

The Muse

Professor’s book to assist students, lawyers in “Alternative Dispute Resolution”



LAWRENCE — A University of Kansas professor has authored a new edition of a book designed to help law students and lawyers develop important practical skills and learn the law governing disputes resolved outside of court.

Stephen Ware, professor of law, has written “Principles of Alternative Dispute Resolution”, now in its third edition. The book is a concise guide to the three main processes of what lawyers call “Alternative Dispute Resolution”, or “ADR”: arbitration, negotiation and mediation.

“Lawyers call these three processes ‘alternative dispute resolution’ because they are our most common alternatives to courts deciding cases,” Ware said. “While cases resolved by courts — judges and juries — typically get the most media attention, a great many cases are resolved by arbitrators, or by the disputing parties’ agreement reached through negotiation or mediation.”

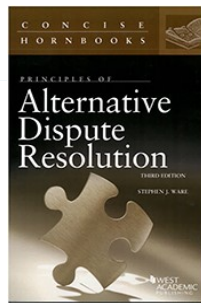
Arbitration is like litigation in court because both arbitration and litigation allow disputing parties and their lawyers to present evidence and arguments to neutral decision-makers. However, those decision-makers in arbitration are neither judges nor jurors, but arbitrators chosen by the parties and usually paid by the parties. So an arbitration is basically a private-sector court created by the disputing parties’ contract.

Negotiation is the most common process of dispute resolution and is widely used by lawyers to settle cases that would otherwise be resolved by litigation or arbitration.

“Negotiation skills are among the most important skills a lawyer can have,” Ware said.

Mediation is a closely related skill because a mediator is a neutral person who assists parties in reaching a negotiated settlement.

“The idea behind increasing use of ADR was that courts were too crowded, litigation was too expensive, and that hopefully through alternative methods we could get better, cheaper resolution of disputes, or both,” Ware said.



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Stephen Ware—Continued.

The book has been used as the primary text for Alternative Dispute Resolution courses in several law schools. The book is suited for that role because it clearly and concisely explains the theory, practice and legal doctrine relating to arbitration, negotiation and mediation. This enables law school instructors using the book to save time “learning the law” so more class time can be devoted to students working with the law to develop practical skills in an experiential manner. For example, many ADR courses involve students negotiating or mediating the settlement of a hypothetical case or drafting a hypothetical arbitration agreement.

Ware emphasizes this sort of skill-building when he teaches ADR and, more broadly, in his other teaching. He also chaired a KU Law committee that led the law school to curricular innovations expanding opportunities for law students to develop a range of practical skills through experiential learning.

“This book is part of that effort to keep legal education practical and serve students by preparing them for their careers, and to serve practicing lawyers as well,” he said.

The three major processes of alternative dispute resolution are very pervasive in law, which makes knowledge of them useful to practicing lawyers in nearly every field and specialization of law. For example, the book is a quick resource for practicing lawyers looking to reach a negotiated settlement, whether in business, family, personal injury or numerous other areas of law. As a research tool, the book can introduce lawyers to areas of alternative dispute resolution they may not be familiar with, such as confidentiality requirements in mediation, and point them to relevant statutes and court decisions in those areas to help set the foundation for their research.

“Good legal research often begins with ‘I need a concise overview of the big picture of a given area of law,’” Ware said. “Then it moves to ‘I need leads to find the law in my jurisdiction about my specific legal issue.’”

Ware’s book provides both the concise overview and the leads for further research.

The new edition expands largely on arbitration. As international business has grown in recent years, international arbitration has grown as well. In addition, arbitration of consumer and employment disputes has grown and become increasingly controversial. The Supreme Court and other courts across the country have issued a number of decisions in the area, and the book has updated its research to reflect the changes and new rulings.

Ware has written extensively on ADR for more than 20 years and said seeing the many connections between ADR and other areas he has expertise in — such as contract, consumer, commercial and bankruptcy law — make alternative dispute resolution an especially rewarding area of law in which to work.

