



**The New Handshake:  
Online Dispute  
Resolution and  
the Future of  
Consumer Protection,  
by Amy J. Schmitz  
and Colin Rule  
(ABA 2017)**

Recall the “old” handshake: “[M]erchants and consumers would meet in person to do business. They would discuss the terms, assess the trustworthiness and character of their contracting partners, and conclude the deal with a handshake. This handshake was more than a kind gesture....That handshake was one’s bond — it was a personal trustmark.”

Amy J. Schmitz and Colin Rule quickly and strongly note: “[T]hose days are gone.”

Schmitz and Rule examine a targeted though extensive dimension of the consumer world: the millions of B2C (business-to-consumer) transactions that participants execute by interacting with each other not “face-to-face” but through digital technology. That is, consumer-merchant transactions are conducted in “e-commerce” in which texting, Skype, or e-mails constitute the communication networks for getting to a “handshake,” networks in which national geographic or legal jurisdictions effectively pose no constraints to such transactions. This exciting, extraordinary commercial world carries remarkable challenges, including what if the participants to a commercial transaction do not fulfill their commitments?

For instance, what if the buyer pays the full price for the product via credit card, but the item is never delivered? Or is delivered four weeks after the promised date? Is damaged or does not work as advertised? From the merchant’s perspective, what if the merchant is charged a system fee when the item was purchased (after the “bidding closed”), but the buyer thereafter refuses, for good or bad reason, to pay the seller the advertised price?

What Schmitz and Rule establish is that participants, both consumers and merchants, all want the same thing: for every “customer issue” to be resolved satisfactorily as quickly and fairly as possible. Speediness, efficiency, easy procedures, safety, and consistent fairness are the consumer’s top priorities. Businesses, in turn, gain loyalty and earn trustworthiness when their processes have all these attributes. Schmitz and Rule examine the lack of consumer remedies and customer care in B2C e-commerce, exploring why consumers rarely pursue remedies for purchase complaints and what would be required for them to use a dispute resolution process and feel fairly treated. They then analyze why any e-commerce business should invest in a well-designed resolution process; indicate how resolution data transparency benefits consumer protection authorities, consumer advocacy organizations, and policy makers; and explore the ethical standards required to sustain any problem-solving process. They conclude with a proposed design for a global e-commerce ODR initiative, indicating that their “initial proposal” is designed to trigger, not end, important discussion and ideas for this domain of extensive economic activity and effective problem-solving. ■

## Endnotes

1 LAINEY FEINGOLD, *STRUCTURED NEGOTIATION: A WINNING ALTERNATIVE TO LAWSUITS 2* (2016).

2 *Id.* at 2.

3 *STORIES MEDIATORS TELL: WORLD EDITION 8* (Lela Love & Glen Parker, eds., 2017).

4 *Id.* at 55.

5 *Id.* at xvi. The editors acknowledge, with appreciation, their professional colleagues who keep such stories alive and “... thereby make all of us better mediators.”

6 *Id.* at xv.

7 eBay learned from such challenges that it colloquially referred to at the time as the “deadbeat bidder” process.

