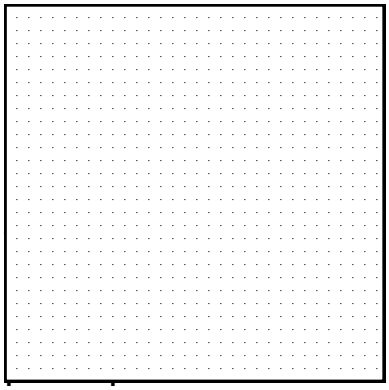
Chapter 2



The Court System

+ See Separate Lecture Outline System

INTRODUCTION

Despite the substantial amount of litigation that occurs in the United States, the experience of many students with the American judicial system is limited to little more that some exposure to traffic court. In fact, most persons have more experience with and know more about the executive and legislative branches of government than they do about the judicial branch. This chapter provides an excellent opportunity to make many aware of the nature and purpose of this major branch of our government.

One goal of this text is to give students an understanding of which courts have power to hear what disputes and when. Thus, the first major concept introduced in this chapter is jurisdiction. Careful attention is given to the requirements for federal jurisdiction and to which cases reach the Supreme Court of the United States. It might be emphasized at this point that the federal courts are not necessarily superior to the state courts. The federal court system is simply an independent system authorized by the Constitution to handle matters of particular federal interest.

This chapter also covers the nuts and bolts of the judicial process.

Among important points to remind students of during the discussion of this chapter are that most cases in the textbook are appellate cases (except for federal district court decisions, few trial court opinions are even published), and that most disputes brought to court are settled before trial. Of those that go through trial to a final verdict, less than 4 percent are reversed on appeal. Also, it might be emphasized again that in a common

law system, such as the United States', cases are the law. Most of the principles set out in the text of the chapters represent judgments in decided cases that involved real people in real controversies.

ADDITIONAL RESOURCES—

HIH AUDIO & VIDEO SUPPLEMENTS HIH

The following audio and video supplements are related to topics discussed in this chapter—

PowerPoint Slides

To highlight some of this chapter's key points, you might use the Lecture Review PowerPoint slides compiled for Chapter 2.

Equal Justice Under Law Series

After you have covered the topic of judicial review, you might consider showing your students the video in the "Equal Justice Under Law" series entitled Marbury v. Madison—the landmark case that first enunciated the doctrine of judicial review. You might also want your students to watch one or both of the following videos to introduce the students to these two landmark cases:

McCulloch v. Maryland
Gibbons v. Ogden

Other Videos

After you have concluded your discussion of the court system, you may wish to show one or more of the following videos to demonstrate visually some of the trial procedures discussed in this chapter:

Moot Court—The Texaco/Pennzoil Case
Anatomy of a Trial—Contracts
A Product's Liability Trial
A Supreme Court Case

CHAPTER OUTLINE

I. The Judiciary's Role in American Government

The essential role of the judiciary in the American governmental system is to interpret and apply the laws to specific situations. The judiciary can decide, among other things, whether the laws or actions of the other two branches are constitutional. The process for making such a determination is known as judicial review. The power of judicial review enables the judicial branch to act as a check on the other two branches of government, in line with the checks and balances system established by the U.S. Constitution.

ENHANCING YOUR LECTURE—

KK } MARBURY V. MADISON (1803) || KK

In the edifice of American law, the Marbury v. Madison[a] decision in 1803 can be viewed as the keystone of the constitutional arch. The facts of the case were as follows. John Adams, who had lost his bid for reelection to the presidency to Thomas Jefferson in 1800, feared the Jeffersonians' antipathy toward business and toward a strong central government. Adams thus worked feverishly to "pack" the judiciary with loyal Federalists (those who believed in a strong national government) by appointing what came to be called "midnight judges" just before Jefferson took office. All of the fifty-nine judicial appointment letters had to be certified and delivered, but Adams's secretary of state (John Marshall) had succeeded in delivering only forty-two of them by the time Jefferson took over as president. Jefferson, of course, refused to order his secretary of state, James Madison, to deliver the remaining commissions.

Marshall's Dilemma

William Marbury and three others to whom the commissions had not been delivered sought a writ of mandamus (an order directing a government official to fulfill a duty) from the United States Supreme Court, as authorized by Section 13 of the Judiciary Act of 1789. As fate would have it, John Marshall had stepped down as Adams's secretary of state only to become chief justice of the Supreme Court. Marshall faced a dilemma: If he ordered the commissions delivered, the new secretary of state (Madison) could simply refuse to deliver them—and the Court had no way to compel action, because it had no police force. At the same time, if Marshall simply allowed the new administration to do as it wished, the Court's power would be severely eroded.

Marshall's Decision

Marshall masterfully fashioned his decision. On the one hand, he enlarged the power of the Supreme Court by affirming the Court's power of judicial review. He stated, "It is emphatically the province and duty of the Judicial Department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. . . . So if the law be in opposition to the Constitution . . . [t]he Court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."

On the other hand, his decision did not require anyone to do anything. He stated that the highest court did not have the power to issue a writ of mandamus in this particular case. Marshall pointed out that although the Judiciary Act of 1789 specified that the Supreme Court could issue writs of mandamus as part of its original jurisdiction, Article III of the Constitution, which spelled out the Court's original jurisdiction, did not mention writs of mandamus. Because Congress did not have the right to expand the Supreme Court's jurisdiction, this section of the Judiciary Act of 1789 was unconstitutional—and thus void. The decision still stands today as a judicial and political masterpiece.

Application to Today's World

Since the Marbury v. Madison decision, the power of judicial review has remained unchallenged. Today, this power is exercised by both federal and state courts. For example, as your students will read in Chapter 5, several of the laws that Congress has passed in an attempt to protect minors from Internet pornography have been held unconstitutional by the courts. If the courts did not have the power of judicial review, the constitutionality of these acts of Congress could not be challenged in court—a congressional statute would remain law until changed by Congress. Because of the importance of Marbury v. Madison in our legal system, the courts of other countries that have adopted a constitutional democracy often cite this decision as a justification for judicial review.

