

{45} ARB: MANDATORY, COURT-ANNEXED—GENERAL
{74} SUBJ MATTER: ANTITRUST
{144} LEGISLATION

Jay P. Kesan & Andres A. Gallo, *The Market for Private Dispute Resolution Services—An Empirical Re-assessment of ICANN-UDRP Performance*, 11 MICH. TELECOMM. & TECH. L. REV. 285 (2005).

The authors compare private ADR services using the Uniform Dispute Resolution Policy implemented by the Internet Corporation for Assigned Names and Numbers. Employing econometric models, they demonstrate that complainants engage in forum shopping when seeking private ADR services. The authors conclude that forum shopping by complainants is based more on efficiency and performance than on bias.

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

Greg Kilby, Note, *Leaving a Stone Unturned—The Unanswered Question from Green Tree Financial Corp. v. Bazzle: Does the Federal Arbitration Act Permit Classwide Arbitration?*, 59 U. MIAMI L. REV. 413 (2005).

This Note argues that the U.S. Supreme Court's decision in *Green Tree Financial Corp. v. Bazzle* is important because of the question it failed to answer: does the Federal Arbitration Act (FAA) permit class arbitration? The author addresses the history of the FAA, and then proceeds to discuss the substantial change in the law created by *Bazzle*, as well as the backdrop of arbitration law upon which the decision relies.

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

Jesse Klaproth, *Decision by the Arbitrator—United States—Continued Dumping and Subsidy Offset Act of 2000: Payback is for the Byrds; Arbitrator Allows Eight Countries to Sanction the United States for Application of the Byrd Agreement*, 13 TUL. J. INT'L. & COMP. L. 401 (2005).

The World Trade Organization (WTO) recently handed down eight arbitration decisions. The dispute involved the failure of the United State's Continued Dumping and Subsidy Act of 2000 and that Act's failure to comply with the WTO's antidumping agreements. In 2003, the arbitrator gave the United States eleven months to bring the Act into compliance with the antidumping agreements. The United States failed to comply, so the WTO handed down arbitration decisions allowing eight countries to bring sanctions against the United States.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Russel Korobkin & Jonathan Zasloff, *Roadblocks to the Road Map: A Negotiation Theory Perspective on the Israeli-Palestinian Conflict After Yasser Arafat*, 30 YALE J. INT'L L. 1 (2005).

This article analyzes the ongoing Israeli-Palestinian negotiations. Part II of the article defines and describes negotiation concepts and applies them to the Israeli-Palestinian negotiations. The authors then discuss and analyze the "roadblocks" to a successful outcome and strategies for overcoming them. The article concludes with a proposal of how the United States can use this information to broker a successful peace negotiation.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{134} DISPUTE PREVENTION

Kimberlee K. Kovach, *Musings on Idea(l)s in the Ethical Regulation of Mediators: Honesty, Enforcement, and Education*, 21 OHIO ST. J. ON DISP. RESOL. 123 (2005).

This article focuses on the creation and revision of the Model Standards of Conduct for Mediators. Three specific issues concerning the standards include: the prior omission of an honesty or truthfulness standard, issues surrounding the enforcement of ethical codes and standards, and the need to focus on how individuals learn ethical conduct.

{21} MEDIATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{138} ETHICS: GENERAL

Norma Kriger, *Veterans' Pensions in Zimbabwe: Dispute Resolution and Nation-Building*, 20 OHIO ST. J. ON DISP. RESOL. 249 (2005).

This article examines how Zimbabwe's method of resolving conflict affected its prospects for effective nation-building. Rather than resorting to violence, uncompensated Libertarian veterans placed pressure on the emerging political cadres in need of popular support to advocate their claims for reparations. The president of Zimbabwe conceded to the pressure and afforded veterans a huge compensation plan for their war efforts along with an official apology for neglecting the veterans.

{60} ADR—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Frank Z. LaForge, Note, *Inequitable Estoppel: Arbitrating with Nonsignatory Defendants Under Grigson v. Creative Artists*, 84 TEX. L. REV. 225 (2005).

This Note discusses the enforceability of an arbitration clause in a binding agreement. It reviews the Fifth Circuit's decision in *Grigson v. Creative Artists*, in which the court utilized the doctrine of equitable estoppel to sustain a nonsignatory party's motion to compel arbitration. LaForge argues that the use of equitable estoppel to compel signatories to arbitrate with nonsignatories leads to inequitable results and should not be allowed.

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

{73} SUBJ MATTER: GENERAL

{114} 3D PARTY: PRACTICE OF LAW

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

David Landau, *The Two Discourses in Colombian Constitutional Jurisprudence: A New Approach to Modeling Judicial Behavior in Latin America*, 37 GEO. WASH. INT'L L. REV. 687 (2005).

Expansion of global trade has resulted in trade agreements that are gradually eliminating barriers to trade in services. As trade continues to grow, there will be an increasing need for international judicial assistance. Landau contends that the judicial assistance regime should not be interpreted in a manner that would inhibit the speedy and efficient arbitration of international commercial disputes.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

Stephan Landsman, *ADR and the Cost of Compulsion*, 57 STAN. L. REV. 1593 (2005).

This article discusses the idea of compulsion with regard to the use of ADR in private contract settings and court-compelled programs. The author emphasizes the risks involved when ADR is required as opposed to being voluntarily chosen. Compulsion in ADR should ultimately be "abandoned" with intermediate steps to increase the voluntariness of participation in ADR.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

Peter Lantka, *The Use of Alternative Dispute Resolution in the Federal Magistrate Judge's Office: A Glimmering Light Amidst the Haze of Federal Litigation*, 36 UWLA L. REV. 71 (2005).

This article outlines the advantages of using alternative dispute resolution (ADR) at the Federal Magistrate's Office. First, the author discusses the

current state of the federal courts and their use of ADR. Next, the author explains the applicability of ADR to the Federal Magistrate's Office. The author concludes that the Magistrate's Office's use of ADR is an effective way to decrease docket size in the federal courts.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{110} SUBJ MATTER: TORTS—OTHER

{133} COURT REFORMS

Zachary L. LaPrade, Note, *A Call to Arms: Rescuing Universities and Small Businesses from Fully Loaded Patents*, 26 LOY. L.A. ENT. L. REV. 41 (2005).

When disruptive patents are introduced, even if otherwise valid, they should not be allowed to interfere with the primary purposes of patent law. The controversy surrounding Acacia Media Technologies' current patent licensing strategy involves the implications of enforcing Acacia's patents against universities and small businesses. Mandatory mediation is a preferred alternative to litigation for resolving such patent disputes.

{21} MEDIATION—GENERAL

{105} SUBJ MATTER: SCIENCE & TECHNOLOGY

{102} SUBJ MATTER: PUBLIC POLICY

{127} REQUIREMENTS: MANDATE TO USE

Alain J. Lapter, *The WTO's Dispute Resolution Mechanism: Does the United States Take it Seriously?*, 4 CHI.-KENT J. INTELL. PROP. 217 (2005).

This article examines the effects of the World Trade Organization's (WTO) dispute resolution system on United States' intellectual property legislation after passage of the Fairness in Music Licensing Act (FMLA). After analyzing the FMLA and the development of dispute resolution processes for intellectual property within the WTO, Lapter is cautiously optimistic that the U.S. will continue to work with WTO signatories and within the WTO's dispute resolution framework.

{53} COLLABORATIVE LAW—GENERAL

{92} SUBJ MATTER: INT'L

Dianne LaRocca, *The Bench Trial: A More Beneficial Alternative to Arbitration of Title VII Claims*, 80 CHI.-KENT. L. REV. 933 (2005).

This article argues that jury waiver provisions in pre-dispute mandatory arbitration agreements offer a solution to unenforceable arbitration agreements. The author analyzes the string of federal cases that followed the Supreme Court's decision in *Circuit City Stores, Inc.* to determine whether a

bench trial is a better alternative to protect an employee's procedural and substantive rights under Title VII.

{44} ARBITRATION—GENERAL

{76} SUBJ MATTER: CIVIL RIGHTS

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Marty Latz, *The Five Golden Rules of Negotiation for Lawyers*, 31 VER. B.J. & L. DIG., Spring, at 44 (2005).

Latz sets out five rules that attorneys should follow in order to avoid making common mistakes in negotiations. Following the five rules increases an attorney's ability to get what he or she and the client wants. The five golden rules stipulate a strategic negotiator will get information, maximize leverage, employ fair and objective criteria, design an offer-concession strategy, and control the agenda.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Jeffrey J. Lauderdale, *A New Trend in the Law of Privilege: The Federal Settlement Privilege and the Proper Use of Federal Rule of Evidence 501 for the Recognition of New Privileges*, 35 U. MEM. L. REV. 255 (2005).

This article concerns the newly recognized "settlement privilege," which is a privilege between adverse parties for communications made at the bargaining table while attempting to settle a dispute. The author discusses the history behind the settlement privilege's recent emergence in the Sixth Circuit, its relation to the legislative history of Federal Rule of Evidence 501, as well as the proper use of the settlement privilege in court.

{38} NON-BINDING RECOMMENDATION PROC—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

{133} COURT REFORMS

Robert M. Lawless, *Bankruptcy Filing Rates After a Major Hurricane*, 6 NEV. L.J. 7 (2005).

Lawless argues that Congress should make the victims of recent hurricanes and natural disasters exempt from legislation that makes it more challenging for individuals to obtain bankruptcy protection. The author, using the farm crisis of the 1980s as a model, suggests that debtors and creditors should be required to mediate and attempt to identify a mutually acceptable repayment plan before going to bankruptcy court.

{21} MEDIATION—GENERAL

{74.5} SUBJ MATTER: BANKRUPTCY

{79} SUBJ MATTER: CONSUMER
 {134} DISPUTE PREVENTION

Aaron Lay, Comment, *Sign Here: Arbitration Clauses in Employment Contracts*, 7 *TRANSACTIONS* 197 (2005).

The article discusses the issue of arbitration clauses in employment contracts in the context of *Cooper v. MRM, Inv. Co.* In *Cooper*, the Sixth Circuit Court of Appeals upheld an arbitration clause by considering five issues: whether it was a contract of adhesion, whether it was unconscionable, whether it lacked sufficient bilateralism, whether there was a threat of invalidity due to lack of express waiver of the right to jury, and whether arbitration would be prohibitively expensive. *Cooper* stands for the acceptance of arbitration as a legitimate tool for resolving employment conflicts. *Cooper* advises that arbitration agreements should contain a severability clause.

