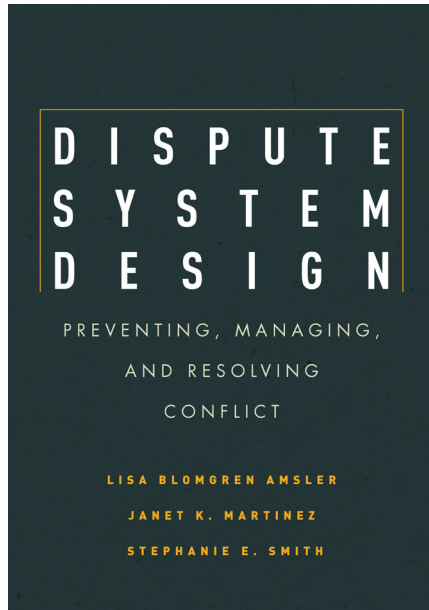




STANFORD UNIVERSITY PRESS



Dispute System Design

Preventing, Managing, and Resolving Conflict

Lisa Blomgren Amsler, Janet K. Martinez,
and Stephanie E. Smith

“With its clear analytic focus on design, practice, and ethics, this book should be of great use in professional settings from law, business, and public policy to social work, education, and international relations.”

—Carrie Menkel-Meadow, University of California, Irvine

Dispute System Design walks readers through the art of successfully designing a system for preventing, managing, and resolving conflicts and legally-framed disputes. The authors draw on their decades of expertise as instructors, experts, and consultants to show how dispute systems design can be used within all types of organizations, including business firms, nonprofit organizations, and international and transnational bodies.

This book has two parts: the first teaches readers the foundations of Dispute System Design (DSD), describing bedrock concepts, and case chapters exploring DSD across a range of experiences, including public and community justice, conflict within and beyond organizations, international and comparative systems, and multi-

jurisdictional and complex systems. This book is intended for anyone who is interested in the theory or practice of DSD, who uses or wants to understand mediation, arbitration, court trial, or other dispute resolution processes, or who designs or improves existing processes and systems.

****May 2020****

\$70.00 hardcover, 592 pages

Receive 20% off

at www.sup.org with code

DISPUTE20

Qualified instructors can request an exam copy by emailing info@www.sup.org.

Lisa Blomgren Amsler is Distinguished Professor and Keller-Runden Professor of Public Service at the Indiana University Paul H. O'Neill School of Public and Environmental Affairs and Saltman Senior Scholar at the University of Nevada Las Vegas William S. Boyd School of Law.

Janet K. Martinez is Senior Lecturer in Law at the Stanford Law School. She is Director of Stanford's Gould Negotiation and Mediation Program and Director of the Gould Alternative Dispute Resolution Research Initiative.

Stephanie E. Smith is Lecturer in Law at the Stanford Law School and Scholar in Residence at the Gould Alternative Dispute Resolution Research Initiative.

Table of Contents

Foundations of System Design

1 What Is Dispute System Design?

Origins in Alternative Dispute Resolution
Key Terms Used in DSD
DSD Within and Beyond Organizations
Guiding Principles
The Overarching Goal of DSD: To Deliver Justice
Control over DSD and Stakeholder Power
Conclusion

2 Analytic Framework for Dispute System Design

Frameworks in Institutional Analysis
Analytic Framework for DSD
Goals
Stakeholders
Context and Culture
Processes and Structure
Resources
Success, Accountability, and Learning
Conclusion

3 System Building Blocks: Processes for Preventing, Managing, and Resolving Conflict

Understanding Process Choices for DSD
Process Maps
DSD Process Building Blocks
Building Blocks for Policy Design
New and Evolving Processes and Structures: Online Dispute Resolution
Conclusion

4 System Design Practice

The Professional Designer
Conflict Stream Assessment
Conducting a DSD Process
Conclusion

5 Accountability: Evaluating Dispute System Design

Accountability Forums: Justice and Fairness
Evaluation in DSD: Variables and Indicators
Practical Program Evaluation
Evaluating Prevention and Management of Conflict
Conclusion

6 Ethics in System Design

Sources for DSD Ethics
Key Ethical Issues
Ethics Considerations in a Cultural Context
Operationalizing Ethics for Designers
Conclusion

Case Applications

Part I. Public and Community Justice

7 Court Programs

History and Context of Alternative Dispute Resolution and Other Design Innovations in U.S. Courts
Case Examples from Federal and State Courts in the United States
Court Alternative Dispute Resolution Outside the United States
Key Framework Issues in Court Alternative Dispute Resolution Programs
Conclusion

8 Claims Facilities

The Traditional Court-Based Tort Mechanism and the Challenge of Mass Torts
Private Tortfeasor Responsibility
Natural Disasters
Terrorist Acts
Key Framework Issues in Claims Facilities

9 Communities and Justice

Community Mediation
Business Communities

The Nation's Peacemaker
Community Public Engagement
Mediation and Conflict in a Community's Schools
Conclusion

Part II. Conflict Within and Beyond Organizations

10 Labor Relations: The Birthplace of Dispute System Design

DSD in Collective Bargaining: The Evolving Workplace
Systems in Private Sector Labor Relations
Case Examples in the Private Sector
Systems in Public Sector Labor Relations
Case Examples in the Public Sector
Conclusion

11 Managing Conflict in Employment

The DSD Analytic Framework in Nonunion Employment
Mediation System Case Study: The USPS REDRESS Program
Ombuds Programs
Conclusion

12 Arbitration in Consumer and Employment Designs

The U.S. Legal Framework for Arbitration Systems
One-Party Control over DSD in Arbitration over Consumer and Employment Claims
Law and Design Choices in Arbitration System Designs
Strategy in Arbitration System Design
Conclusion

13 Commercial Disputes

Process Choice and Stakeholder-Lawyers
Examples from the Commercial Domain
Contracting and DSD
Conclusion

14 Consumer Disputes

Kaiser Permanente Health System
Mortgage Foreclosure Mediation
eBay
Conclusion

Part III. International and Comparative Systems

15 Transitional Justice

Key Concepts and Process Categories
Application of the Analytic Framework
Conclusion

16 International Dispute Resolution

Court of Arbitration for Sport
Bilateral Investment Treaties
World Trade Organization
United Nations Commission for International Trade Law
Conclusion

Part IV. Multijurisdictional and Complex Systems

17 Collaborative Governance and Dispute System Design

Collaborative Governance
Adapting the DSD Analytic Framework to Collaborative Governance
Upstream and Downstream in a Public Agency: Large-Scale Energy Infrastructure
Negotiated Rulemaking as Collaborative Governance
Participatory Budgeting
Conclusion

18 Designing Dispute Systems for the Environment

The Analytic Framework and Environmental Conflict
Maine Public Health Mystery
California Marine Life Protection Act
Comparing Two ECR Approaches
Conclusion

Conclusion