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a. 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).

ENHANCING YOUR LECTURE—

KK } JUDICIAL REVIEW IN OTHER NATIONS || KK

The concept of judicial review was pioneered by the United States. Some maintain that one of the reasons the doctrine was readily accepted in this country was that it fit well with the checks and balances designed by the founders. Today, all established constitutional democracies have some form of judicial review—the power to rule on the constitutionality of laws—but its form varies from country to country.

For example, Canada's Supreme Court can exercise judicial review but is barred from doing so if a law includes a provision explicitly prohibiting such review. France has a Constitutional Council that rules on the constitutionality of laws *before* the laws take effect. Laws can be referred to the council for prior review by the president, the prime minister, and the heads of the two chambers of parliament. Prior review is also an option in Germany and Italy, if requested by the national or a regional government. In contrast, the United States Supreme Court does not give advisory opinions; be before the Supreme Court will render a decision only when there is an actual dispute concerning an issue.

For Critical Analysis

In any country in which a constitution sets forth the basic powers and structure of government, some governmental body has to decide whether laws enacted by the government are consistent with that constitution. *Why might the courts be best suited to handle this task? Can you propose a better alternative?*

II. Basic Judicial Requirements

Before a lawsuit can be heard in a court, certain requirements must be met. These requirements relate to jurisdiction, venue, and standing to sue.

A. JURISDICTION

Jurisdiction is the power to hear and decide a case. Before a court can hear a case, it must have jurisdiction over both the person against whom the suit is brought or the property involved in the suit and the subject matter of the case.

1. Jurisdiction over Persons or Property

Power over the person is referred to as *in personam* jurisdiction; power over property is referred to as *in rem* jurisdiction. Generally, a court's power is limited to the territorial boundaries of the state in which it is located, but in some cases, a state's long arm statute gives a court jurisdiction over a nonresident. A corporation is subject to the jurisdiction of the courts in any state in which it is incorporated, in which it has its main office, or in which it does business.

CASE SYNOPSIS—

Case 2.1: Mastondrea v. Occidental Hoteles Management S.A.

Libgo Travel, Inc., in Ramsey, New Jersey, with Allegro Resorts Management Corp. (ARMC), a

marketing agency in Miami, Florida, placed an ad in the Newark Star Ledger, a newspaper in Newark, New Jersey, to tout vacation packages for accommodations at the Royal Hideaway Playacar, an all-inclusive resort hotel in Quintana Roo, Mexico. ARMC is part of Occidental Hotels Management, B.V., a Netherlands corporation that owns the hotel with Occidental Hoteles Management S.A., a Spanish company. In response to the ad, Amanda Mastondrea, a New Jersey resident, bought one of the packages through Liberty Travel, a chain of travel agencies in the eastern United States that Libgo owns and operates. At the resort, Mastondrea slipped and fell on a wet staircase. She filed a suit in a New Jersey state court against the hotel, its owners, and others, alleging negligence. The defendants asked the court to dismiss the suit for lack of personal jurisdiction. The court refused. The hotel appealed.

A state intermediate appellate court affirmed, concluding that the hotel had contacts with New Jersey, consisting of a tour operator contract and marketing activities through ARMC and Libgo, and that in response to the marketing, Mastondrea booked a vacation at the hotel. "Courts have generally sustained the exercise of personal jurisdiction over a defendant who, as a party to a contract, has had some connection with the forum state or who should have anticipated that his conduct would have significant effects in that state. . . . [T]he Hotel should have reasonably anticipated that its conduct would have significant effects in New Jersey."

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Notes and Questions

How did the marketing agreement between ARMC and Libgo work? According to the court in the Mastondrea case, "[t]he cooperative marketing agreement between ARMC and Libgo, in effect at the time of plaintiff's injury, encompassed the three 'brands' of hotels, Allegro, Grand, and Royal Hideaway (the resort at issue), grouped under the trade name of Occidental Hotels & Resorts. These brands were sometimes advertised separately, and sometimes jointly under the Occidental designation. According to the testimony of ARMC employee [Kathy] Halpern, the agreement between ARMC and Libgo established a marketing budget, premised upon the level of sales of relevant vacation packages by Libgo entities in the prior year. ARMC then built marketing initiatives based on that specified dollar amount. In that connection, ARMC, through Halpern, worked with Libgo to develop and implement a marketing plan that specified the marketing initiatives for the calendar year, including media insertions, brochure contributions, trade shows, and outside events. Although the plan was jointly developed, it was ultimately subject to the approval of ARMC Marketing Vice-President, Marcelo Radice, or another senior ARMC employee. According to Halpern, a media insertion schedule would be incorporated as part of the media plan. Once approved, Libgo would be responsible for placing ads, sending tear sheets containing copies of the ads to ARMC, and for initial payments to the various newspapers. Halpern indicated that '[t]he way a marketing agreement is paid for in terms of the cost, it is exactly what it states: it is cooperative. So the tour operator puts in some, as [do] the various hotels.' "

Was it fair in this case for the state of New Jersey to assert personal jurisdiction over a hotel in Mexico? The court concluded that it was. "[T]his suit does not offend traditional notions of fair play and substantial justice. The Hotel is demonstrably a part of a worldwide travel empire well-equipped to defend litigation within the United States. It chose to market itself, through Libgo, in New Jersey, and thus can be deemed to have foreseen, and indeed to have induced, the presence of New Jersey guests at its Mexican facility. Much more occurred here than national advertising, the acceptance of bookings from independent travel agencies and the payment of commissions to those agencies.

"That some harms would follow and would result in claims in New Jersey was not only to be

anticipated, it was predictable. 'Fair warning' that the Hotel's activities might subject it to the jurisdiction of New Jersey's courts thus existed. Moreover, the Hotel's activities were of a sort that gave New Jersey an interest in holding it to account for plaintiff's alleged injuries.".

