

---

## GENERAL TABLE OF CONTENTS

	<b>Page</b>
About Wolters Kluwer Law & Business .....	iii
About the General Editors .....	v
Foreword .....	vii
Preface .....	xi
List of Contributors .....	xiii
Members of the Review Board .....	xvii
Acknowledgements .....	xxi
Expanded Table of Contents .....	xxvii
Abbreviations .....	xli

### Chapters

1	AUSTRALIA	
	Dale BAGSHAW: The Impact of Family Dispute Resolution (Mediation) on the National Family Law System in Australia .....	1
2	AUSTRIA	
	Ulrike FRAUENBERGER-PFEILER and Walter H RECHBERGER: The Development and Impact of Mediation on the Austrian Legal System .....	43
3	CANADA	
	Catherine MORRIS: The Impact of Mediation on the Culture of Disputing in Canada: Law Schools, Lawyers and Laws .....	67
4	CHINA (Mainland)	
4.1	TANG Houzhi: An Overview of Mediation in China .....	117

	Page
4.2 WANG Chengjie: Recent Developments in Chinese Mediation Practice and Some Effects of Cultural Differences on Commercial Mediation Practice in China .....	127
4.3 YAO Jianjun: The Cultural Foundation and Practice of Court-conducted Mediation in China: The Impact on Judges .....	141
4.4 ZHANG Zhongxia: Court-conducted Mediation in China .....	161
4.5 ZOU Tingqian: An Empirical Analysis of Court Mediation in Rui'an District Court of Zhejiang Province .....	179
5 CHINESE TAIPEI	
Angela Y LIN: Mediation in Taiwan .....	203
6 HONG KONG SAR	
6.1 Shahla F ALI and A K C KOO: Mediation and its Impact on the Legal System of Hong Kong SAR .....	225
6.2 ZHAO Sining: Mediation's Impact on the Civil Justice System in Hong Kong SAR .....	243
7 INDIA	
Rajesh SHARMA: Access to Justice for All through Mediation in India .....	267
8 INDONESIA	
Karen MILLS: Mediation in Indonesia .....	295
9 JAPAN	
SAKAI Hajime: Mediation in Japan .....	305

	Page
10 REPUBLIC OF KOREA	
10.1 Deog-Nam HWANG: The Impact of Mediation on the Culture of Disputing in Korea: Lawyers and Courts .....	315
10.2 Lori YI: Mediation in Korea: The Development and Challenges .....	345
11 NEW ZEALAND	
Deborah HART: Dispute Resolution and the Justice System: The New Zealand Experience .....	365
12 SINGAPORE:	
LEE Tye Beng Joel: The Evolution of ADR in Singapore .....	397
13 THAILAND	
Vichai Ariyanuntaka: Cultivating Mediation Culture in an Adversarial Environment: A Thai Perspective .....	423
14 UNITED STATES OF AMERICA	
Eric van GINKEL: The Impact of Mediation on United States Legal Systems .....	437
APPENDIX 1: List of Questions to Contributors by YANG Fan .....	457
APPENDIX 2: UNCITRAL Model Law on International Commercial Conciliation with Guide to Enactment and Use (2002) .....	463
Table of Cases .....	465
Table of Legislation .....	467
Table of Codes, Model Laws and Rules .....	485
Table of Practice Directions .....	487
Index .....	490

---

## EXPANDED TABLE OF CONTENTS

	Page
About the General Editors .....	v
Foreword by Luca G CASTELLANI.....	vii
Preface by WANG Guiguo and YANG Fan .....	xi
List of Contributors.....	xiii
Members of the Review Board .....	xvii
Acknowledgements .....	xxi
Abbreviations .....	xl