{44} ARBITRATION—GENERAL
 {93} SUBJ MATTER: LABOR—GENERAL
 {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Andrew Leaser, Note, *See Spot Mediate: Utilizing the Emotional and Psychological Benefits of “Dog Therapy” in Victim-Offender Mediation*, 20 *OHIO ST. J. ON DISP. RESOL.* 943 (2005).

Leaser contends that mediators should consider using dogs in victim-offender mediation. Highlighting the conciliatory nature of dogs, Leaser discusses how a mediator can capitalize on the therapeutic dynamic to create a better final outcome and an environment encouraging discussion and resolution for both parties in victim-offender mediation. Leaser concludes by explaining the importance of, and necessary training for, “mediator-handlers.”

{21} MEDIATION—GENERAL
 {82} SUBJ MATTER: CRIMINAL

Ilhyung Lee, *In re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum*, 20 *OHIO ST. J. ON DISP. RESOL.* 375 (2005).

This article describes the inadequate attention law schools give to cross-cultural negotiations. This reality is surprising, especially after the clash of culture became apparent post-9/11 and given the increasingly international character of modern legal practice. Culture is an important aspect of dispute resolution, and if law schools pay more attention to the area, the study of cross-cultural negotiations will bring new and fruitful scholarship to the dispute resolution field.

{60} ADR—GENERAL
 {92} SUBJ MATTER: INT’L
 {124} COMPARISONS: CROSS-CULTURAL

Mark A. Lemley & R. Anthony Reese, *A Quick and Inexpensive System for Resolving Peer-to-Peer Copyright Disputes*, 23 CARDOZO ARTS & ENT. L.J. 1 (2005).

Copyright owners' initial response to peer-to-peer file sharing—trying to shut down the technologies that facilitate file sharing—is bad for society. It would be preferable to lower enforcement costs for copyright owners by making dispute resolution quick and cheap. The Uniform Dispute Resolution Policy (UDRP) provides a model for Internet domain name trademark disputes. The UDRP also provides an alternative dispute resolution system for trademark owners' disputes with infringers.

{44} ARBITRATION—GENERAL

{78} SUBJ MATTER: COMPUTER—INTERNET

{133} COURT REFORMS

{136} ECONOMIC ADVANTAGES OF ADR

Michael H LeRoy, *Getting Nothing for Something: When Women Prevail in Employment Arbitration Awards*, 16 STAN. L. & POL'Y REV. 573 (2005).

This article discusses the inequality women face in employment. It focuses on the potential difficulties women face in employment arbitration. These difficulties may be based upon arbitrator bias or inability, or other cost barriers to effective arbitration for women. LeRoy emphasizes the importance of obtaining a neutral arbitrator, who is knowledgeable about these particular employment issues, to hear a women's sex discrimination claim.

{44} ARBITRATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

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

Michael H. LeRoy, *Jury Revival or Jury Reviled? When Employees are Compelled to Waive Jury Trials*, 7 U. PA. J. LAB. & EMP. L. 767 (2005).

Though firms currently embrace arbitration to lower dispute costs, the trend is beginning to change as employers question its value. Remarkably, some employers are discarding arbitration to return to court, but with a condition: employees must waive access to a jury and agree to a bench trial. Yet, when employers use the same contractual method merely to substitute jury waiver in place of arbitration, courts obstruct their path by bolstering employee discrimination laws.

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

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Christopher R. Leslie, *The Need to Study Coupon Settlements in Class Action Litigation*, 18 GEO. J. LEGAL ETHICS 1395 (2005).

The author discusses the problems related to coupon settlements of class action lawsuits, including issues related to redemption rates. Leslie proposes that the FTC should take action to study, evaluate, and challenge the coupon settlements that are least likely to compensate class members or disgorge defendants of their unjust enrichments.

{60} ADR—GENERAL

{79} SUBJ MATTER: CONSUMER

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{149} QUALITY CONTROL

Brandon J. Lester, Note, *System Failure: The Case for Supplanting Negotiation with Mediation in Plea Bargaining*, 20 OHIO ST. J. ON DISP. RESOL. 563 (2005).

This Note examines the arguments for replacing the traditional plea bargaining system with plea mediations. The author concludes that mediation can return a sense of fairness to the sentencing system without compromising the benefits offered in the current system of plea negotiations.

{1} NEGOTIATION—GENERAL

{21} MEDIATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{133} COURT REFORMS

Michael A. Lindstadt, Note, *Employing Mediation to Approach Truants*, 43 FAM. CT. REV 303 (2005).

This Note focuses on the issue of truancy, its effects on children, and its effect on the state. The author describes societal attempts to combat truancy and explains why juvenile courts are inadequate to address the issue of truancy. Mediation is an alternative to a punishment-oriented approach to truancy and it provides multiple benefits to truants and their families.

{21} MEDIATION—GENERAL

{83} SUBJ MATTER: EDUCATION

{136} ECONOMIC ADVANTAGES OF ADR

Sara Lingafelter, Comment, *Lack of Meaningful Choice Defined: Your Job vs. Your Right to Sue in a Judicial Forum*, 28 SEATTLE U. L. REV. 803 (2005).

This Comment outlines the current controversy over mandatory arbitration clauses, including the defenses available under state law, such as the doctrine of unconscionability. The author argues that mandatory arbitration agreements leave employees with no meaningful choice, and that courts have

exacerbated the situation by misinterpreting the congressional intent behind legislation designed to remedy the problem.

- {44} ARBITRATION—GENERAL
- {93} SUBJ MATTER: LABOR—GENERAL
- {94} SUBJ MATTER: LABOR—DISCRIMINATION
- {144} LEGISLATION

Joshua S. Lipshutz, *The Court's Implicit Roadmap: Charting the Prudent Course at the Juncture of Mandatory Arbitration Agreements and Class Action Lawsuits*, 57 STAN. L. REV. 1677 (2005).

This article explains the recent increase in mandatory arbitration agreements, discussing specifically the “changing of the tide” when the Supreme Court began to view these agreements as “favorable.” This change relates to agreements between consumers and companies. Lipshutz also explores the applicability of these mandatory arbitration agreements to class action suits.

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

Robert M. Lloyd, *Pennzoil v. Texaco, Twenty Years After: Lessons for Business Lawyers*, 6 TRANSACTIONS 321 (2005).

This article provides a brief description of the corporate transaction that gave rise to the *Pennzoil v. Texaco* lawsuit. The *Pennzoil* case offers several lessons for business lawyers. One important lesson is that business lawyers should consider whether arbitration clauses will benefit clients when drafting contracts.

- {44} ARBITRATION—GENERAL
- {81} SUBJ MATTER: CORPORATE
- {126} REQUIREMENTS: CONTRACTUAL CLAUSES

Arno R. Lodder & John Zeleznikow, *Developing an Online Dispute Resolution Environment: Dialogue Tools and Negotiation Support Systems in a Three-Step Model*, 10 HARV. NEGOT. L. REV. 287 (2005).

Many researchers have become interested in the potential for online dispute resolution. After outlining the background of online dispute resolution and ADR, the authors discuss their model for online negotiation, and consider the potential problems and drawbacks of online dispute resolution.

- {1} NEGOTIATION—GENERAL
- {78} SUBJ MATTER: COMPUTER—INTERNET
- {93} SUBJ MATTER: LABOR—GENERAL
- {149} QUALITY CONTROL

Daniel A. Losk, Note, *After Intel: Reconciling Policy Considerations and a Proposed Framework to Extend Judicial Assistance to International Arbitral Tribunals*, 27 CARDOZO L. REV. 1035 (2005).

Parties engaged in international commercial transactions increasingly prefer arbitration as a method of dispute resolution. International arbitral tribunals occasionally require judicial assistance from federal courts to compel discovery. Providing judicial aid to international arbitral tribunals in the context of discovery requests would likely add to the speed, fairness, and reliability that make arbitration appealing, while aligning with the robust federal policy in favor of arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{133} COURT REFORMS

Lela P. Love & John W. Cooley, *The Intersection of Evaluation by Mediators and Informed Consent: Warning the Unwary*, 21 OHIO ST. J. ON DISP. RESOL. 45 (2005).

This article outlines what mediators should tell parties before providing an opinion on the merits of a legal question, as well as how mediators should obtain informed consent prior to assuming an evaluative or decisional role.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{147} POWER IMBALANCE

Cynthia R. Mabry, *Disappearing Acts: Encouraging Fathers to Reappear for Their Children*, 7 J. L. FAM. STUD. 111 (2005).

Mediation is one of several ways in which frequent contact between fathers and their children can be arranged. Mediation also facilitates communication between parents by reducing existing hostility while allowing parents to develop more creative ways to resolve their disputes. Additionally, fathers' parenting education and training should begin in mediation.

{21} MEDIATION—GENERAL

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

{134} DISPUTE PREVENTION

Martin H. Malin & Jeanne M. Vohnhof, *The Evolving Role of the Labor Arbitrator*, 21 OHIO ST. J. ON DISP. RESOL. 199 (2005).

The authors explore the evolving role of the labor arbitrator with respect to the parties' expectations and public law. Issues include: the traditional role of the arbitrator as an instrument of the parties' system of workplace self-government, the expansion of public regulation of the workplace, and potential conflicts between the arbitrator's accountability to the parties'

expectations and the arbitrator's evolving role as adjudicator of employees' public law claims.

{44} ARBITRATION—GENERAL

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

{149} QUALITY CONTROL

Fabrizio Marrella, *Unity and Diversity in International Arbitration: The Case of Maritime Arbitration*, 20 AM. U. INT'L L. REV. 1055 (2005).

The author analyzes the appropriateness of characterizing the independent field of maritime arbitration within the general category of international commercial arbitration. In making this determination, the author illustrates the diverse sources of arbitration law relating to maritime matters to show maritime arbitrations' expansive reach. One possible way to individualize this sector is to create an International Court on Maritime Arbitration within the International Maritime Organization to resolve transnational maritime issues.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{97} SUBJ MATTER: MARITIME

{146} ORGANIZATION POLICIES & RULES

Kara Marshall, *Recent Development, EEOC v. Luce, Forward, Hamilton, & Scripps*, 20 OHIO ST. J. ON DISP. RESOL. 611 (2005).