ANSWER TO "WHAT IF THE FACTS WERE DIFFERENT?" IN CASE 2.1

If Mastondrea had not seen Libgo and Allegro's ad, but had bought a Royal Hideaway vacation package on the recommendation of a Liberty travel agent, is it likely that the result in this case would have been different? Why or why not? It is not likely that the court would have concluded there was no personal jurisdiction in this case on the basis of the facts stated in the question. It was the defendant hotel's minimum contacts with the state, and its expectations flowing from those contacts, that served as the basis for the court's assertion of jurisdiction. Those contacts included marketing activities, which were part of the arrangements with Libgo and Liberty. Whether Mastondrea acted in response to an ad placed by Libgo or a verbal suggestion made by a Liberty agent would not seem significant.

ANSWER TO "THE GLOBAL DIMENSION" QUESTION IN CASE 2.1

What do the circumstances and the holding in this case suggest to a business firm that actively attempts to attract customers in a variety of jurisdictions? This situation and the ruling in this case indicate that a business firm actively attempting soliciting business in a jurisdiction should be prepared to appear in its courts. This principle likely covers any jurisdiction and reaches any business conducted in any manner.

ADDITIONAL BACKGROUND—

Long Arm Statutes

A court has personal jurisdiction over persons who consent to it—for example, persons who reside within a court's territorial boundaries impliedly consent to the court's personal jurisdiction. A state long arm statute gives a state court the authority to exercise jurisdiction over nonresident individuals under circumstances specified in the statute. Typically, these circumstances include going into or communicating with someone in the state for limited purposes, such as transacting business, to which the claim in which jurisdiction is sought must relate.

The following is New York's long arm statute, New York Civil Practice Laws and Rules Section 302 (NY CPLR § 302).

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED

CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 3—JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

§ 302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

2. Jurisdiction over Subject Matter

Subject-matter jurisdiction involves limitations on the types of cases a court can hear—a court of general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court of limited jurisdiction. Courts of original jurisdiction are trial courts; courts of appellate jurisdiction are reviewing courts.

ADDITIONAL BACKGROUND—

Diversity of Citizenship

Under Article III, Section 2 of the United States Constitution, diversity of citizenship is one of the bases for federal jurisdiction. Congress further limits the number of suits that federal courts might otherwise hear by setting a minimum to the amount of money that must be involved before a federal district court can exercise jurisdiction.

The following is the statute in which Congress sets out the requirements for diversity jurisdiction, including the amount in controversy.

UNITED STATES CODE

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV—JURISDICTION AND VENUE
CHAPTER 85—DISTRICT COURTS; JURISDICTION

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—
(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

(June 25, 1948, c. 646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658; July 25, 1958, Pub.L. 85-554, § 2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 88-439, § 1, 78 Stat. 445; Oct. 21, 1976, Pub.L. 94-583, § 3, 90 Stat. 2891; Nov. 19, 1988, Pub.L. 100-702, Title II, §§ 201 to 203, 102 Stat. 4646 ; Oct. 19, 1996, Pub.L. 104-317, Title II, § 205(a), 110 Stat. 3850.)

3. Jurisdiction of the Federal Courts

A suit can be brought in a federal court whenever it involves (1) a question arising under the Constitution, a treaty, or a federal law, or (2) citizens of different states, a foreign country and an American citizen, or a foreign citizen and an American citizen. Congress has set an

additional requirement—the amount in controversy must be more than $75,000. For diversity-of-citizenship purposes, a corporation is a citizen of the state in which it is incorporated and of the state in which it has its principal place of business.

4. Exclusive v. Concurrent Jurisdiction

When both state and federal courts have the power to hear a case, concurrent jurisdiction exists. When a case can be heard only in federal courts or only in state courts, exclusive jurisdiction exists. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, and copyrights; in suits against the United States; and in some areas of admiralty law. States have exclusive jurisdiction in certain subject matters also—for example, in divorce and in adoptions. Factors for choosing one forum over another are listed in the text.

B. JURISDICTION IN CYBERSPACE

The basic question in this context is whether there are sufficient minimum contacts in a jurisdiction if the only connection to it is an ad on the Web originating from a remote location. To date, the answer has generally been no.

1. The "Sliding-Scale" Standard

One approach is the sliding scale, according to which a passive ad is not enough on which to base jurisdiction while doing considerable business online is. Some of the controversy involves cases in which the contact is more than a passive ad but less than a lot of activity.

IHI ANSWER TO VIDEO QUESTION LTR. A IHI

What standard would a court apply to determine whether it has jurisdiction over the out-of-state computer firm in the video? A court would apply a "sliding-scale" standard to determine if the defendants (Wizard Internet) had sufficient minimum contacts with the state for the court to assert jurisdiction. Generally, the courts have found that jurisdiction is proper when there is substantial business conducted over the Internet (with contracts, sales, and so on). When there is some interactivity through a Web site, courts have also sometimes held that jurisdiction is proper. Jurisdiction is not proper, however, when there is merely passive advertising.

IHI ANSWER TO VIDEO QUESTION LTR. B IHI

What factors is a court likely to consider in assessing whether sufficient contracts existed when the only connection to the jurisdiction is through a Web site? The facts in the video indicate that there might be some interactivity through Wizard Internet's Web site. The court will likely focus on Wizard's Web site and determine what kinds of business it conducts over the Web site. The court will consider whether a person could order Wizard's products or services via the Web site, whether the defendant entered into contracts over the Web, and if the defendant did business with other Montana residents.

