

# Q&A

## Hon. Mitchell H. Kaplan (Ret.)



### Q. Can you tell us about your practice before you served on the bench?

**A.** Over my 30-plus years in private practice, I handled a broad variety of civil cases, including trials of construction, medical malpractice and civil rights cases, as well as business disputes. In the last dozen years, my practice was more focused on business litigation, in particular securities litigation and disputes between co-venturers in business enterprises. During this time, I frequently represented the accounting industry, including all of the Big Four accounting firms.

### Q. What can you tell us about your settlement style, process and/or philosophy? How do you handle difficult personalities?

**A.** In answering this question, I rely principally on my years on the bench. I think that patience is a critical part of the process. In dealing with difficult litigants or, on the criminal side, defendants, I've come to believe that people need to be heard. After they have had the opportunity to tell you what they think is important—even if you may not agree with their assessments—they are more willing to listen to your views and suggestions, and sometimes even accept them.

### Q. What types of cases are you particularly interested in handling?

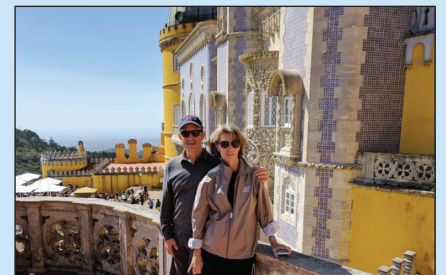
**A.** I think that any case that involves novel issues and/or interesting facts would be interesting to mediate or arbitrate. In my last year on the bench, I presided over two trials involving the construction of very large bridges. I don't have a background in civil engineering, but it was really interesting to learn how bridges are designed and built. I think I have a great deal of experience in matters involving the duties and responsibilities of directors and officers to business entities and business owners, and of co-venturers and shareholders to each other. I also have had many cases, both in private practice and as a judge, that involve corporate finance and business valuation.

### Q. What was one of the more interesting cases you were involved in either on the bench or in practice?

**A.** I represented a startup software company called ITA Software that developed the software that enables online searching for airline flights. It was first deployed on Orbitz. The founders, who had Ph.D.'s in artificial intelligence but little business experience, came to me because the first licensing agreement the company entered into when it was desperate for income was with a global corporation. Although that corporation wasn't even using the software yet, it had demanded extraordinarily restrictive provisions in the licensing agreement regarding who else could receive a license, which led to litigation involving the Orbitz license. Our goal was to extricate ITA from that restrictive licensing agreement. The case had both fascinating technical questions of fact and novel issues of law, including how to avoid enforcement of an arbitration clause so that we could keep the case in federal court in the United States rather than being forced into a European arbitration. It was a great outcome for ITA, which not long after was acquired by Google for a great deal of money.

## FUN FACTS

- I've been married for 39 years and have three adult daughters and one grandson. After my daughters moved out, my wife and I sold our house in the suburbs and moved into town. Although I was dragged kicking and screaming into the city, I soon realized that, once again, my wife was right and I was wrong. My family is pretty spread out geographically. I love the few occasions each year that we can all be together, which is usually at our cottage on Martha's Vineyard.
- I have always enjoyed sports and have been a pretty avid squash and tennis player and skier, although age and injuries have slowed me down substantially in the last year or so.
- My family moved a lot when I was growing up, so by the time I was 18, I had lived in Baltimore; New Jersey; Utica, NY; Redlands, CA; and Brookline, MA.
- I am a huge Red Sox fan. I also like the Patriots and the Celtics, but it's not quite the same. A warm summer night at Fenway Park is a great night out, and now I can walk there from my home.



- My wife, Fern Frolin, and I really enjoy traveling. Prior to the pandemic, we tried to take at least one big trip a year, including this one to Sintra, Portugal.



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