### Chapters

1	<b>Australia: The Impact of Family Dispute Resolution (Mediation) on the National Family Law System in Australia, by Dale BAGSHAW.....</b>	<b>1</b>
1	Introduction .....	3
2	The Development of Family Dispute Resolution in the Family Law Context in Australia .....	5
3	Australian National Accreditation Standards for Mediators .....	8
	a Family Dispute Resolution Accreditation in Australia.....	9
	b Compulsory Family Dispute Resolution .....	12
4	The Impact of Mediation on Family Dispute Resolution Culture.....	13
	a How have cultural backgrounds affected the way people negotiate and resolve disputes? .....	14
5	The Impact of Family Dispute Resolution on Practising Lawyers .....	17
6	The Impact of Mediation on Scholars.....	20
7	Family Violence, Family Law and Family Dispute Resolution.....	23
	a Family Violence and Family Law .....	23
	b Family Violence and Family Dispute Resolution .....	29
8	Child-Centered Family Dispute Resolution .....	35
9	Collaborative Family Law Practice .....	38
10	Conclusion .....	39



Chapters	Page
<b>2 Austria: The Development and Impact of Mediation on the Austrian Legal System, by Ulrike FRAUENBERGER-PFEILER and Walter H RECHBERGER .....</b>	<b>43</b>
1 General Information.....	45
a The Concept of Mediation .....	45
b A Mainly Voluntary Regime .....	46
c UNCITRAL Model Law .....	46
d Legal Bases for Mediation – (1) No Uniform System ....	47
e Legal Bases for Mediation – (2) National Mediation.....	48
f Legal Bases for Mediation – (3) EU-cross-border Civil Mediation.....	49
g Legal Bases for Mediation – (4) Mediation with Regard to Third (ie, Non-EU Member) States.....	51
h Mediation Procedure: (1) General Information .....	51
i Mediation Procedure: (2) Duration and Time Limits....	52
j Mediation Procedure: (3) Confidentiality.....	53
2 Mediation's Impact on the Dispute Resolution Culture .....	56
a Historical Background.....	56
b Practice .....	56
c Change of litigation culture? .....	57
3 Mediation's Impact on Practising Lawyers .....	58
4 Mediation's Impact on Scholars .....	59
5 Mediation's Impact on Courts .....	60
a The Impact of Mediation on the Court System: Mediation and Settlements Before Court.....	60
b The Impact of Mediation on the Court System: The Effect of Agreements to Mediate .....	61
c The Impact of Mediation on the Court System: Mediation within the Court System .....	62
d Enforcement of Mediated Settlements/Agreements: Formal Requirements of the Accord Reached.....	62
e Enforcement of Mediated Settlements/Agreements: Effects of the Settlement Reached by the Parties .....	63
6 Mediation's Impact on Arbitration.....	64
7 Conclusion .....	64

Chapters	Page
<b>3 Canada: The Impact of Mediation on the Culture of Disputing in Canada: Law schools, Lawyers and Laws, by Catherine MORRIS .....</b>	<b>67</b>
1 Introduction .....	69
2 Perceptions in the 1970s and 1980s: Overburdened Courts and Excessive, Adversarial Litigation .....	69
3 Benchmarks in the History of Mediation in Canada .....	71
a Pioneering Projects .....	71
b Getting Organised: Interdisciplinary Civil Society Organisations.....	72
c Education and Training: The Emergence of Philosophical Struggles.....	76
d Law Schools: Teaching and Research.....	79
4 Resistance and Critique .....	84
a Feminist Critiques.....	85
b Indigenous Peoples in Canada: Resistance to Colonial Ideologies .....	86
c Canada's Cultural Minorities .....	87
d Canada's Legal Culture: Resistance by Judges and Lawyers .....	88
e The Emergence of the "New Lawyer" .....	91
5 Law Reform Efforts and their Impact on the Culture of Disputing .....	92
a British Columbia: Mandatory Judicial Settlement and Quasi-mandatory Mediation .....	92
b Alberta: Judicial Dispute Resolution.....	99
c Ontario: Mandatory Mediation Initiatives .....	101
d Quebec: An Integrative Approach to Dispute Resolution .....	105
e National Initiatives .....	107
f Federal Initiatives .....	108
g Off-ramps from the Litigation Highway: The "Vanishing Rial" and Self-represented Litigants.....	112
6 Conclusion.....	115