IHI ANSWER TO VIDEO QUESTION LTR. C IHI

How do you think the court would resolve the issue in this case? Wizard Internet could argue that the site is not "interactive" because software cannot be downloaded from the site (according to Caleb). That would be the defendant's strongest argument against jurisdiction. The court, however, would also consider any other interactivity. The facts state that Wizard has done projects in other states and might have clients in Montana (although Anna and Caleb cannot remember). If Wizard does have clients in Montana who purchased software via the Web site, the court will likely find jurisdiction is proper because the defendant purposefully availed itself of the privilege of acting in the forum state. Also, if Wizard Internet regularly enters contracts to sell its software or consulting services over the Web—which seems likely given the type of business in which Wizard engages—the court may hold jurisdiction is proper. If, however, Wizard simply advertises its services over the Internet and persons cannot place orders via the Web, the court will likely hold that this passive advertising does not justify asserting jurisdiction.

2. International Jurisdictional Issues

The minimum-contact standard can apply in an international context. As in cyberspace, a firm should attempt to comply with the laws of any jurisdiction in which it targets customers.

C. VENUE

A court that has jurisdiction may not have venue. Venue refers to the most appropriate location for a trial. Essentially, the court that tries a case should be in the geographic area in which the incident occurred or the parties reside.

D. STANDING TO SUE

Before a person can bring a lawsuit before a court, the party must have standing. The party must have suffered a harm, or been threatened a harm, by the action about which he or she is complaining. The controversy at issue must also be justifiable (real and substantial, as opposed to hypothetical or academic).

III. The State and Federal Court Systems

A. STATE COURT SYSTEMS

Many state court systems have a level of trial courts and two levels of appellate courts.

1. Trial Courts

Trial courts with limited jurisdiction include local municipal courts (which handle mainly traffic cases), small claims courts, and domestic relations courts. Trial courts with general jurisdiction include county, district, and superior courts. At trial, the parties may dispute the facts, what law applies, and how that law should be applied.

2. Appellate. or Reviewing, Courts

In most states, after a case is tried, there is a right to at least one appeal. Few cases are retried on appeal. An appellate court examines the record of a case, looking at questions of law and procedure for errors by the court below. In about half of the states, there is an intermediate level of appellate courts.

3. Highest State Courts

In all states, there is a higher court, usually called the state supreme court. The decisions of this highest court on all questions of state law are final. If a federal constitutional issue is involved in the state supreme court's decision, the decision may be appealed to the United States Supreme Court.

B. THE FEDERAL COURT SYSTEM

The federal court system is also three-tiered with a level of trial courts and two levels of appellate courts, including the United States Supreme Court.

1. U.S. District Courts

Federal trial courts of general jurisdiction are called district courts. (A district may consist of an entire state or part of a state. A district court has geographical jurisdiction corresponding to the territory of its district. Congress determines the number of districts.) Trial courts of limited jurisdiction include U.S. Tax Courts and U.S. Bankruptcy Courts.

2. U.S. Courts of Appeals

U.S. courts of appeal hear appeals from the decisions of the district courts located within their respective circuits. (The U.S. and its territories are divided into twelve judicial circuits. The jurisdiction of a thirteenth circuit—the federal circuit—is national but limited to certain subject matter.) The decision of each court of appeals is binding on federal courts only in that circuit.

3. United States Supreme Court

The court at the top of the federal system is the United States Supreme Court to which further appeal is not mandatory but may be possible. A party may ask the Court to issue a writ of *certiorari*, but the Court may deny the petition. Denying a petition is not a decision on the merits of the case. Most petitions are denied. Typically, the Court grants petitions only in cases that at least four of the justices view as involving important constitutional questions.

C. PROCEDURAL RULES

Procedural requirements are introduced in the text, principally through a brief discussion of the Federal Rules of Civil Procedure (FRCP). Most cases follow the same basic steps, from the pleadings through the appeal (if any). The text uses a hypothetical to illustrate various stages in litigation.

D. CONSULTING WITH AN ATTORNEY

The text outlines what an attorney might tell a client about a lawsuit, including the probability of success, and the procedures, money, and time involved. How an attorney's fees may be calculated and who might be liable for them is explained. It is also noted that an attorney's fees do not include other costs related to a case, such as court fees.

ADDITIONAL BACKGROUND—

Who Pays an Attorney's Fee?

Generally, unless statutorily or contractually authorized, attorneys' fees are not awardable to a winning party. Thus, the basic answer is that everyone pays his or her own *attorney's fee*. There are exceptions. In some circumstances (for example, in certain cases involving indigent criminal defendants), the government pays, win or lose. Fees may be awarded if the losing party acted in bad faith, vexatiously, wantonly, or for oppressive reasons, or if the litigation confers a substantial benefit on the

members of an ascertainable class and the court's subject matter jurisdiction makes possible an award to spread the costs among them. In a civil rights action, a court may award fees to a prevailing defendant, if the action is interpreted as frivolous, unreasonable, or without foundation. (Most, if not all, civil rights laws expressly provide that attorneys' fees may be awarded to a prevailing plaintiff.)

Of course, the sources of the funds to pay attorneys' fees vary. Under a contingent fee arrangement, an attorney might agree to accept as compensation a percentage—typically, about thirty to forty percent—of whatever amount is recovered. (If nothing is recovered, the attorney receives nothing.) Sometimes parties not directly involved in the litigation pay. (For example, an individual who favors prayer in the schools might pay the defense's expenses in an appropriate case.) Sometimes attorneys pay their own fees. (Attorneys refer to this work as *pro bono*. For example, attorneys handling cases for the American Civil Liberties Union pay their own fees.)

E. PRETRIAL PROCEDURES

1. The Pleadings

In a civil case, the pleadings inform each party of the other's claims and specify the issues. The pleadings consist of a complaint and an answer.

a. The Plaintiff's Complaint

The complaint (or petition or declaration) is filed with the clerk of the trial court. It contains a statement alleging jurisdictional facts; a statement of facts entitling the complainant to relief; and a statement asking for a specific remedy. A copy of the complaint and a summons is served on the party against whom the complaint is made. The summons notifies the defendant of his or her options—file a motion to dismiss, file an answer, or default. Corporate defendants can be served by delivering process to their registered agents. In federal cases, service can be waived.

