

## BOOK REVIEWS

### **Mediation Law and Civil Practice (2nd Edition)**

*Tony Allen*

Bloomsbury Professional (2019)

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The year 2019 was remarkable for mediation practitioners along with the signing of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the ‘Singapore Mediation Convention’). The Convention is intended to facilitate the enforcement of settlement agreements coming after international mediation proceedings. It has put a spotlight on mediation worldwide and substantially promoted alternative dispute resolution (ADR) development. Given this, it is getting more important for us to understand the true meaning and characteristics of mediation. The publication of this book offers a perfect opportunity for the readers to find out more.

The second edition of *Mediation Law and Civil Practice* by Tony Allen systematically introduces the law and practice of mediation in England and Wales. More importantly, by providing vivid discussions about the relationship between the courts and mediations as developed over the past few decades, the book lifts the veil on how the substantive law and rules governing civil practice in England and Wales impinge on mediation.

Allen is a British solicitor who specialises in mediation and a former longstanding Director of the Centre for Effective Dispute Resolution (CEDR). He gained in-depth master-level knowledge of mediation through over 40 years of practice in mediation and law. As the author says, the book is not only about the ‘the practicalities and skills of being a mediator or of representing or being a party at a mediation’, but also attempts to stimulate discussion about the mediation areas where there is doubt or controversy.

To do so, Allen divides the book into 14 co-related chapters. In Chapters 1 to 4, the author introduces the legislative background, the legal status of mediation, the mediator’s role and the connections between mediation and the Civil Procedure Rules 1998 (CPR). In Chapters 5 to 7, he makes references to abundant precedent cases to investigate matters such as ADR orders issued by courts and costs sanctions imposed or dismissed when parties refuse to mediate. Chapters 8 to 10 and 12 to 13 shed light on several practical topics in mediation, for example, pre-drafted ADR clauses in a contract,

its enforceability, considerations on privilege and confidentiality, costs and funding, among others. Finally, the author adopts a comparative approach to describe the impact of European law on mediation in England and Wales in Chapter 11, and in conclusion comments on the future of mediation within the English civil justice system in Chapter 14.

Despite the book being focused on the mediation in England and Wales, thanks to the author's clear and empirical writing style, readers from both civil law and common law countries could easily follow his logical thinking. For instance, to define 'mediation', the author consults rich resources of legal instruments, for example, the EU Mediation Directive, CPR, the Jackson ADR Handbook, the CEDR Model Procedure and the US Uniform Mediation Act, to help readers understand the core characteristics of mediation better.

The author makes use of comparative analysis of the different practices in Australia, the EU, the United States and other countries to illustrate the unique practices in England and Wales. He also offers some pragmatic suggestions for mediating cases, which may inspire the readers in their professional practice. In particular, with respect to settlement agreements, the author underlines the importance of the parties signing written terms to create certainty.

Allen uses fruitful examples to remind the readers of several essential principles of mediation. He points out that mediators are taking a facilitative role in mediation; they are not decision-makers. Their status and power are derived solely from what the parties choose to confer upon them. The parties are free to disengage from any mediation if they believe that their interests are best served elsewhere.

By using plain language, the author wisely reveals the secret of the high satisfaction rate in mediated settlements; he often conveys a sense of equality about the outcome, even where the parties entered a dispute with a significant power imbalance between them. The parties feel they own the terms and very often accept that, since both parties would need to make compromises to achieve a mutual understanding. In the end, success in mediation is a settlement that the parties can live with.

This book is not only recommended for lawyers, judges and academics but also for mediation practitioners who do not come from a law background. The author has given ample illustrations on why legal interpretation is not the biggest part of handling a successful mediation since not all mediation or settlement agreements are intended to create legal relations. The author refers to an illustrative case of this, whereby the basic issue between the parties was whether a maximum of 20 minutes or four hours' parking should be permitted. This is the kind of issue that

is probably best debated in an informal confidential atmosphere before embarking upon a complex legal trial.

The author also introduces some special and novel types of mediation in this book, for example, the speedy mediation procedure in small claims, fast-track cases, in which most of the mediators' work is done by telephone. According to the author, mediators in these cases have achieved striking settlement rates and satisfaction levels since the service was introduced in 2007.

As the author says, 'the pace of ADR development still depends upon professional people'; a professional mediator, engaged at the right time in the process and in the right spirit of cooperation by the parties, will often be able to resolve the most intractable case and save everyone a good deal of money, time and effort.

I believe readers will welcome and benefit from the deep knowledge of mediation from the author by investing some time in reading this book.

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