“One of the great, fun things about my career is the ability to teach a wide variety of areas and write on a wide variety as well, to be able to view law as a whole rather than focusing more narrowly,” Ware said.

The University of Kansas is a major comprehensive research and teaching university. The university’s mission is to lift students and society by educating leaders, building healthy communities and making discoveries that change the world. The KU News Service is the central public relations office for the Lawrence campus.

Meet The Director



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Jorden Ryan mediates contract and employment disputes. He has an active law practice where he represents both employers and employees and is acutely aware of the ever-evolving landscape that is Employment Law. Jorden has a unique lawyer mediator background. After undergrad he spent over a decade working for small companies and major corporations. Jorden gained experience in business negotiation working on international projects for IKEA, Wal-Mart, Sam's Club and various suppliers. He has practical business knowledge in logistics, inventory software, product development, sourcing, sales, and marketing. Mr. Ryan believes that having such a variety of work experience brings an invaluable understanding of both the employer and employee that can only be gained by working as a non-attorney.

Jorden has mediated all types of employment-related claims including: discrimination, retaliation claims under Title VII, The American Disabilities Act, and The Age Discrimination in Employment Act, Wage & Hour, The Family and Medical Leave Act, wrongful discharge, failure to hire, non-compete, severance pay, and other employment-related torts.

He provides investigations, organization conflict analysis, and training for companies. Mr. Ryan is usually asked to engage when management and Human Resources are in need of a solution here he utilizes a three prong system to ensure the organization receives the best results of conflict management (RMR):

REDUCE- using tools to analyze and identify the organization's trouble areas and prevent problems before they happen. Often, even businesses that have made the commitment to use some form of dispute resolution planning still appear to use dispute resolution techniques reactively, rather than preventively.

MITIGATE- once conflict occurs, early detection and reaction are essential--don't let the problem fester and become toxic to the organization. Use expert assessment and evaluation to promote early settlement.

RESOLVE- the key to any conflict management system is a Dispute Resolution Program (DRP) that meets the individual needs of the company. Whether you choose negotiation, neutral fact-finding, Ombuds, peer review, mediation, arbitration or litigation, our program ensures that best practices are used.

As a mediator, his philosophy is to allow parties to obtain a solution that can meet the needs of both parties. Having studied law in Barbados, Ireland, and in the United States, his experiences have influenced his ability to understand people with diverse views and objectives.

Professional Activities

Jorden is a Missouri-licensed attorney and an approved mediator in Missouri and Kansas. He is a member of the Kansas Bar Association, Missouri Bar Association, Kansas City Metropolitan Bar Association, National Employment Law Association, San Diego County Bar Association and the Consumer Attorneys of San Diego.

Education

He received his Bachelors from Pittsburg State (2003) and his Jurist Doctorate (2013) from Washburn School of Law.



Dispute resolution is "people side of the law"

November 10, 2016

Ninety-five percent of cases filed with the courts are settled using dispute resolution, either through direct negotiation, mediation or arbitration, and many contracts today include dispute resolution clauses.

"The study of dispute resolution is becoming popular, since it is the next generation of law practice," said Sarah Gonzales, assistant director of Straus Institute for Dispute Resolution at Pepperdine University School of Law. "Dispute resolution is typically much quicker and cheaper than the traditional litigation process, and [it] keeps the results confidential, which can protect from additional lawsuits."

Pepperdine, which prides itself on its 52 courses in dispute resolution, views it as the "people side of the law," Gonzales said.

Students learn how to represent a client in the mediation or arbitration process, and courses don't just focus on the role of the mediator or arbitrator. Straus Institute uses a practice-oriented approach, teaching through experience so students can discover their own negotiation or mediation style.

So who benefits from studying dispute resolution? Everyone from practicing attorneys and judges to human resource professionals and medical doctors.