To explore the ramifications of the holding in *EEOC v. Luce, Forward, Hamilton, & Scripps* as it relates to arbitration, Marshall begins with a discussion of the factual background, procedural history, and reasoning of the case. Next, Marshall examines the underlying purpose of the decision to express the court's support of arbitration as a viable option to litigation for employers.

{44} ARBITRATION—GENERAL

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

{133} COURT REFORMS

Jason R. Marshall, *Fired in the NBA! Terminating Vin Baker's Contract: A Case-Study in Collective Bargaining, Guaranteed Contracts, Arbitration, and Disability Claims in the NBA*, 12 SPORTS L. J. 1 (2005).

This article begins with a discussion about a grievance arbitration hearing involving guaranteed contracts in the National Basketball Association. Marshall explains the importance of alternative dispute resolution with regard to collective bargaining agreements. For example, arbitrators are often used to interpret ambiguous language in collective bargaining agreements.

Marshall also discusses the relationship between individual contracts and collective bargaining.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 CLINICAL L. REV. 271 (2005).

For parents of children with special needs, getting an early diagnosis and obtaining placement in special education is difficult, especially if the proper resources are not available in the community. Among the changes that have taken place in the area of special education, law students in clinical programs are now using alternative dispute resolution processes to help parents advocate for their children.

{60} ADR—GENERAL

{83} SUBJ MATTER: EDUCATION

{144} LEGISLATION

{155} TEACHING

Joseph M. Matthews, *Consumer Arbitration: Is It Working Now and Will It Work in the Future?*, 79 FLA. B.J., April, at 22 (2005).

This article outlines consumer arbitration in detail, focusing on its economics, protocol, fairness, and class arbitration. The author provides a brief history of consumer arbitration, and then explains its rising costs. The author encourages consumer arbitration, especially in the class context, and maintains that if “competent, conscientious, and impartial arbitrators” are used, the process will remain viable.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{136} ECONOMIC ADVANTAGES OF ADR

Michele Mattsson & Kent B. Scott, *Maneuvering Through Mediation: The Tricks, Twists and Turns of Finding Untracked Powder—Resolution*, 18 UTAH B. J., Sept./Oct., at 30 (2005).

This article provides a roadmap for reaching settlement in the mediation process. It acknowledges that there are a number of ways to reach settlement, but outlines six steps that will most likely lead to settlement. Specifically, it asserts that in working to reach settlement, an attorney should prepare the client, prepare the mediator, and prepare a strategy for the mediation beforehand.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL
{151} ROLE OF LAWYERS

Richard H. McAdams, *The Expressive Power of Adjudication*, 2005 U. ILL. L. REV. 1043 (2005).

To provide a better understanding of legal compliance, the author offers that adjudicative expression can help explain instances of sanctionless but effective adjudication in the courts and with regard to ADR. The author also describes a theory of “expressive dispute resolution” and suggests that it may reveal a fundamental trade-off between dispute resolution and dispute avoidance.

{60} ADR—GENERAL
{73} SUBJ MATTER: GENERAL
{133} COURT REFORMS

E. Patrick McDermott & Danny Ervin, *The Influence of Procedural and Distributive Variables on Settlement Rates in Employment Discrimination Mediation*, 2005 J. DISP. RESOL. 45 (2005).

This study examines factors that contribute to successful outcomes in employment discrimination mediations. The authors conducted a survey that measured the satisfaction of the parties who participated in the Equal Employment Opportunity Commission’s mediation process. The authors attempt to determine whether certain procedural and distributive factors are significant predictors of case resolution, and whether other factors, such as party representation in mediation, correlate with the resolution of disputes.

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

Lucy S. McGough, *Protecting Children in Divorce: Lessons from Caroline Norton*, 57 ME. L. REV. 13 (2005).

The author asserts that Caroline Norton, an Englishwoman who lobbied Parliament for child custody reforms, would be leading the movement away from litigation. After examining reforms such as collaborative practice and mediation, the author suggests that the most important systemic change is to redefine the “public goal” to optimize the possibilities that both parents can remain engaged in a relationship with the child.

{60} ADR—GENERAL
{85} SUBJ MATTER: FAMILY (DOMESTIC REL.)
{127} REQUIREMENTS: MANDATE TO USE
{133} COURT REFORMS

Michael G. McGuinness & Adam J. Karr, *California's "Unique" Approach to Arbitration: Why this Road Less Traveled will Make all the Difference on the Issue of Preemption Under the Federal Arbitration Act*, 2005 J. DISP. RESOL. 61 (2005).

This article examines California's and the Ninth Circuit's application of unconscionability in an arbitration setting. The authors argue that this application is "unique and hostile to arbitration" and, thus, preempted by the Federal Arbitration Act. The article discusses decisions related to arbitration, focusing on the courts' application of the unconscionability doctrine and its affect on dispute resolution, particularly on arbitration.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{144} LEGISLATION

Jason A. McNeil, Note, *The Implications of EEOC v. Waffle House: Do Settlement and Waiver Agreements Affect the EEOC's Right to Seek and Obtain Victim-Specific Relief?*, 38 IND. L. REV. 761 (2005).

This Note examines the Supreme Court's decision in *EEOC v. Waffle House, Inc.*, which held that the Equal Employment Opportunity Commission could seek victim-specific relief on behalf of an individual, even when that individual had previously signed a mandatory arbitration agreement. The authors attempt to answer the question of whether this case allows the EEOC to recover victim-specific relief, including back pay and compensatory and punitive damages, on behalf of an employee who has settled or signed a waiver agreement with his or her employer. This Note explains why the Court's holding in *Waffle House* extends to situations where an employee has previously settled or waived his or her claim.

{44} ARBITRATION—GENERAL

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Robyn L. Meadows, *Elder Law: Unconscionability as a Contract Policing Device for the Elder Client: How Useful is It?*, 38 AKRON L. REV. 741 (2005).

This Article questions the effectiveness of the U.C.C. doctrine of unconscionability in elder cases. Meadows uses court enforcement of arbitration clauses as a primary example of a contract provision that seems to be failing the elderly.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

Lisa M. Mezzetti & Whitney R. Case, *The Coupon Can be the Ticket: The Use of "Coupon" and Other Non-Monetary Redress in Class Action Settlements*, 18 GEO. J. LEGAL ETHICS 1431 (2005).

In their discussion of coupon settlements in class action lawsuits, Mezzetti and Case find that some coupons may be better than others, but generally find value in this type of settlement. Finding value for class members, practitioners, and courts in this type of dispute resolution, the authors submit that all coupon settlements should not be discounted as a means of redress. The authors propose a minimum settlement pay-out in coupon settlements where it is necessary to avoid conflict or concerns about valuation of the settlement.

{60} ADR—GENERAL

{79} SUBJ MATTER: CONSUMER

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Matthew C. Mickelson, *Enforcement of Binding Arbitration Provisions in Retainers*, 28 L.A. LAW., June, at 12 (2005).

This practice tip discusses the typical binding arbitration provision found in retainer agreements for lawyer representation. The Mandatory Fee Arbitration Act and California Arbitration Act further complicate this issue. Because courts have failed to clarify how these Acts coincide, confusion over the enforceability of binding arbitration provisions in attorney-client retainer agreements persists.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

B. Tyler Milton, Comment, *The "Unable to Agree" Requirement and Texas Condemnation Law: A Critical Analysis of Hubenak v. San Jacinto Gas Transmission Co.*, 37 ST. MARY'S L.J. 569 (2006).

This article addresses a Texas court's interpretation of the "unable to agree" requirement in a condemnation statute. Specifically, the court interpreted the statute to compel "good faith negotiations" between the condemner and the landowner. This requirement furthers the statutory purpose of encouraging negotiations.

{1} NEGOTIATION—GENERAL

{101} SUBJ MATTER: PROBATE

{128} REQUIREMENTS: STATUTORY OR RULES

Max Minzner, *Treating Tribes Differently: Civil Jurisdiction Inside and Outside Indian Country*, 6 NEV. L.J. 89 (2005).

The author analyzes why Native American tribes are treated differently from states, but are indistinguishable under the existing jurisdictional framework established by the Supreme Court despite wide-ranging differences between tribes. The article features discussion of dispute resolution mechanisms employed by the various Native American tribes, including some that resemble mediation.

{60} ADR—GENERAL

{77} SUBJ MATTER: COMMUNITY

{124} COMPARISONS: CROSS-CULTURAL

Michael D. Moberly, *Immunizing Arbitrators from Claims for Equitable Relief*, 5 PEPP. DISP. RESOL. L.J. 325 (2005).

This article focuses on the need for arbitrator immunity from claims for equitable relief. The author explains the similarities between judicial and arbitral processes. After summarizing the origins of the judicial and arbitral immunity doctrines, the author discusses situations in which courts refused to extend judicial immunity.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Michael L. Moffitt, *Schmediation and the Dimension of Definition*, 10 HARV. NEGOT. L. REV. 69 (2005).

The author analyzes the way mediation and mediation practices are defined by scholars and practitioners. Today, mediation is composed of many different practices and activities that are labeled in a variety of ways. The author focuses on different types of definitions associated with mediation, and explains the instances in which competing definitions are given to a mediation practice.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

Michael Moffitt, *Pleadings in the Age of Settlement*, 80 IND. L.J. 727 (2005).

An examination of the theories underlying modern pleadings and dispute resolution literature reveals that there is a fundamental disconnect between what is required by a pleading and what negotiation theory suggests is helpful at the outset of a dispute. The author, while surveying the current functions of pleadings and modern negotiations, suggests a revision to the pleading rule, adding a pre-pleading conference, in order to bring modern pleading and dispute resolution principles closer together.

{1} NEGOTIATION—GENERAL
 {73} SUBJ MATTER: GENERAL
 {144} LEGISLATION

Andrew P. Morriss et al., *Choosing How to Regulate*, 29 HARV. ENVTL. L. REV. 179 (2005).