Chapters	Page
<b>4 China</b>	
<b>4.1 An Overview of Mediation in China, by Houzhi TANG</b> .....	117
1 Mediation's Long History and Current Status	
in China.....	119
a Long History of Mediation in China .....	119
b New Stage of Mediation in China.....	121
2 Reflections from Different Circles.....	122
3 Combining Mediation with Arbitration and	
Litigation .....	124
4 Two Big Barriers .....	125
<b>4.2 Recent Development of Chinese Mediation Practice and Some</b>	
<b>    Effects of Cultural Differences on Commercial Mediation</b>	
<b>    Practice in China, by Chengjie WANG</b> .....	127
1 General Information.....	129
2 The History of Mediation in China .....	129
3 Recent Developments in Mediation Law and Practice	
in China.....	130
4 Parties' Roles in Mediation .....	133
5 Parties' Attitudes towards Disputes .....	134
6 Value Systems and the Effect on Dispute Resolution .....	135
7 Mediation Modes or Style .....	136
8 Choices and Expectations of the Mediators.....	137
9 Thought Process and Decision-making Patterns .....	138
10 Conclusion.....	138
<b>4.3 The Cultral Foundation and Practice of Court Conciliation</b>	
<b>    in China: The Impact on Judges, by Jianjun YAO</b> .....	141
1 Introduction .....	143
2 The Cultural Foundation of Conciliation in China.....	143
a The Value of Li .....	144
b The "Pursuit of Harmony" in a Harmonious	
Society.....	146
c "Face" in Chinese Culture .....	148

Chapters	Page
<b>3 The Practice of Court Conciliation in China</b> .....	151
a Legal Basis for Court Conciliation.....	151
b Value Basis of Court Conciliation.....	154
<b>4 The Impact of Court Conciliation on Chinese Judges</b> .....	156
a Chinese Judges' Dual Roles as Court Conciliator	
and Adjudicator in the Same Case .....	157
b Chinese Judges' Reasons for Preferring Court	
Conciliation.....	158
c Chinese Judges and the Success of Court	
Conciliation.....	159
<b>5 Conclusion</b> .....	160
<b>4.4 Court-conducted Mediation in China, by</b>	
<b>    ZHANG Zhongxia</b> .....	161
1 Introduction .....	163
2 Historical Development of Court Mediation in China .....	164
a The First Stage (1950s to Early 1990s) .....	165
b The Second Stage (Early 1990s to the Turn of the	
Century).....	165
c The Third Stage (2006 to Present).....	165
3 The Explosion of Disputes in Recent Years .....	166
a The Explosion of Court Cases .....	167
b The Awakening of Legal Rights.....	167
c The Ability of the Court System to Meet the	
Expectations of the People.....	168
d The Choice of Court Mediation.....	168
4 Disputes that are Subject to Court Mediation .....	169
5 Time: When Can Court Mediation Take Place? .....	170
6 Place: A Conducive Environment for Court Mediation .....	172
7 People: The Right People to Conduct Court	
Mediation .....	173
8 Enforceability of Court Mediated Settlement	
Agreements.....	175
9 Conclusion .....	177