Family and Finances in a Troubled Population: What the Demographics of Kansas Families Mean to the Attorneys and Mediators Who Serve Them.

Military families, divorce and separation are key in HMA training. About 40 attorneys, students and members of Heartland Mediators Association came together on Veterans Day November 11 to discover more about Kansas families struggling through separation and divorce.

The packed program with multiple presenters revealed some of the challenges facing families during transitions, such as divorce or breakup; unique life situations such as farming or the military, plus different employment demands and family needs, and specialized laws that protect them in court.

The afternoon at the Flint Hills Discovery Center in Manhattan began with a demographics lesson by Tonya Ricklefs, PhD in Family Studies at Kansas State University. She is Clinical assistant professor and coordinator of the Riley Geary Mediation Program at K-State.

She brought out incomes and special circumstances for families going through divorce and breakup in the central Kansas area emphasizing that which attorneys and mediators need to be aware. Many in attendance offered information and asked many questions, making the afternoon a positive training.

Those who enter the world of divorce or separation can spend upwards to half their annual income on their divorce. Those wanting this choice may want to consult at least someone on a limited representation for the basics like dividing assets, parenting plans and other documents necessary for a balanced and safe ending for the family. The average cost of divorce in Kansas is about \$16,000 when there are children. Limited representation can cut some costs as will mediation when the parents can heal some of the wounds between them and realize that children are important.

Mindy Markham, Ph.D., Ms. Markham, who received her B.S. in Family Studies and Human Services from Kansas State University, defined high conflict divorce, but mentioned those parties who have never married or are same sex parents.

She said 10 to 20 percent of all parents in conflict are of the high conflict nature defined as those who have an extreme lack of trust between the parties, elevated levels of anger, willingness to engage in repetitive litigation and parental relationships marked by fear, refusal to communicate, active blaming and sabotage. High conflict court actions are expensive not just in dollars but in stress for the parties and their children. And then one must consider the financial difficulties young adults find themselves in these days.

Young Kansas families are in crisis says Emily Koochel, M.S., a graduate assistant at Powercat Financial Counseling, a student financial planning center located on the campus of Kansas State University. She promotes financial literacy to various student organizations across campus through financial presentations and interactive events. She suggests that today parents are struggling with the issues of reduced income, job insecurity, displacement from extended family support, and social isolation. Additionally, they are increasingly faced with parenting and supporting their children on their own.

Attorneys and mediators are seeing first-hand the impact of these stresses on these young and conflicted families. This presentation helped family law attorneys and domestic mediators to understand and better serve these families in crisis. Transparency between family members is important. Communication is very important as financial problems can be a prediction of future divorce and conflict possibilities.

The afternoon ended with "Ethical Dilemmas in Changing Societal Norms" with a panel of Tonya Ricklefs, Ph.D., MSW, and Ann Zimmerman, J.D., facilitated by Aline Cole Barrett, J.D., MA. The panel discussed changes and answered questions on societal norms and attitudes about marriage and families.

Some of the changes have become part of the legal landscape and include same sex marriage, prose separations, and parenting time. Barrett, a graduate of Gonzaga University Law School, is an approved Kansas attorney/mediator in Civil/Core, Parent/Adolescent, and Domestic Mediation. Ricklefs is a Clinical Assistant Professor and Program Coordinator of the Riley Geary Mediation Program at Kansas State University. Zimmerman, a graduate of Harvard Law School and Kansas State University, is a licensed attorney, state-approved mediator, past president of Heartland Mediators Association and serves on the Kansas Supreme Court Dispute Resolution Advisory Council. Panelists discussed biases mediators or attorneys might have about those who divorce who might remarry or not.

Heartland Mediators Association is an educational not-for-profit that offers inexpensive training and information to mediators, conciliators and attorneys who work with families, businesses and others seeking to end or ease conflict.

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Linda Laird is a past president of HMA.