This article discusses the trend of administrative agencies in the United States creating new regulations through negotiated rulemaking instead of the traditional avenue of issuing written regulations that inform entities how to conduct their businesses. The authors illustrate this concept through a case study of the EPA's regulation of heavy-duty diesel engines over the past thirty years.

{1} NEGOTIATION—GENERAL
 {87} SUBJ MATTER: GOV'T
 {104} SUBJ MATTER: REGULATORY
 {146} ORGANIZATION POLICIES & RULES

Daniel J. Morrissey, *After the Ball Is Over: Investor Remedies in the Wake of the Dot-Com Crash and Recent Corporate Scandals*, 83 NEB. L. REV. 732 (2005).

Morrissey analyzes the possibilities for investors to secure relief for their losses in the wake of the dot-com collapses and corporate fraud scandals of the last ten years. The author argues that arbitration of securities disputes can be advantageous for investors because of its inexpensiveness compared to litigation, the informal setting, its subsidization by the securities industry, and its ability to speedily resolve a dispute.

{44} ARBITRATION—GENERAL
 {79} SUBJ MATTER: CONSUMER
 {106} SUBJ MATTER: SECURITIES
 {136} ECONOMIC ADVANTAGES OF ADR

Margaret L. Moses, *Privatized "Justice"*, 36 LOY. U. CHI. L.J. 535 (2005).

The author argues that the Supreme Court's interpretation of the Federal Arbitration Act (FAA) has undermined consumer protection and ignored the intent of the FAA. The author recommends that state laws must ensure that parties give their willing and knowing consent to waive a jury trial before it permits enforcement of an arbitration clause. The author then provides several other legislative reforms such as legislation to restrict the application of the FAA to federal courts.

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Ziyad Motala, *The Use of the Truth Commission in South Africa as an Alternative Dispute Resolution Mechanism Versus the International Law Obligations*, 45 SANTA CLARA L. REV. 913 (2005).

The Truth and Reconciliation Commission (TRC), created pursuant to the South African Constitution, has been touted as an alternative model for the resolution of past conflict in a society marked by deep divisions, conflict, and human rights violations. In this article, the author argues that the TRC does not constitute an adequate mechanism under principles of international law for addressing these serious human rights violations.

{44} ARBITRATION—GENERAL

{82} SUBJ MATTER: CRIMINAL

{92} SUBJ MATTER: INT'L

Eric F. Mulch, Note, *Choice of Law in Two-Part Harmony: The Fifth Circuit Interprets Conflicting Choice of Law Clauses in Foster Wheeler Energy Corp. v. An Ning Jiang MV*, 29 TUL. MAR. L.J. 461 (2005).

Within the context of the case of *Foster Wheeler Energy Corp. v. An Ning Jiang MV*, this article discusses the various U.S. courts' treatment of recognizing the enforceability of foreign arbitration clauses and arbitration forum clauses. The article argues that the current pattern is to give presumptive enforceability to such foreign clauses.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

James A.R. Nafziger, *Circumstantial Evidence of Doping: BALCO and Beyond*, 16 MARQ. SPORTS L. REV. 45 (2005).

The author discusses how the World Anti-Doping Code has provided a set of rules and processes to harmonize and enforce a global problem. He notes that with a new "specter" of undetectable or difficult-to-see doping agents, highlighted by the BALCO controversy, it will make it hard for the "legal imagination" to keep up with scientific ingenuity.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{145} OMBUDSPERSON

George A. Nation III, *Obscene Contracts: The Doctrine of Unconscionability and Hospital Billing of the Uninsured*, 94 KY. L.J. 101 (2005).

This article argues that admission agreements between hospitals and patients, where patients agree to pay the hospital's "full charge" for necessary medical

services, are unenforceable as unconscionable. It discusses arbitration clauses that patients face upon entering a hospital, giving an overview of the unconscionability doctrine, providing background on hospital billing practices, discussing case law regarding hospital admission contracts, and applies unconscionability to hospital admission agreements.

{44} ARBITRATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{147} POWER IMBALANCE

Daniel Nelson, Comment, *Medical Dispute Resolution Amendments*, 2005 UTAH L. REV. 387 (2005).

This comment describes recent legislation passed by the state of Utah preventing health care providers from denying care to patients who refuse to sign a binding arbitration agreement. Senate Bill 245 makes arbitration voluntary for patients and changes the process for selecting arbitrators to favor patients. The author also discusses the potential for the legislation to be ineffective because health care providers can hide the arbitration agreement within the patient consent form.

{44} ARBITRATION—GENERAL

{89} SUBJ MATTER: HOSPITALS

{128} REQUIREMENTS: STATUTORY OR RULES

{144} LEGISLATION

Bert Niemeijer & Machteld Pel, *Court-Based Mediation in the Netherlands: Research, Evaluation and Future Expectations*, 110 PENN ST. L. REV. 345 (2005).

The first portion of this article focuses on the methods used to refer cases to mediation and the mediator's method of evaluation. Additionally, the authors discuss issues concerning the mediation policy in the Netherlands and the role of lawyers. The article concludes with an overview of the current state of affairs in the Netherlands.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{125} COMPARISONS: HISTORICAL

Barry Nobel, *Meditation and Mediation*, 43 FAM. CT. REV 295 (2005).

This article describes meditation generally, draws theoretical connections between meditation and mediation, and concludes by offering practical suggestions for integrating the two endeavors to increase a mediator's impartiality, humility, and compassion.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

Alexia Norris, Note, *When "Contracting Around" the Law Will not Work: The Potential Inability to Expressly Prohibit Punitive Damages in Arbitration*, 2005 J. DISP. RESOL. 147 (2005).

This Note examines whether punitive damages should be allowed to be awarded in an arbitration where an agreement did not expressly prohibit such damages. The author discusses the continued confusion over how to limit the application of choice-of-law provisions in arbitration agreements, and explains the policy argument that, even if parties can put limitations on liability, perhaps such limitations are not fair when tortious and grievous acts have been committed.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Susan Oberman, *Mediation Theory vs. Practice: What Are We Really Doing? Resolving a Professional Conundrum*, 20 OHIO ST. J. ON DISP. RESOL. 775 (2005).

In this article, Oberman argues that mediators have an obligation to present clients with a clear picture of the mediation process. Oberman argues that better defined models of mediation will clarify the purpose, goal, and ethics of the mediation process for both mediators and clients. Further, she argues that more transparency in the process will give clients more self-determination and create a better process for all involved.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{151} ROLE OF LAWYERS

Maurice Oduor, *Resolving Trade Disputes in Africa: Choosing Between Multilateralism and Regionalism: The Case of COMESA and the WTO*, 13 TUL. J. INT'L. & COMP. L. 177 (2005).

This article compares the trade dispute resolution regime in various parts of Africa to the trade dispute resolution regime at the international level. In particular, the article compares the Common Market for Eastern and Southern Africa's (COMESA) system for trade dispute resolution to the system employed by the World Trade Organization (WTO). Member states are able to choose which system they want to evoke, and this article focuses on the factors that contribute to each country's decision.

{60} ADR—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{124} COMPARISONS: CROSS-CULTURAL

{146} ORGANIZATION POLICIES & RULES

State Bar of Texas, *In the Supreme Court of Texas: Approval of Ethical Guidelines for Mediators*, 68 TEX. B.J., Oct., at 856 (2005).

This article briefly discusses the need for ethical guidelines for mediators in Texas. After looking at the history of the guidelines, the article then presents the newly approved guidelines for the reader.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{138} ETHICS: GENERAL

John B. O’Keefe, Note, *Preserving Collective-Action Rights in Employment Arbitration*, 91 VA. L. REV. 823 (2005).

This Note argues that an arbitration contract’s prohibition of employee class actions alone is insufficient to show an unfair labor practice when other avenues for effectuating Section 7 rights remain available. A promising solution is for employers to implement “open arbitration.” This involves employers adopting arbitration procedures that provide for public disclosure of outcomes and the right to present prior awards as persuasive precedent.

{44} ARBITRATION—GENERAL

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

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{134} DISPUTE PREVENTION

Nathan D. O’Malley & Shawn C. Conway, *Document Discovery in International Arbitration—Getting the Documents You Need*, 18 TRANSNAT’L LAW. 371 (2005).

International arbitration is the preferred method of dispute resolution for international commercial disputes. However, unlike arbitration practices in the United States, international arbitration does not provide for discovery on a level comparable to the standard in United States legal practice. This article discusses the various methods for compelling document disclosure in connection with international arbitration. The article also discusses various nations’ arbitration laws and practices. It recommends that to set forth discovery standards and rules, parties should agree to, or tribunals should adopt, the IBA Rules of Evidence.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT’L

{124} COMPARISONS: CROSS-CULTURAL

{151} ROLE OF LAWYERS

Rebecca M. Owen, Note, *In re Uncertainty: A Uniform and Confidential Treatment of Evidentiary and Advocacy Materials Used in Mediation*, 20 OHIO ST. J. ON DISP. RESOL. 911 (2005).

Recognizing the gaps in current mediation confidentiality procedures, Owen urges the adoption of Sections 4 and 5 of the UMA by state and federal governments, and also suggests that courts consider certain uniform factors in determining the confidentiality of advocatory materials and evidence that are not governed by the UMA. Owen discusses the purposes of protecting this material and the vastly different approaches to mediation confidentiality of state and federal courts.

{21} MEDIATION—GENERAL
 {104} SUBJ MATTER: REGULATORY
 {132} CONFIDENTIALITY
 {133} COURT REFORMS

Carl Oxholm III, *A Whole New Ball Game: A Report on Drexel University College of Medicine's First Year of Experience with Medical Malpractice Mediation*, 27 PA. LAW. 24 (2005).

This article discusses a new medical malpractice mediation program instituted at Drexel University. The author suggests that lawyers have a very different role in mediation than in the courtroom and that over more time this role will become more natural.

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

Mario J.A. Oyarzabal, *Jurisdiction Over International Electronic Contracts: A View on Inter-American, Mercosur, and Argentine Rules*, 19 TEMP. INT'L & COMP. L.J. 87 (2005).

This article examines the compatibility of the Internet and cyberspace with international law and the various methods of dispute resolution available. It focuses particularly on arbitration versus judicial courts, determination of jurisdiction, and the future of online arbitration.

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

William W. Park, *Private Disputes and the Public Good: Explaining Arbitration Law*, 20 AM. U. INT'L L. REV. 903 (2005).