CASE SYNOPSIS—

Case 2.2: Cruz v. Fagor America, Inc.

Alan Cruz was burned on the left side of his body when he tried to take the lid off a pressure cooker distributed by Fagor America, Inc. He filed a suit in a California state court against Fagor, alleging negligence and product liability, and mailed a summons and a copy of the complaint to Fagor by certified mail, return receipt requested. The envelope was addressed to "Patricio Barriga, Chairman of the Board, FAGOR AMERICA, INC.," etc. The receipt was returned with the signature of "Tina Hayes." Fagor did not file an answer. In a default judgment, Cruz was awarded damages of $259,114.50. Later, Barriga claimed that he had not been notified of the suit. The court granted Fagor's motion to set aside the judgment. Cruz appealed.

The state intermediate appellate court reversed. Cruz met the requirements for serving an out-of-state corporation. Significantly, he addressed the service to Barriga, not to the corporation. Under a state statute, service is proper when the summons and a copy of the complaint are delivered to "a person authorized by the corporation to receive service." Hayes was a Fagor employee who regularly received mail on her employer's behalf. "Hayes's notice of the action is imputed to Fagor and its officers."

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Notes and Questions

Did Fagor establish a satisfactory excuse for failing to defend against Cruz's suit? The appellate court answered no. "Although Fagor submitted a declaration of Patricio Barriga, notably absent from that declaration is any statement that he does not know Hayes, that Hayes is not employed by Fagor, that Hayes is not authorized to accept mail for Barriga or other Fagor officers, or that neither Hayes or anyone else at Fagor received the summons and complaint at issue. Barriga also does not state that he was unaware of the action pending against Fagor."

If a mailed summons actually reached the individual to be served, would that be sufficient to establish valid service, even if the summons was not addressed correctly or was signed for by someone who did not have the authority to do so? Probably. If a plaintiff can provide evidence that a corporate officer or an agent for service of process actually received a summons, this would likely be sufficient to establish that the plaintiff substantially effected service.

Could a party serve process via e-mail without asking the court? *Federal Rules of Civil Procedure* permit service by e-mail in certain circumstances, but generally, a party will have to obtain a court's permission.

What are the advantages of effecting service of process via e-mail? The chief advantages are lower cost and faster process. Any businessperson who is involved in litigation will benefit, through lower legal costs, by the time and cost savings resulting from service by e-mail. The legal profession, the court systems, and other plaintiffs will also realize the cost-saving advantages of effecting service of process over the Internet.

ANSWERS TO QUESTIONS AT THE END OF CASE 2.2

1. Suppose that Cruz had misaddressed the envelope, but the summons had still reached Hayes and Cruz could prove it. Would this have been sufficient to establish valid service? Explain. Evidence that a mailed summons actually reached the individual to be served should be sufficient to establish valid service, even if the envelope was misaddressed or some other circumstance indicated that the summons might have gone astray. Thus, if Cruz were able to provide evidence that a corporate officer or an agent for service of process actually received a summons, this should have been sufficient to establish compliance with the requirements for service of process, regardless of the address on the envelope.

2. Should a plaintiff be required to serve a defendant with a summons and a copy of a complaint more than once? Why or why not? More than one service is not more likely to receive a response. Besides, it would be unfair to the plaintiff to require more than one service. As the court pointed out in the *Cruz* case, for example, "[a] plaintiff who has provided evidence that a person authorized to receive mail on behalf of a corporation in fact received an item that was mailed to an officer of the corporation should not be held responsible for any failure on the part of the corporate defendant to effectively distribute that mail."

b. *The Defendant's Response*

The defendant's answer admits or denies the allegations in the complaint and sets out any defenses and counterclaims (the plaintiff can file a reply to any counterclaim).

2. Dismissals and Judgments before Trial

a. Motion to Dismiss
A defendant's motion to dismiss may be based on any of several grounds. A motion to dismiss for failure to state a claim on which relief can be granted alleges that according to the law, even if the facts in the complaint are true, the defendant is not liable.

b. Motion for Judgment on the Pleadings
After the pleadings are filed, if no facts are in dispute and only questions of law are at issue, either party can file a motion for judgment on the pleadings. A trial might be avoided if no facts are in dispute and only questions of law are at issue.

ADDITIONAL BACKGROUND—

Motions to Dismiss and Other Pre-Answer Motions

Besides a plaintiff's failure to state a claim on which relief can be granted, a defendant's pre-answer motion to dismiss may be based on the court's lack of subject matter or personal jurisdiction, improper venue, insufficiency of process or service of process, and the plaintiff's failure to join a party needed for a just adjudication of the controversy. Or the defendant may raise these defenses in his or her answer. In fact, some of these must be raised at this stage, or they are deemed waived. A defendant may also move for dismissal on the ground of the plaintiff's failure to diligently prosecute his or her claim, or to comply with procedural rules or a court order.

Other pre-answer motions include: a motion for a more definite statement (which may be made if a pleading is so vague or ambiguous that a response cannot reasonably be framed); a motion to strike such matters as, for example, an insufficient defense; and a motion for summary judgment (through which, as discussed below, the moving party asserts that there is no genuine issue of material fact, and he or she is entitled to judgment as a matter of law).

c. Motion for Summary Judgment

Like a motion for judgment on the pleadings, after the pleadings are filed, if no facts are in dispute and only questions of law are at issue, either party can file a motion for summary judgment. A trial might be avoided if no facts are in dispute and only questions of law are at issue. In ruling on a motion for summary judgment, a court can consider evidence outside the pleadings.