Chapters	Page
<b>4.5 An Empirical Analysis of Court Mediation in Rui'an District Court of Zhejiang, by ZOU Tingqian</b> .....	179
1 Introduction .....	181
2 Mediation Pilot Scheme for Small Claims.....	181
3 Issues with the Current Court Mediation System .....	190
a Existing Court Mediation is Not a Direct Descendant of Traditional Chinese Customs.....	190
b The Existing Civil Procedure System of China Can be Dated Back to the New Democratic Revolution Period (1919-1949) .....	191
c In Judicial Practice, Court Mediation Has its Limitations and Cannot Replace Adjudication as the Principal Means of Dispute Resolution .....	192
d The Current Court Mediation System, in Which Parties May Choose to Enter Mediation at Any Point During a Trial, and the Trial Judge Acts as Mediator, is Confusing .....	193
e Different Attitudes Between Chinese Judges and Lawyers .....	194
4 Suggestions for Improving the Mediation System in China .....	196
a Allow Non-judicial Organisations to Mediate, and Create a Cohesive Mediation System to Resolve Social Conflicts.....	196
b Mediation from Litigation to Make It an Independent Dispute Resolution Regime.....	197
c Set Up a Separate, Full-time Mediating Judge System and Improve Mediation Procedures.....	197
d Make Pretrial Mediation a Prerequisite in Cases Like Small Claims Disputes .....	198
e Review the Category of Cases Where Mediation is Prohibited .....	199
f Adjust the Regulation on Litigation Costs in Mediation Cases, to Encourage More Parties to Settle Disputes through Mediation.....	200
5 Conclusion.....	201

Chapters	Para
<b>5 Chinese Taipei: Mediation in Taiwan, by Angela Y LIN</b> .....	203
1 Introduction .....	205
2 Mediation Center of the Chinese Arbitration Association, Taipei.....	206
a Introduction.....	206
b Types of Cases Handled by the Mediation Center.....	207
c Qualifications of Mediators .....	207
d Mediation Fee .....	207
e Legal Effect of Settlement Agreements Facilitated by the Mediation Center .....	208
f Mediation Process.....	209
3 Mediation for Disputes over Performance of Government Procurement Contracts under the Government Procurement Act.....	210
a Introduction.....	210
b Mediator's Qualifications .....	211
c Mediation Proceedings .....	212
d Mediation Fee .....	213
e Legal Effect of Mediation.....	213
f Mediation-Arbitration under the Government Procurement Act .....	213
4 Other Mediation Mechanisms under Taiwan Law.....	214
a Mediation under the Statute for Mediations in Villages, Towns and Cities .....	214
b Labour Dispute Mediation under the Act for Settlement of Labor-Management Disputes.....	215
c Consumer Dispute Mediation under Consumer Protection Act .....	216
d Copyright Dispute Mediation under the Copyright Act .....	218
e Mediation of Public Nuisances under the Public Nuisance Dispute Mediation Act.....	219
5 Mediation under the Cross-Strait Investment Agreement.....	220
a Background.....	220
b Scope.....	222

Chapters	Para
c Mediation under the Cross-Strait Investment Agreement.....	223
6 Conclusion.....	224
<b>6 Hong Kong SAR:</b>	
<b>6.1 Mediation in Hong Kong SAR, by Shahla F ALI and Anna K C KOO .....</b>	<b>225</b>
1 Introduction .....	227
2 The Impact on the Dispute Resolution Culture .....	229
3 The Impact on Courts .....	232
4 The Impact on Legal Practitioners .....	237
5 The Impact on Scholarship.....	238
6 Conclusion.....	241
<b>6.2 Mediation's Impact on Hong Kong's Civil Justice System by ZHAO Sining.....</b>	<b>243</b>
1 Introduction .....	245
2 Mediation in Hong Kong before Civil Justice Reform .....	246
3 Legislative Intent of Civil Justice Reform .....	248
a Interim Report .....	248
b Final Report .....	250
c RHC and RDC .....	251
4 Mediation Procedures under Civil Justice Reform.....	253
5 The Impact of Mediation on Civil Justice System .....	256
a Effects of the Costs Sanction.....	257
b "Unreasonable Refusal" .....	257
c "Minimum Level of Participation" .....	262
6 Conclusion.....	264
<b>7 India: Access to Justice for All through Mediation in India, by Rajesh SHARMA .....</b>	<b>267</b>
1 Introduction .....	269
2 Mediation in Pre-Independence India (Before 1947): Panchayat .....	270
3 Mediation in Present Time (Post-Independence Era: 1947-Present).....	272
4 Lok Adalat (People's Court): A de factor Mediation.....	273
5 Conciliation .....	276