This article describes two main considerations of international economic arbitration. The “micro” aspect refers to what procedures will be used in ensuring a fair proceeding for the parties. Additionally, the “macro” issue examines the social consequences of displacing litigation from the national arena and into the private sector before arbitrators. These two issues present a

constant tension between creating a reliable dispute resolution system and safeguarding the community interests.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{146} ORGANIZATION POLICIES & RULES

Austen L. Parrish, *Trail Smelter Déjà Vu: Extraterritoriality, International Environmental Law, and the Search for Solutions to Canadian-U.S. Transboundary Water Pollution Disputes*, 85 B.U. L. REV. 363 (2005).

This article examines the problem of transboundary pollution between the United States and Canada. It discusses the Trail Smelter Arbitration, a landmark decision in international environmental law, and the current Trail Smelter dispute. This article concludes that the use of international arbitration provides an effective, and too often overlooked, way to resolve transboundary water pollution issues.

{44} ARBITRATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{92} SUBJ MATTER: INT'L

Jessica Pearson et al., *A New Look at an Old Issue: An Evaluation of the State Access and Visitation Grant Program*, 43 FAM. CT. REV. 372 (2005).

This article examines the results of federal and state child support agencies that allocated funds in an attempt to improve compliance with child access provisions of court orders. Congressional appropriations funded a series of projects that offered parents mediation, education, and counseling. The study indicated that contact between non-custodial parents and children increased by one-third to one-half following participation in the program.

{44} ARBITRATION—GENERAL

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

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Richard A. Posner, *The Law and Economics of Contract Interpretation*, 83 TEX. L. REV. 1581 (2005).

This paper discusses the usefulness of arbitration to solve contract interpretation disputes. The author offers several suggestions as to why including an arbitration clause in a contract may be beneficial for both parties, including privacy, the reliability of arbitrators, and mistrust of jurors as contract interpreters.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

Heather Rushing Potter, Comment, *Confidentiality in Mediation and the Duty to Report Child Abuse*, 29 J. LEGAL PROF. 269 (2004).

This comment examines the circumstance in which a mediator is required to report child abuse that she learns about during mediation. It analyzes reporting laws, the duty of confidentiality, and mediation as the practice of law. To resolve the dilemma between reporting child abuse and maintaining confidentiality, the comment recommends adopting the Uniform Mediation Act or as an alternative, for the ABA to provide guiding opinions. It then suggests several ways in which lawyer-mediators can protect themselves from liability.

{21} MEDIATION—GENERAL

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

{132} CONFIDENTIALITY

Victoria Pynchon, *Shame by Any Other Name: Lessons for Restorative Justice from the Principles, Traditions and Practices of Alcoholics Anonymous*, 5 PEPP. DISP. RESOL. L.J. 299 (2005).

This article addresses current shortcomings in the various approaches to restorative justice or criminal ADR, such as victim-offender mediation programs. The author suggests that a comprehensive understanding of “shame” is vital for the practice of restorative justice to achieve its goals to rehabilitate offenders and heal communities.

{60} ADR—GENERAL

{77} SUBJ MATTER: COMMUNITY

{82} SUBJ MATTER: CRIMINAL

Jennifer M. Ralph, Casenote, *Unconscionable Mediation Clauses: Garrett v. Hooters-Toledo*, 10 HARV. NEGOT. L. REV. 383 (2005).

Garrett v. Hooters-Toledo held that a mediation requirement in an ADR agreement was both substantively and procedurally unconscionable. The agreement was unconscionable because of the unequal bargaining power between the parties, and because the mediation process was excessively favorable to Hooters. This is the first time that a mediation requirement has been invalidated on these grounds. The author discusses the implications of the case.

{21} MEDIATION—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{147} POWER IMBALANCE

Susan Randall, *Mandatory Arbitration in Insurance Disputes: Inverse Preemption of the Federal Arbitration Act*, 11 CONN. INS. L.J. 253 (2005).

This article provides a description of the Federal Arbitration Act (FAA) and explains the concerns raised by application of the FAA in the insurance context. The article goes on to explore how states concerned with the fairness of mandatory arbitration of insurance disputes can override the FAA through the McCarren-Ferguson Act.

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

{91} SUBJ MATTER: INSURANCE

{128} REQUIREMENTS: STATUTORY OR RULES

Jessica Raper, *The Gacaca Experiment: Rwanda's Restorative Dispute Resolution Response to the 1994 Genocide.*, 5 PEPP. DISP. RESOL. L.J. 1 (2005).

The article describes the program adopted by the Rwandan government in the wake of the 1994 genocide, which is based on the Rwandan traditional customary dispute resolution system and provides reconciliation as well as prosecution components. The author sees the process as an important contribution to the ADR field in that it utilizes customary justice processes adapted by the government to address peace and reconciliation issues.

{60} ADR—GENERAL

{77} SUBJ MATTER: COMMUNITY

{124} COMPARISONS: CROSS-CULTURAL

{134} DISPUTE PREVENTION

Alan Scott Rau, *The Culture of American Arbitration and the Lessons of ADR*, 40 TEX. INT'L L.J. 449 (2005).

The article examines some of the characteristics of arbitration in America, specifically its contractual, expansionist, and a-legal nature. These three elements serve to distinguish the American perspective from that of most other legal systems, and they are closely interrelated to the ideology of the ADR movement.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

Mary Ellen Reimund, *The Law and Restorative Justice: Friend or Foe? A Systemic Look at the Legal Issues in Restorative Justice*, 53 DRAKE L. REV. 667 (2005).

This article examines the current and potential roles for restorative justice in the criminal justice system. Specific applications, including mediation, family group conferencing, sentencing circles, and reparative boards, are all studied. The constitutional implications and the role of lawyers in restorative justice programs are also explored.

{60} ADR—GENERAL

{82} SUBJ MATTER: CRIMINAL

Richard C. Reuben, *Democracy and Dispute Resolution: Systems Design and the New Workplace*, 10 HARV. NEGOT. L. REV. 11 (2005).

The author suggests that unilaterally imposed arbitration requirements create limitations on the workers' freedom to choose between court or some other form of dispute resolution to resolve their workplace complaint. The arbitration requirement may diminish workers' social capital and destroy trust between employees and management. Formal and informal management policies that treat workers fairly and equally will promote more egalitarian workplaces.

{44} ARBITRATION—GENERAL

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

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

{127} REQUIREMENTS: MANDATE TO USE

David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 29 TUL. MAR. L.J. 369 (2005).

In the case of *Karim v. Finch Shipping Co.*, the court held that while arbitration provisions are valid and enforceable in any maritime transaction, the Federal Arbitration Act carves an exception for the validity and enforceability of arbitration provisions that do not apply to seaman employment contracts. However, in *Francisco v. Stalt Achievement MT*, the court held that the Convention on Recognition of Foreign Arbitral Awards trumps the Federal Arbitration Act's exclusion of arbitration enforceability in the context of seaman employment contracts.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

Peter Robinson et al., *DyADS: Encouraging "Dynamic Adaptive Dispute Systems" in the Organized Workplace*, 10 HARV. NEGOT. L. REV. 339 (2005).

The author discusses the use of Dynamic Adaptive Dispute Systems (DyADS) in the workplace. Through the use of DyADS, labor and management stakeholders could collaboratively design a dispute system that would evolve with the organization. The goal of DyADS is to encourage better intergroup relationships, more creative problem-solving, and a more efficient and less costly way of settling disputes.

{1} NEGOTIATION—GENERAL

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

{146} ORGANIZATION POLICIES & RULES

Ryan M. Rodenberg & Katie A. Featherston, *ADR and Drug Testing in Professional Tennis: An Effective Doubles Team?*, 16 MARQ. SPORTS L. REV. 31 (2005).

When professional tennis players fail a doping test, every professional association requires the athlete by contract to submit to an arbitration hearing. Illustrated by case studies, the authors cite several advantages to this process, including confidentiality for high-profile individuals, and quicker resolution for a demanding sport.

{44} ARBITRATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{132} CONFIDENTIALITY

Catherine A. Rogers, *The Vocation of the International Arbitrator*, 20 AM. U. INT'L L. REV. 957 (2005).

The author argues that although international arbitrators are among the most legally talented individuals that strive to professionalize the vocation of being an arbitrator, an arbitrator is still not considered an ordinary occupation. In creating professionalism, implementation of greater regulatory regimes is necessary, especially since international arbitrators operate as custodians for a system that is imperative for international trade and is beyond the reach of traditional state regulatory mechanisms.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{128} REQUIREMENTS: STATUTORY OR RULES

James L. Rogers, *Overseas Enforcement of Judgments and Arbitral Awards*, 16 S.C. LAW., Mar., at 22 (2005).

This article compares judgments and arbitral awards granted inside the United States but that must be enforced outside the United States. Rogers argues that when attorneys draft a dispute resolution clause in a contract, they should consider whether the final place the judgment will be enforced recognizes U.S. law. If it does not, Rogers suggests choosing arbitration because it is more widely accepted throughout the world.

{44} ARBITRATION—GENERAL

{81} SUBJ MATTER: CORPORATE

{121} SETTLEMENT: AUTHORITY

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Catherine A. Rogers, *Regulating International Arbitrators: A Functional Approach to Developing Standards of Conduct*, 41 STAN. J. INT'L L. 53 (2005).

This article discusses the difficulty in regulating arbitrators, particularly because of the recent growth in arbitration. The article emphasizes the need for clear standards for arbitrators to follow, specifically focusing on the difficulty in defining arbitrator standards such as “impartial” and “independent.” The “true meaning” of these terms must be considered before progress can be made.

{44} ARBITRATION—GENERAL

{104} SUBJ MATTER: REGULATORY

{149} QUALITY CONTROL

Florida Ruth P. Romero, *Legal Challenges of Globalization*, 15 IND. INT'L & COMP. L. REV. 501 (2005).

During her lecture on the legal challenges of globalization, the author briefly comments on the role of arbitration. In particular, developments in the arbitration of commercial disputes between parties from different jurisdictions and the United Nations Convention on Recognition and Enforcement of Arbitral Awards are discussed.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{136} ECONOMIC ADVANTAGES OF ADR

{138} ETHICS: GENERAL

Richard Roos-Collins, *A Perpetual Experiment to Restore and Manage Silicon Valley's Guadalupe River*, 35 GOLDEN GATE U. L. REV. 291 (2005).