ADDITIONAL BACKGROUND—

Motions for Judgment on the Pleadings and Other Motions That May Be Made after the Pleadings Are Closed

A motion for judgment on the pleadings is more akin to a motion for summary judgment than it is to a motion to dismiss for failure to state a claim on which relief can be granted. The grounds on which motions to dismiss can be made can be divided into four categories, including challenges to the complaint itself. These challenges point to defects on the face of a complaint—that is, a plaintiff may actually have a claim, but has not properly phrased it. A motion for judgment on the pleadings "attack[s] the substantive sufficiency of the allegations." In other words, a motion for judgment on the pleadings challenges not only the sufficiency of an opponent's pleading, but whether a substantive right to relief even exists on the facts as pleaded. (For example, the text notes that this motion would be appropriate if the facts as shown in the pleadings reveal that the applicable statute of limitations has run.) Also, before a motion for judgment on the pleadings can be made, both a complaint and an answer must have been filed (unlike a motion to dismiss for failure to state a claim on which relief can be granted, which is a pre-answer motion).

Other motions that may be made after the pleadings are closed include the defendant's motion to dismiss on the basis of the court's lack of subject matter jurisdiction, or the plaintiff's failure to state a claim on which relief can be granted or to join an indispensable party. At this point, a defendant may also move for dismissal on the ground of the plaintiff's failure to diligently prosecute his or her claim, or to comply with procedural rules or a court order. At this time, a party may also object to the other's failure to state a legal defense to a claim.

3. Discovery

To prepare for trial, parties obtain information from each other and from witnesses through the process of discovery. These devices save time by preserving evidence, narrowing the issues, preventing surprises at trial, and avoiding a trial altogether in some cases.

a. Depositions and Interrogatories

A deposition is a record of the answers of a party or witness to questions asked by the attorneys of both plaintiff and defendant. Interrogatories are written questions asked of a party, who responds in writing.

b. Requests for Admissions

A request for an admission is a request that a party admit the truth of a matter.

c. Requests for Documents, Objects, and Entry upon Land

A request for documents, objects, and entry on land is a request to inspect these items.

d. Request of Examinations

A request for a physical or mental examination will be granted only if the court decides that the need for the information outweighs the examinee's right of privacy.

e. Electronic Discovery
Computer-generated or electronically recorded information, such as e-mail, voice mail, spreadsheets, word processing documents, and other data, is also discoverable. This is sometimes referred to as e-evidence. The text discusses some of the technical issues and the question of costs.

ANSWERS TO CRITICAL ANALYSIS QUESTIONS IN THE FEATURE—EMERGING TRENDS IN THE LEGAL ENVIRONMENT

1. How might a large corporation protect itself from allegations that it intentionally failed to preserve electronic data? A corporation might defend against charges of intentional destruction or loss of data by showing, for example, that the absence is due to the implementation of a policy to periodically purge electronic systems. Such charges might be avoided by not destroying the data but instead storing it.

2. Given the significant costs and often burdensome associated with electronic data discovery and the fact that paying such costs is often burdensome, should courts consider cost shifting in every case involving electronic discovery? Why or why not? A court should consider cost shifting in every case in which the parties' abilities to afford the cost are unequal, because electronic discovery can be expensive. Typically, the cost is more easily borne by, for example, a large corporation rather than a private individual, who might otherwise not request discovery.

4. Pretrial Conference
After discovery, a pretrial hearing is held to clarify the issues, consider a settlement, and set rules for trial.

5. The Right to a Jury Trial and Jury Selection
If a jury trial is possible and has been requested, the jury is selected. Prospective jurors undergo *voir dire* (questioning by the attorneys to determine impartiality).

F. THE TRIAL

1. Opening Statements
The trial begins with the attorneys' opening statements. These statements concern facts that they expect to prove during the trial.

2. Rules of Evidence
These rules ensure that evidence presented during a trial is fair and reliable.

3. Examination of Witnesses
Because the plaintiff has the burden of proving his or her case, the plaintiff's attorney calls and examines the first witness. This is called direct examination. The defendant's attorney cross-examines the plaintiff's witness, after which there is an opportunity for redirect and recross-examinations.

a. Potential Motion and Judgment
In a jury trial, after the plaintiff's case is presented, the defendant can move for a directed verdict, which the judge grants if he or she believes that the jury could not find for the plaintiff. If this motion is denied, the defendant's attorney presents the defendant's case.

ADDITIONAL BACKGROUND—

Motions for a Directed Verdict and Motions for Summary Judgment

Under the Federal Rules of Civil Procedure, a party may move for a directed verdict: (a) after his or her opponent's opening statement, (b) at the conclusion of the opponent's case, or (c) at the close of all the evidence. Basically, a directed verdict is proper if the party with the burden of proof has presented no or insufficient evidence on a critical issue. A party with the burden of persuasion on an issue is rarely entitled to a directed verdict, since the party bears the risk of nonpersuasion, and usually, reasonable jurors may differ on what evidence to believe. Thus, even if a party with the burden of persuasion produces substantial evidence of, for example, the other party's negligence, so that the jury could reasonably conclude that the other party was negligent, the motion will be denied, since the jury may also disbelieve the evidence.

A motion for a directed verdict is a procedural device available in both civil and criminal proceedings in which the trial is by jury. Either side may move for a directed verdict whenever the other side rests--for example, after the plaintiff presents his or her evidence, the defendant may move for a directed verdict; after the defendant rests, the plaintiff may so move; after the plaintiff's rebuttal; after the defendant's rejoinder; and so on. On determining that the evidence is such that reasonable jurors could not disagree and, thus, the moving party is entitled to a favorable verdict as a matter of law, the judge grants the motion and takes the case from the jury's consideration.