Chapters	Para
6 Introduction of Mediation as an Alternative Dispute Resolution Method.....	279
7 Alternative Dispute Resolution Rules 2003 .....	281
8 Mediation Rules .....	284
9 Aap Ki Kachehri: A Real Time Mediation on Television... 287	
10 Conclusion .....	290
<b>8 Indonesia: Mediation in Indonesia, by Karen MILLS .....</b>	<b>295</b>
1 Introduction .....	297
2 Mandatory Mediation as Prerequisite to Litigation .....	297
3 Mediation Procedure Pursuant to PERMA 01/08 .....	298
4 Private Mediation.....	301
5 Mediation Training .....	302
6 Practical Experience: Impact of Mediation on Dispute Resolution Culture in Indonesia .....	302
7 Conclusion .....	304
<b>9 Japan: Mediation in Japan, by SAKAI Hajime.....</b>	<b>305</b>
1 Mediation in Japan.....	307
2 The Reaction of Practitioners.....	308
3 The Impact on Legal Scholarship.....	310
4 Acceptability of the UNCITRAL Model Law .....	311
<b>10 Republic of Korea:</b>	
<b>10.1 The Impact of Mediation on the Culture of Disputing in Korea: Lawyers and Courts, by Deog-Nam HWANG.....</b>	<b>315</b>
1 Introduction .....	317
2 The Development of Civil Dispute Mediation .....	319
a The Development of Laws and Institutions Supporting Civil Dispute Mediation.....	319
b Practice in the Court .....	319
c Court Mediation Statistics .....	320
3 Introduction of Standing Mediator and Court Mediation Center .....	320
a Creation of the Standing Mediator System .....	320
b Background and Basic Structure.....	321
c Standing Mediator Qualifications .....	322
d What Standing Mediators Must Not Be.....	322



Chapters	Para
e Duties of Standing Meditor .....	322
f Working Procedure.....	323
g Evaluation and Criticism .....	323
h Criticisms of Court-annexed Mediation .....	324
i The Absence of the Process to Discover Mediation Experts.....	324
<b>4 The Impact of Mediation on the Dispute Resolution Culture .....</b>	<b>325</b>
a The Impact of Cultural Background on Dispute Resolution Methods.....	325
b Cultural Effects on the General Way of Communication, Business Negotiations and Communication Skills within the Judicial Procedure .....	326
<b>5 The Impact of Mediation on Practising Lawyers.....</b>	<b>327</b>
a How Practising Lawyers Perceive Mediation.....	327
b The Impact on the Content of Standard Dispute Settlement Provisions .....	328
c Recommending Mediation to Clients.....	329
d Reasons Why Lawyers Do Not Recommend Mediation .....	330
e The Impact of Mediation on Legal Advice .....	330
f Types of Disputes Suited for Mediation .....	330
<b>6 The Impact of Mediation on Courts.....</b>	<b>332</b>
a Impact on Judicial Procedure .....	332
b Direct Mediation by Trial Courts.....	334
c Enforcing Mediated Agreements.....	335
<b>7 Conclusion.....</b>	<b>335</b>
Annex 1: Table 10.1.1 Comparison Table of Application Acts on Mediation of Civil Disputes before Enacting Civil Mediation Act .....	337
Annex 2: Table 10.1.2 The Amendment History of Civil Mediation Act .....	339
Annex 3: Table 10.1.3 Statistics of Civil Cases and Mediation .....	342
Annex 4: Table 10.1.4 Mediation Procedure of Civil Cases.....	344