In discussing the collaborative restoration and economic use management program of the Guadalupe River in California, the author discusses the related negotiations and settlements giving rise to the program and their consequences for the Guadalupe watershed and other urban rivers. Roos-Collins specifically discusses how the Santa Clara Valley Water District, the Guadalupe-Coyote Resource Conservation District, and other parties developed a joint scientific record as the basis for their negotiations.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

Brian P. Rosander, Note, *Medical Arbitration in Utah: A Plea for Greater Fairness and Equal Bargaining Positions*, 2005 UTAH L. REV. 969 (2005).

This Note examines and recommends alterations to Utah's medical arbitration system. The author advocates for changes that benefit both patients and health care providers when arbitrating a dispute. Recommended

changes include the prohibition of pre-dispute arbitration agreements, oral and written notice given by the health care provider to patients, patients' right to revoke the arbitration agreements within thirty days, and replacing the three arbitrator panel with one arbitrator.

{44} ARBITRATION—GENERAL

{91} SUBJ MATTER: INSURANCE

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{144} LEGISLATION

Michelle Rosenblatt, *Hidden in the Shadows: The Perilous Use of ADR by the Catholic Church*, 5 PEPP. DISP. RESOL. L.J. 115 (2005).

The article examines the history of, and parties and interests involved in, the Catholic Church sex abuse dispute, the Church's current use of ADR, and factors for a successful mediation. The article concludes that ADR, despite its unique advantages in satisfying some of the parties' interests, fails to truly resolve the problem successfully by shielding the offenders, fostering abuse of imbalance of power, and preventing creation of precedent.

{60} ADR—GENERAL

{77} SUBJ MATTER: COMMUNITY

{147} POWER IMBALANCE

{137} EFFECT OF PROCESS ON NON-PARTICIPATORY PARTIES

Paul H. Rubin, *Micro and Macro Legal Efficiency: Supply and Demand*, 13 S. CT. ECON. REV. 19 (2005).

This article returns to the debate of whether common law is more efficient than statutory law. It surveys recent empirical studies on the efficiency of the legal system. This article suggests that more studies be conducted on the efficiency of arbitration as a private legal system.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{133} COURT REFORMS

{136} ECONOMIC ADVANTAGES OF ADR

Noah Rubins, *The Enforcement and Annulment of International Arbitration Awards in Indonesia*, 20 AM. U. INT'L L. REV. 359 (2005).

The author argues that the Jakarta Central District Court vacating an international commercial arbitration award against an Indonesian oil company violates the spirit and letter of the New York Convention. As a result, predictability and stability in enforcing arbitration awards is harmed while the international reputation of the oil company is damaged. Unless Indonesia reforms its arbitration laws, it will lose to the competition in attracting foreign investments.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{92} SUBJ MATTER: INT'L

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Robert Rubinson, *A Theory of Access to Justice*, 29 J. LEGAL PROF. 89 (2004).

The author begins the article with a autobiography of her experience with resource dispute resolution (RDR). She then examines the inadequacy of RDR allocation and its consequences, especially when involving low-resource disputants. The article explains several proposals, including community lawyering and improving mediation programs, which could break the cycle and prevent low-income disputants from being major victims.

{60} ADR—GENERAL

{73} SUBJ MATTER: GENERAL

{77} SUBJ MATTER: COMMUNITY

Mitchell H. Rubinstein, *Advisory Labor Arbitration Under New York Law: Does It Have a Place in Employment Law?*, 79 ST. JOHN'S L. REV. 419 (2005).

The article summarizes the law surrounding advisory arbitration in New York and aims to assist attorneys and litigants in determining whether advisory arbitration is a feasible form of dispute resolution for their organizations. The author claims that advisory arbitration, due to its lack of finality, serves little purpose in public or private sector labor-management relations. However, advisory arbitration may be suited for non-union private or public sector.

{44} ARBITRATION—GENERAL

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

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

Peter B. Rutledge, *Market Solutions to Market Problems: Re-Examining Arbitral Immunity as a Solution to Unfairness in Securities Arbitration.*, 26 PACE L. REV. 113 (2005).

This article describes common complaints regarding unfairness of the securities arbitration process and offers a model for addressing such complaints. The author argues that arbitrators need to be stripped of their absolute immunity from civil actions for damages resulting from their misconduct or legal errors. It is argued that this measure, as opposed to any regulatory solution, will tap market forces as a more effective way to achieve the desired fairness.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{128} REQUIREMENTS: STATUTORY OR RULES

Erin Ryan, *The Discourse Beneath: Emotional Epistemology in Legal Deliberation and Negotiation*, 10 HARV. NEGOT. L. REV. 231 (2005).

The author explores the relationship between emotion and traditional legal remedies, as well as in alternative dispute resolution. While lawyers are often discouraged from using their emotional knowledge, emotionality is an important part of our culture. An effective negotiator must consult a constant stream of emotional data to keep a negotiation on track.

{1} NEGOTIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{149} QUALITY CONTROL

Celeste W. Sabel, *Appellate Mediation: Comments from the Mediation Office on Confidentiality and Sanctions*, 66 ALA. LAW., Jan., at 424 (2006).

This article explores the Alabama court's new and very successful Appellate Mediation program. The author notes that confidentiality is one of the keys to the success of the program.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{132} CONFIDENTIALITY

Robert S. Safi, Note, *Beyond Unconscionability: Preserving the Class Mechanism Under State Law in the Era of Consumer Arbitration*, 83 TEX. L. REV. 1715 (2005).

The Supreme Court's holding in *Green Tree Financial Corp. v. Bazzle* stated that arbitrators should determine whether a silent or ambiguous agreement permits class arbitration and that arbitrators should decide whether to certify a class for claims that will be arbitrated. This Note looks at the tools available to consumers to overcome the use of arbitration agreements by defendants as a shield from classwide liability.

{44} ARBITRATION—GENERAL

{79} SUBJ MATTER: CONSUMER

Valerie A. Sanchez, *A New Look at ADR in New Deal Labor Law Enforcement: The Emergence of a Dispute Processing Continuum Under the Wagner Act*, 20 OHIO ST. J. ON DISP. RESOL. 621 (2005).

This article takes an in-depth look at the historical aspects of ADR as it relates to labor disputes during the New Deal era. In particular, it suggests a revised outlook about the use of ADR by the National Labor Relations Board in labor law enforcement under the Wagner Act. The article further explores

various approaches that will help individuals avoid the most common and consequential mistakes in such situations.

{60} ADR—GENERAL

{93} SUBJ MATTER: LABOR—GENERAL

{146} ORGANIZATION POLICIES & RULES

Matthew Savare, *Clauses in Conflict: Can an Arbitration Provision Eviscerate a Choice-of-Law Clause?*, 35 SETON HALL L. REV. 597 (2005).

This article investigates the apparent tension created in commercial contracts that provide both a choice-of-law provision and an arbitration clause. The author delineates the practical implications of this contradiction and then offers guidance on how parties and their attorneys can draft arbitration clauses that protect their interests more effectively.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{127} REQUIREMENTS: MANDATE TO USE

Kristin L. Savarese, Note, *Judging the Judges: Dispute Resolution at the Olympic Games*, 30 BROOK. J. INT'L L. 1107 (2005).

This Note looks at the use of arbitration in resolving disputes that arise during the Olympic Games. Specifically, Savarese describes the framework of the unique arbitration scheme utilized by the International Olympic Committee, she examines the appellate process, offers suggestions for improvement and alternatives, and reconciles the arbitration model she posits with the developing area of sports law generally.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{127} REQUIREMENTS: MANDATE TO USE

Suzanne J. Schmitz, *A Critique of the Illinois Circuit Rules Concerning Court-Ordered Mediation*, 36 LOY. U. CHI. L.J. 783 (2005).

The author suggests that all the circuits should adopt the Illinois Uniform Mediation Act (IUMA) in such areas as confidentiality, mediator ethics, de-certification, and training. The article discusses court-ordered mediation in general and then in the context of the circuit rules. In conclusion, the article recommends further education for all parties involved.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{123} SETTLEMENT: PRESSURES TO SETTLE

{133} COURT REFORMS

Amy J. Schmitz, *Mobile-Home Mania? Protecting Procedurally Fair Arbitration in a Consumer Microcosm*, 20 OHIO ST. J. ON DISP. RESOL. 291 (2005).

The author challenges the procedural sufficiency of arbitrations involving mobile home disputes. Arbitration provisions governing disputes over mobile home defects overwhelmingly favor the institutional defendants over the low-income mobile homeowners. Existing federal and state laws result in arbitration clauses being enforced regardless of the power differentials obviously present. A possible solution to increase fairness is expanding the Mobile Home Improvement Act to provide minimal procedural and remedial standards in arbitrations.

{44} ARBITRATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{104} SUBJ MATTER: REGULATORY

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Melissa J. Schoffer, Note, *Bringing Children to the Mediation Table: Defining a Child's Best Interest in Divorce Mediation*, 43 FAM. CT. REV 323 (2005).

Focusing on divorce mediation, this Note addresses whether a child should actively participate in the mediation process. This Note also discusses the costs and benefits of involvement by focusing on four specific approaches for including children in divorce mediation. This article further asserts that mediation should be considered on a case-by-case basis, and proposes that a child should be included when there is a dispute concerning the child's best interest.

{21} MEDIATION—GENERAL

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

{134} DISPUTE PREVENTION

Susan B. Schultz, *Your Administration Case is Going to Mediation: Are You Ready?*, 6 TEX. TECH J. TEX. ADMIN. L. 189 (2005).

This article introduces the mediation process to administrative lawyers in Texas. It defines the procedures used in alternative dispute resolution, the provisions of the Alternative Dispute Resolution Procedures Act of 1996, and how the Act applies to and interacts with Texas law. The article also illustrates the lawyer's role in ADR procedures and explains to the lawyer what to expect in mediation.

{21} MEDIATION—GENERAL

{87} SUBJ MATTER: GOV'T

L. Wayne Scott, *The Law of Mediation in Texas*, 37 ST. MARY'S L. J. 325 (2006).

The author conducts an overview of the law of mediation in the State of Texas, focusing on Texas judicial opinions dealing with the Texas Alternative Dispute Resolution Act.