A motion for summary judgment is a procedural device available only in civil proceedings. Either side may move for summary judgment before the trial on any or all of the issues--the defendant at any time (for example, when the pleadings do not allege a contradictory statement of material facts, and thus, there is nothing for a jury to decide); the plaintiff not until after twenty days from commencement of the action or within twenty days after an adverse party moves for summary judgment. On determining that there is no genuine issue of material fact and the moving party is entitled to prevail on the issue or issues as a matter of law, the judge grants the motion. If there is any doubt as to any of the facts necessary to determine the outcome of the issue or issues, the court will deny the motion.

b. Defendant's Evidence
The defendant's attorney presents the evidence and witnesses for the defendant, after which there is an opportunity for redirect and recross-examinations. At the end of the defendant's case, either party can move for a directed verdict. If this motion is denied, the plaintiff's attorney can refute the defendant's case in a rebuttal, and the defendant's attorney can meet that evidence in a rejoinder.

4. Closing Arguments, Jury Instructions, and Verdict
After both sides have rested, the attorneys present their closing arguments. The jury is instructed in the law that applies to the case. The jury retires to consider a verdict, specifying the factual findings and the damages.

G. POSTTRIAL MOTIONS

After the jury has rendered its verdict, either party may make a posttrial motion. The prevailing party usually files a motion for a judgment in accordance with the verdict.

1. Motion for a New Trial

The non-prevailing party frequently files a motion for a new trial (which may be granted on the ground that the jury verdict is the obvious result of a misapplication of the law or a misunderstanding of the evidence, or on the grounds of newly discovered evidence, misconduct by the participants, or error by the judge).

2. Motion for Judgment N.O.V.
The nonprevailing party may file a motion for a judgment n.o.v. (or judgment as a matter of law), which will be granted if the jury's verdict was unreasonable ad erroneous.

H. THE APPEAL

1. Filing the Appeal
To appeal, the appellant files the record on appeal, which contains the pleadings, a trial transcript, copies of the exhibits, the judge's rulings, arguments of counsel, jury instructions, the verdict, posttrial motions, and the judgment order from the case below. The appellant files a brief, which contains statements of facts, issues, applicable law, and grounds for reversal. The appellee files an answering brief.

2. Appellate Review
The court reviews these records, the attorneys present oral arguments, and the court affirms the lower court's judgment or reverses it and remands the case for a new trial.

CASE SYNOPSIS—

Case 2.3: Evans v. Eaton Corp. Long Term Disability Plan

Eaton Corp. funds and administers a long-term disability benefits plan for its employees. In 1998, Eaton employee Brenda Evans quit her job due to severe rheumatoid arthritis and filed for benefits. Four years later, Evans injured her spine in a car accident and added that injury to her disability claims. By 2004, however, Evans's arthritis had improved and her back injury seemed to be less severe—she could cook, shop, do laundry, wash dishes, and drive. Eaton decided that Evans was no longer totally disabled and terminated her benefits. She filed a suit in a federal district court against Eaton, alleging violations of the Employee Retirement Income Security Act of 1974 (ERISA). The court found Evans's examining physicians more credible than Eaton's and reinstated Evans's benefits. Eaton appealed.
"

The U.S. Court of Appeals for the Fourth Circuit reversed and remanded for a judgment in Eaton's favor. A reviewing court must "show enough deference to a primary decision-maker's judgment that the court does not reverse merely because it would have come to a different result. . . . Where an ERISA administrator rejects a claim to benefits on the strength of substantial evidence, careful and coherent reasoning, faithful adherence to the letter of ERISA and the language in the plan, and a fair and searching process, there can be no abuse of discretion—even if another, and arguably a better, decision-maker might have come to a different, and arguably a better, result."

.....

Notes and Questions

Is it possible that a court would "show . . . deference to a primary decision-maker's judgment" and affirm a result that is clearly an abuse of discretion? Yes, and it may sometimes happen, but such a compounded abuse of discretion is one of the reasons for the provision of appellate review. At times, upholding the process may be viewed as more important than arriving at a "correct" result; at other times, the "substance" of an outcome may seem to take precedence over judicial "form"; in still other circumstances, as in the Eaton case, the two can be intertwined.

What does the court mean by the term "judicial restraint"? In this case, the term

"judicial restraint" refers to the court's refraining from substituting its judgment for that of the defendant's benefits administrator—i.e., making a different decision based on the same evidence. Instead, in the appellate court's opinion, the lower court should have reviewed only the administrator's decision-making to determine whether its process followed the statutory requirements. If so, the administrator's decision should have been left undisturbed.

ANSWER TO "WHAT IF THE FACTS WERE DIFFERENT?" IN CASE 2.3

Suppose that the district court had concluded that Eaton Corporation's termination of Evans's benefits was not an abuse of discretion, and Evans had appealed. In that situation, would Evans have had any grounds for appealing the district court's decision? Explain. In those circumstances, Evans's grounds for appeal might have included the court's alleged abuse of discretion, as evidenced perhaps by its disregard for her witnesses. But credibility is generally a determination for a trial court, not an appellate court, except in a case of "clear error."

ANSWER TO "THE ETHICAL DIMENSION" QUESTION IN CASE 2.3

The appellate court noted in this case that the district court's decision—which granted benefits to Evans—may arguably have been a better decision under these facts. If the court believes the district court's conclusion was right, then why did it reverse the decision? What does this tell you about the standards for review that judges use? This ruling indicates, among other things, that standards of review, although they "cannot be imprisoned within any form of words," are not arbitrary. There is a certain method in their interpretation and clear limits to their application.

3. Higher Appellate Courts

If this court is an intermediate appellate court, the losing party can file a petition for leave to appeal to a higher court. If the petition is granted, the appeal process is repeated.

I. ENFORCING THE JUDGMENT

The text notes some of the options available to a party to enforce a judgment. Those discussed include the collection of money or the transfer or property to satisfy an award of damages. (Creditors' remedies, including those of judgment creditors, are discussed in more detail in Chapter 15.)

TEACHING SUGGESTIONS

1. To impress on students one of the reasons for the legal system's observance of procedural technicalities, emphasize the finality of courts' rulings, that people's lives are often changed by a court's decision. If it were the students' person or their property hanging in the balance, would they prefer a series of well-defined steps or a less formal process? What if the decision reached in the less formal process was not binding?