Chapters	Para
<b>10.2 Mediation in Korea: The Development and Challenges, by Lori YI .....</b>	<b>345</b>
1 Introduction .....	347
2 Judicial Mediation.....	348
a Three Types of Judicial Mediation .....	349
b Legal Authority .....	350
c Judicial Mediation Process .....	350
d Mediation by the Trial Court.....	352
e Decision Instead of Mediation .....	353
3 Extrajudicial Mediation.....	354
a Some Features of the Korean Extrajudicial Mediation System .....	354
b Copyright Dispute Mediation .....	356
c Medical Dispute Mediation .....	358
4 Private Mediation.....	361
5 Conclusion and Challenges Ahead.....	362
<b>11 New Zealand: Dispute Resolution and the Justice System: The New Zealand Experience, by Deborah HART .....</b>	<b>365</b>
1 Introduction .....	367
2 Background .....	367
3 Present Day New Zealand .....	369
4 History of Dispute Resolution .....	369
5 Dispute Resolution Legislation .....	371
a Arbitration .....	371
b Adjudication.....	372
c Mediation.....	373
d Residential Tenancies Act 1986 .....	374
e Human Rights Act 1993 .....	374
f Te Ture Maori Act 1993, Maori Land Act 1993 .....	375
g Employment Relations Act 2000.....	375
h Weathertight Homes Resolution Services Act 2006 .....	376
6 Private Mediation.....	377
7 Regulation .....	377
8 Culture .....	379
a Maori Culture .....	379



Chapters	Para
b Hui .....	379
c Treaty of Waitangi Settlement Process.....	381
d Rural Culture .....	383
e Legal Culture .....	384
9 Disaster and Dispute Resolution.....	385
10 The Courts .....	387
a Disputes Tribunal .....	387
b Family Court.....	388
c High Court .....	390
d Generally .....	391
e Courts versus Dispute Resolution .....	392
11 Dispute Resolution Education Initiatives .....	393
a For Lawyers .....	393
b Peer Mediation Schemes .....	394
12 Conclusion.....	394
<b>12 Singapore: The Evolution of ADR in Singapore,</b> <b>by Joel LEE.....</b>	<b>397</b>
1 Introduction .....	399
2 The Birth of ADR.....	400
a Court-based Mediation .....	402
b Community Mediation Centres .....	403
c Singapore Mediation Centre.....	404
3 Growing Pains .....	406
4 Gaining (Reluctant) Acceptance .....	410
5 Making Friends.....	416
6 Looking to the Future .....	418
<b>13 Thailand: Cultivating Mediation Culture in an</b> <b>Adversarial Environment: A Thai Perspective, by</b> <b>Vichai ARIYANUNTAKA .....</b>	<b>423</b>
1 Introduction .....	425
2 Thai Scenario.....	426
3 Alternative Dispute Resolution and Judicial Innovation.....	427
4 Conciliation .....	428
5 Role of the Judge: Inquisitorial versus Adversarial.....	429
6 Some Techniques Used in Court-annexed Conciliation .....	431
7 Conclusion.....	434

Chapters	Para
<b>14 United States of America: The Impact of Mediation on</b> <b>United States Legal Systems, by Eric van GINKEL .....</b>	<b>437</b>
1 Prefatory Note .....	439
2 Introduction .....	440
3 Regulation of Mediation in the United States .....	442
a Court Referral to Mediation .....	445
4 Regulation of Mediation in California .....	445
a Encouraging the Use of Mediation – Confidentiality .....	446
b Lessening the Caseload of the Courts .....	446
5 The Impact of Mediation on the ADR Culture.....	449
6 The Impact of Mediation on Practising Attorneys .....	450
7 The Impact of Mediation on Scholars.....	451
8 The Impact of Mediation on the Courts .....	452
9 The Impact of Mediation on Arbitration.....	454
10 Conclusion and a Look Ahead .....	455
<b>Appendix 1: List of Questions to Contributors by YANG Fan .....</b>	<b>457</b>
<b>Appendix 2: UNCITRAL Model Law on International</b> <b>Commercial Conciliation with Guide to Enactment and</b> <b>Use (2002).....</b>	<b>463</b>
<b>Table of Cases .....</b>	<b>525</b>
<b>Table of Legislation .....</b>	<b>527</b>
<b>Table of Codes, Model Laws and Rules.....</b>	<b>545</b>
<b>Table of Practice Directions .....</b>	<b>547</b>
<b>Index.....</b>	<b>549</b>