{21} MEDIATION—GENERAL

{73} SUBJ MATTER: GENERAL

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

{144} LEGISLATION

Daniel P. Selmi, *The Promise and Limits of Negotiated Rulemaking: Evaluating the Negotiation of a Regional Air Quality Rule*, 35 ENVTL. L. 415 (2005).

This article undertakes an in-depth examination of negotiated rulemaking by a regional air quality agency in the state of California. The article further evaluates the negotiation against the seven factors commonly cited as demonstrating either the merits of, or problems with, the use of negotiated rulemaking.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{128} REQUIREMENTS: STATUTORY OR RULES

Yuval Shany, Note & Comment, *Contract Claims vs. Treaty Claims: Mapping Conflicts Between ICSID Decisions on Multisourced Investment Claims*, 99 AM. J. INT'L L. 835 (2005).

This Note analyzes three important cases to detail the inconsistent approaches taken by international arbitrators when delineating the relationship between private investment contracts and international investment agreements. Because of this inconsistency, there exists confusion in the areas of law and procedure when arbitrating international investment disputes. The author also extends this inconsistency in order to reflect on theoretical questions pertaining to the makeup of international investment law.

{44} ARBITRATION—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{124} COMPARISONS: CROSS-CULTURAL

John D. Sheehan, *Careful Planning Remains Important Part of Pre-Bankruptcy Negotiations*, 24-10 AM. BANKR. L.J., Dec., at 10 (2005).

This article examines the newly effective 11 U.S.C. § 502(k), which allows courts to penalize unsecured creditors that do not negotiate reasonable alternative payment arrangements with their debtors. Several other changes

made to the BAPCPA are explored, detailing the ways in which they were crafted to promote pre-petition negotiations between the parties of a bankruptcy.

{1} NEGOTIATION—GENERAL

{74.5} SUBJ MATTER: BANKRUPTCY

{75} SUBJ MATTER: COMMERCIAL

{127} REQUIREMENTS: MANDATE TO USE

David Sherwyn et al., *Assessing the Case for Employment Arbitration: A New Path for Empirical Research*, 57 STAN. L. REV. 1557 (2005).

This article discusses the underlying policy debate relating to mandatory arbitration in employment. The authors use a study of large employers that have administered these mandatory arbitration policies for years as a basis for providing empirical evidence to answer these underlying policy questions. This article also summarizes the arguments in favor of, and against arbitration.

{44} ARBITRATION—GENERAL

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

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

Shelby Silverman, Note, *Outsourcing and Collective Bargaining: A "Win-Win" for Employers and Employees*, 13 CARDOZO J. INT'L & COMP. LAW 601 (2005).

Outsourcing opportunities allows employers to maintain their competitive advantage. It is easy to paint a picture of labor and management entrenching themselves on opposite sides, gearing up for a massive war about the future of outsourcing. Encouraging parties to use collective bargaining to come up with creative solutions to deal with outsourcing decisions is vital to promoting and ensuring domestic industrial peace as envisioned in the National Labor Relations Act.

{1} NEGOTIATION—GENERAL

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

{123} SETTLEMENT: PRESSURES TO SETTLE

Benjamin L. Snowden, *Bargaining in the Shadow of Uncertainty: Understanding the Failure of the ACF and ACT Compacts*, 13 N.Y.U. ENVTL. L.J. 134 (2005).

In this article, Snowden employs negotiation theory to analyze the reasons for the failure of Apalachicola-Chattahoochee-Flint River Basin Compact, a negotiated solution to a water dispute between Georgia, Florida, and Alabama. Snowden argues that the structure of the negotiations was at least partially responsible for the compact's failure and provides suggestions for a

negotiation structure that could lead to a more permanent settlement of the dispute.

{1} NEGOTIATION—GENERAL

{84} SUBJ MATTER: ENVIRONMENT

{87} SUBJ MATTER: GOV'T

John A. Spanogle, *The Enforcement of Foreign Arbitral Awards in the U.S.—A Matter of Federal Law*, 13 U.S.-MEX. L.J. 97 (2005).

This article discusses the enforcement of foreign arbitral awards. First, the article explains the applicable law and its incorporation into the Federal Arbitration Act. The author then discusses the criteria for enforcing a foreign arbitral award. Next, the article introduces the six defenses to the enforcement of foreign arbitral awards. Finally, the article addresses the issue of pre-judgment relief and finds that only courts have the ability to grant pre-judgment relief.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Andrew M. Stakelum, Note, *Freudensprung v. Offshore Technical Services, Inc.: Has the Fifth Circuit Sunk the Seaman's Exclusion from Arbitration?*, 29 TUL. MAR. L.J. 451 (2005).

This article reviews the case of *Freudensprung v. Offshore Technical Services, Inc.* The particular issue in the case is the enforceability of an arbitration provision mandating that arbitration occur in London. The Fifth Circuit held that the arbitration provision was enforceable because the United States was a signatory, and there was a foreign element between the two parties since the contract contemplated foreign performances. The article argues that the court's decision broadens the Convention's scope to the detriment of the Federal Arbitration Act.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

{127} REQUIREMENTS: MANDATE TO USE

Tony Starr, *Practice Tips: Choosing Between Litigation and Arbitration*, 49 BOSTON B.J., Mar./April, at 31 (2005).

The article suggests methods to determine whether to arbitrate or litigate a dispute. In contract disputes, the lawyer should ask who the contract favors, whether the area of the dispute would be better resolved by a judge or arbitrator, and how much discovery is necessary. If the client decides to arbitrate, the article encourages lawyers to be careful in drafting the arbitration agreement and selecting the arbitrator.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL
 {151} ROLE OF LAWYERS

Jean R. Sternlight, *Creeping Mandatory Arbitration: Is It Just?*, 57 STAN. L. REV. 1631 (2005).

This article discusses the evolution of mandatory arbitration. Sternlight discusses the position of both the supporters and critics of mandatory arbitration. In addition, the article explores the U.S. judicial and legislative response to mandatory arbitration. Sternlight discusses possible Constitutional issues and the federal statutory arguments involved.

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

Laura S. Stewart, Comment, *Has the United States Anti-Doping Agency Gone Too Far? Analyzing the Shift from 'Beyond a Reasonable Doubt' to 'Comfortable Satisfaction,'* 13 VILL. SPORTS & ENT. L.J. 207 (2006).

In response to the athlete doping epidemic, the United States Olympic Committee established the United States Anti-Doping Agency (USADA) to monitor doping in Olympic athletes. The USADA's adjudication process via arbitrated hearings is based on regulations from the American Arbitration Association/Court of Arbitration for Sport. Athletes do not have a choice for adjudication as they must arbitrate doping allegations and sanctions. Courts are reluctant to intervene with USADA adjudication policies.

{44} ARBITRATION—GENERAL
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT
 {146} ORGANIZATION POLICIES & RULES
 {147} POWER IMBALANCE

Michael S. Straubel, *Enhancing the Performance of the Doping Court: How the Court of Arbitration for Sport Can Do Its Job Better*, 36 LOY. U. CHI. L.J. 1203 (2005).

This article examines the structure, operation, and practice of the Court of Arbitration for Sport (CAS) and the American Arbitration Association (AAA) first by providing the history and development of this structure and then discussing the inadequacies of both the AAA and CAS in handling certain disputes such as doping cases. It then concludes by suggesting the development of a second chamber to hear doping cases and steps to ensure fairness in hearings, as well as equal protection and due processes for the accused.

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

Michael F. Sturley, *Overruling Sky Reefer in the International Arena: A Preliminary Assessment of Forum Selection and Arbitration Clauses in the New UNCITRAL Transport Law Convention*, 37 J. MAR. L. & COM. 1 (2006). This article concerns forum selection and arbitration clauses in maritime contracts. To this end, it discusses the United Nations Commission on International Trade Law (UNCITRAL), as well as the partial overturn of the *Sky Reefer* decision. The author argues that few will be happy with the results of the UNCITRAL Working Group's latest round of negotiations regarding these two clauses, but that no better alternative appears possible.

{44} ARBITRATION—GENERAL

{97} SUBJ MATTER: MARITIME

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{144} LEGISLATION

Gregory N. Thomas, *Casenote, North Valley Emergency Specialists, LLC v. Santana: The Death Knell for Employee Arbitration Agreements in Arizona?*, 47 ARIZ. L. REV. 851 (2005).

A recent decision by the Arizona Supreme Court, holding that statutory arbitration award exclusions apply to all employees, seems to be in conflict with recent U.S. Supreme Court holdings that favor the enforcement of employment arbitration agreements. Further, the Arizona Supreme Court left some unanswered questions with regards to the Federal Arbitration Act, which will need to be resolved soon to ensure employment arbitration agreements in the state.

{44} ARBITRATION—GENERAL

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

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Lisa Thomas, *Recent Development, Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 20 OHIO ST. J. ON DISP. RESOL. 1039 (2005).

In *Hay Group*, the Third Circuit found that under the Federal Arbitration Act (FAA), an arbitrator does not have the power to subpoena documents held by a third party without also compelling the appearance of that third party. Thomas addresses the impact of the Third Circuit's ruling on non-party discovery under the FAA.

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

{75} SUBJ MATTER: COMMERCIAL

{87} SUBJ MATTER: GOV'T

Judy D. Thompson et al., *Fighting Bogus Arbitrations*, 24-5 AM. BANKR. INST. J., June, at 20 (2005).

This cites a number of instances (cases) in which consumer websites are manipulating the newly reformed bankruptcy laws to create a series of “bogus” arbitrations designed to thwart debt collectors. Thompson’s warning is to the creditors and stresses that they must take “timely and aggressive action in responding” to the notices, which will prevent debtors from getting away unscathed.

{44} ARBITRATION—GENERAL
 {74.5} SUBJ MATTER: BANKRUPTCY
 {79} SUBJ MATTER: CONSUMER

Jennifer Trieshmann, Note, *Horizontal Uniformity and Vertical Chaos: State Choice of Law Clauses and Preemption Under the Federal Arbitration Act*, 2005 J. DISP. RESOL. 161 (2005).

This Note explores the impact that choice of law clauses in commercial agreements have on the strong federal policy favoring arbitration as construed by the federal courts. The author examines the uncertainty as to the law that a court will apply in deciding a motion to stay or otherwise interfere with an arbitration and addresses the issue of whether the law governing arbitration is the Federal Arbitration Act, the arbitration law of the state where the arbitration is taking place, or that of the state mentioned in a choice of law clause.

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

Jenny A. Urquhart, Comment, *Olympic Judging and Scoring is Far from a Perfect Ten: Why the International Olympic Committee Must Set Standards for Judging and Scoring to Save the Olympic Games*, 24 PENN ST. INT’L L. REV. 475 (2005).

In Part VI of this article, the author questions whether the Court of Arbitration for Sport’s (CAS) lack of structure to give immediate resolution to disputes that arise during the Olympic Games is a proper forum for such disputes to be resolved. The author notes that the international sports community rarely recognizes the purpose of the CAS and therefore rarely uses the CAS to settle a wide range of disputes.

{44} ARBITRATION—GENERAL
 {92} SUBJ MATTER: INT’L
 {107} SUBJ MATTER: SPORTS & ENTERTAINMENT
 {146} ORGANIZATION POLICIES & RULES

Peter Uvin et al., *Regional Solutions to Regional Problems: The Elusive Search for Security in the African Great Lakes*, 29 FLETCHER F. WORLD AFF. 67 (2005).

This author proposes a possible solution for citizens in the Great Lakes region of Africa, who have been subjected to civil war, genocide and violence in the last decade. To resolve these problems, the author introduces the idea that international communities develop a regional security system focusing on mediation and the facilitation of mediated negotiations throughout the region.

{21} MEDIATION—GENERAL

{92} SUBJ MATTER: INT'L

{147} POWER IMBALANCE

Mark C. Vallone, Note, *System and Method of Funding SMEs Commencing Patent Infringement Disputes*, 56 SYRACUSE L. REV. 181 (2005).

This Note discusses the problems that small-to-midsize enterprises (SMEs) face when commencing patent infringement cases and proposes some solutions. The Note acknowledges the use of alternative dispute resolution in resolving some patent infringement disputes and argues that the use of ADR might actually disadvantage SMEs in commencing patent infringement cases.

{60} ADR—GENERAL

{75} SUBJ MATTER: COMMERCIAL

{136} ECONOMIC ADVANTAGES OF ADR

{149} QUALITY CONTROL

Raul Emilio Vinuesa, *Enforcement of Mercosur Arbitration Awards Within the Domestic Legal Orders of Member States*, 40 TEX. INT'L L.J. 425 (2005).

The creation of a common market among Argentina, Brazil, Paraguay, and Uruguay encouraged economic development both locally and within the international scene. This article details the dispute resolution scheme created to handle conflicts that arose within this market, focusing specifically on the Protocols of Brasilia, Ouro Preto, and Olivos and the application of these Protocols in arbitration.

{44} ARBITRATION—GENERAL

{92} SUBJ MATTER: INT'L

Jonathan R. Waldron, Note, *Resolving a Split: May Courts Order Consolidation of Arbitration Proceedings Absent Express Agreement by the Parties?*, 2005 J. DISP. RESOL. 177 (2005).

This Note addresses the current split in state and federal courts concerning court-ordered consolidation of arbitration proceedings, particularly whether courts have authority to order parties to consolidate their claims in the

absence of complete agreement among party members. The author argues that the best way to resolve this issue is through state adoption of the Revised Uniform Arbitration Act.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{121} SETTLEMENT: AUTHORITY

Kathleen C. Wallace, *A Proposal for the United States Olympic Committee to Incorporate Formal Mediation Within its Grievance Process*, 16 MARQ. SPORTS L. REV. 59 (2005).

The author proposes that the United States Olympic Committee (USOC) adopt and develop an external mediation option as part of the USOC grievance process. Currently, the USOC has an arbitration process and an Athlete Ombudsman who informally mediates disputes between athletes and their sport's National Governing Body. The author argues that external mediation would substantially improve the likelihood of achieving a collaborative and cost-effective outcome.

{21} MEDIATION—GENERAL

{107} SUBJ MATTER: SPORTS & ENTERTAINMENT

{136} ECONOMIC ADVANTAGES OF ADR

{146} ORGANIZATION POLICIES & RULES

Amnon Wenger, Note, *See No Evil, Hear No Evil, Don't Get Sued: Should a Private Cause of Action Exist for a Violation of NASD Conduct Rule 3010?*, 74 FORDHAM L. REV. 303 (2005).

This Note analyzes the impact that arbitration policies and recent legislation have had on the use of private causes of action for violation of the SEC Supervisory Rules. NASD Conduct Rule 3010 details the supervisory requirements imposed upon brokerage firms. As courts have restricted the ability of harmed investors to seek redress through litigation, these investors have increasingly turned to arbitration.

{44} ARBITRATION—GENERAL

{106} SUBJ MATTER: SECURITIES

{128} REQUIREMENTS: STATUTORY OR RULES

Wang Wenying, *The Role of Conciliation in Resolving Disputes: A P.R.C. Perspective*, 20 OHIO ST. J. ON DISP. RESOL. 421 (2005).

This article examines the role and history of conciliation in Chinese culture. Because of the long history of conciliation and Confucian standards, this technique remains an important part of dispute resolution throughout China. The author divides conciliation in China into five distinct categories and examines each individually: administrative conciliation, people's

conciliation, conciliation conducted by permanent conciliation centers, conciliation conducted in the litigation process, and conciliation conducted in the arbitration process.

{1} NEGOTIATION—GENERAL

{92} SUBJ MATTER: INT'L

{124} COMPARISONS: CROSS-CULTURAL

Sarah Williams, Note, *Confidentiality in Mediation: Is It Encouraging Good Mediation or Bad Conduct?*, 2005 J. DISP. RESOL. 209 (2005).

This Note addresses whether the California Supreme Court's policy arguments for protecting confidentiality in mediation outweigh the policy arguments against protection. The author argues that the court's decision to make many types of evidence used in mediation confidential and therefore inadmissible in subsequent litigation, was erroneous and that other policy issues, namely that confidentiality could potentially obstruct justice, should have been given greater weight.

{21} MEDIATION—GENERAL

{102} SUBJ MATTER: PUBLIC POLICY

{132} CONFIDENTIALITY

Megan Jane Wilson, Casenote, *Arbitration Award Reinstating Employee Who Made Racially Offensive Remark Upheld*, 6 TRANSACTIONS 485 (2005).

This Casenote reviews the case of *Way Bakery v. Truck Drivers Local No. 164*. The case illustrates the high degree of deference that courts give to arbitration awards. Courts generally enforce arbitration awards so long as they are authorized by collective bargaining agreements.

{44} ARBITRATION—GENERAL

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

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

Roselle Wissler & Bob Dauber, *Lawyer Views on Mandatory Arbitration: Mandatory Arbitration in Arizona: Structure and Performance*, 42 ARIZ. ATT'Y, Oct., at 18 (2005).

Second in a series, this article examines how mandatory mediation is designed to function and how it performs in reality. This analysis takes place in the wake of a study involving the use of court-connected arbitration. The study included a survey of Arizona lawyers (addressed in a separate article), an examination of the structure of arbitration programs in each county, an analysis of the performance of arbitration based on case processing data, and a review of the structure and performance of court-connected arbitration in other states.

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

{73} SUBJ MATTER: GENERAL
 {151} ROLE OF LAWYERS

Peter Y. Wolfe, *How a Mediator Enhances the Negotiation Process*, 46 N.H.B. J., Summer, at 38 (2005).

The author discusses how mediation improves the efficiency of the negotiation process by overcoming strategic, cognitive, and structural obstacles present when two attorneys negotiate directly with one another.

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

Jarrod Wong, *Court or Arbitrator—Who Decides Whether Res Judicata Bars Subsequent Arbitration Under the Federal Arbitration Act?*, 46 SANTA CLARA L. REV. 49 (2005).

This article deals with the application of res judicata in the context of arbitration. It also focuses on the Federal Arbitration Act and the situations in which preclusion issues affecting subsequent arbitration come before federal courts. This article also discusses the question of who should determine whether res judicata bars subsequent arbitration while attempting to reconcile conflicting cases on the issue.

{44} ARBITRATION—GENERAL
 {104} SUBJ MATTER: REGULATORY
 {144} LEGISLATION

Maria Wusinich, *Compulsory Pre-Dispute Arbitration Clauses in the Employment Context After EEOC v. Luce, Forward, Hamilton & Scripps*, 5 PEPP. DISP. RESOL. L.J. 57 (2005).

The author argues that despite recent circuit court decisions, enforceability of employee agreements to arbitrate claims arising under federal anti-discrimination law is far from settled. The author contends that the issue will soon be revisited because it is apparent to the legislators that compelled arbitration is not an appropriate method for resolving such claims. The author suggests ways to ensure appropriate procedures for the resolution of pending statutory employment discrimination claims.

{44} ARBITRATION—GENERAL
 {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)
 {127} REQUIREMENTS: MANDATE TO USE

Rachel A. Yuen, Note, *Beyond the Schoolyard: Workplace Bullying and Moral Harassment Law in France and Québec*, 38 CORNELL INT'L L.J. 625 (2005).

This Note compares moral harassment law in France and Québec and examines the likelihood of similar legislation in the rest of North America. It defines moral harassment and reviews the conceptions of harassment in North America and Europe. The Note examines Québec's new anti-bullying legislation, and considers the potential role of the French and Québec legislation as models for North America.

{21} MEDIATION—GENERAL

{94} SUBJ MATTER: LABOR—DISCRIMINATION

Ann D. Zeigler, *Volunteers Resolve Fee Disputes*, 42 HOUS. LAW., May/June, at 22 (2005).

This article describes the process by which the Fee Dispute Committee, an arm of the Houston Bar Association, resolves fee disputes. The committee is made up of lawyers and non-lawyers who sit on a panel to arbitrate lawyer/client fee disputes. Arbitration will only occur if both parties agree to it. The Committee's services are usually enlisted for family law matters and criminal defense fees paid by a third party.

{44} ARBITRATION—GENERAL

{73} SUBJ MATTER: GENERAL

{136} ECONOMIC ADVANTAGES OF ADR