2. Emphasize the factors—economic and non-economic—in deciding whether or not to pursue legal action. Are they prepared to pay for going to court? Engaging in legal action can be expensive. A good attorney may charge as much as $300 an hour, or more, plus expenses, and more for trial work. Do they have the patience to pursue a case through the judicial system? Court calendars are crowded. In some cases, it may be years before the matter comes to trial—and then there is the appeal. Is there an alternative to legal action? A settlement might be preferable to a suit, even if the former represents a lesser dollar amount, once their bottom lines are adjusted for future expenses, time lost, aggravation, and so on. Many controversies lend themselves to faster, less expensive methods of dispute resolution. Students should also be reminded that a decision should only be made with the advice of a competent legal professional.

3. What do your students think that jurors discuss when they retire to consider a verdict? What should they discuss? Research indicates that discussion in the jury room focuses primarily on what procedures the jury should follow, their opinions about the case, and relevant personal reminiscences. Much less time is spent discussing testimony from the trial and the judge's instructions. In many cases, jury verdicts are not different from the decisions that the judges would have made. Studies reveal that 80 percent of the time, the court agrees with the jury's verdict. In civil cases, judges and juries almost always agree; in criminal cases, a jury is more likely to acquit a defendant than a judge is.

4. All students have different requirements in regards to the amount of study time that they need to prepare for a class or an exam. Everyone faces the same temptation: putting off until tomorrow what should be done today. Your students might be reminded that the best remedy for this temptation is not to give into it but to remain disciplined. They might simply set up a schedule and make every effort to stick to it to achieve their best results.

5. Some students may find it enlightening to be reminded that sometimes forgotten in a dry, tedious study of legal principles are the people behind the concepts. It may prove helpful in their studying to remember that most of the principles set out in the text represent judgments in decide cases that involved real people in real controversies. The law corresponds to the many ways in which people organize the world. That is, the law includes customs, traditions, rules, and objectives that people have held in different circumstances at different times. While it often seems that the law creates meaningless distinctions, it is in fact the real needs of real people that create them.

6. In the courtroom, changes are being wrought by television. There is an increasing reliance on video testimony. Children who allege physical or sexual abuse, for example, may give video testimony outside a courtroom to be shown during trial proceedings. Lawyers who represent accident victims often commission videos to visually show the court the impact of accident-related injuries on the daily lives of their clients. In criminal trials, judges have allowed juries to see filmed reenactments of crimes. To further blur the line between simulation and reality is the increasing number of cameras that videotape the commission of alleged crimes and other wrongs. What effect are these uses of television having on the judicial system? Could jurors watch trials on their televisions at home and reach a verdict by interactive cable? Through a familiarity with movies and TV shows, could jurors come to expect more excitement than is generated in the usual courtroom when at least some of the proceeding is on video? Will lawyers argue their cases to appeal to home audiences? And what effect might all of this have on the U.S. judicial system's impartiality and fairness?

Cyberlaw Link

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Ask your students to what extent those who send e-mail over the Internet should be liable for the content of their messages in states other than their own (or nations other than the United States). Is the existence of a Web site a sufficient basis to exercise jurisdiction?
“

Many jurisdictions have implemented online filing systems, and some have set up cyber courts in which part, or all, of a case may be presented online. What issues are likely to occur in these circumstances?

DISCUSSION QUESTIONS

1. If a corporation is incorporated in Delaware, has its main office in New York, and does business in California, but its president lives in Connecticut, in which state(s) can it be sued? Delaware, New York, and California—a corporation is subject to the jurisdiction of the courts in any state in which it is incorporated, in which it has its main office, or in which it does business.

2. What is the role of a court with appellate jurisdiction? Courts of appellate jurisdiction are reviewing courts—they review cases brought on appeal from trial courts, which are courts of original jurisdiction. In most states, after a case is tried, there is a right to at least one appeal. An appellate court examines the record of a case, looking at questions of law and procedure for errors by the court below.

3. When may a federal court hear a case? Federal courts have jurisdiction in cases in which federal questions arise, in cases in which there is diversity of citizenship, and in some other cases. When a suit involves a question arising under the Constitution, a treaty, or a federal law, a federal question arises. When a suit involves citizens of different states, a foreign country and an American citizen, or a foreign citizen and an American citizen, diversity of citizenship exists. In diversity suits, there is an additional requirement—the amount in controversy must be more than $50,000. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, and copyrights; in suits against the United States; and in some areas of admiralty law.

4. When may the United States Supreme Court hear a case? The United States Supreme Court has original in only a few situations. The Supreme Court can review any case decided by a federal court of appeals and any case decided by a state's highest court in which a federal constitutional issue is involved.

5. When may a court exercise jurisdiction over a party whose only connection to the jurisdiction is via the Internet? One way to phrase the issue is when, under a set of circumstances, there are sufficient minimum contacts to give a court jurisdiction over a remote party. If the only contact is an ad on the Web originating from a remote location, the outcome to date has generally been that a court cannot exercise jurisdiction. Doing considerable business online, however, generally supports jurisdiction. The "hard" cases are those in which the contact is more than an ad but less than a lot of activity.

6. What are the first steps in bringing a legal action? A complaint (or petition or declaration) is filed with the clerk of the trial court. A copy of the complaint and a summons is served on the party against whom the complaint is made.

7. What are the defendant's possible responses? The defendant files a motion to dismiss the complaint, files an answer, or defaults. If the defendant files an answer including a counterclaim, the plaintiff can file a reply to any counterclaim.

8. What is Discovery? Discovery is the process through which parties prepare for trial by obtaining information from each other and from witnesses. What devices are used to obtain this information? Discovery can involve the use of depositions, interrogatories, requests for admission, requests for physical or mental examinations, and requests for documents, objects, and entry upon land. A deposition is a record of the answers of a party or witness to questions asked by the attorneys of both plaintiff and defendant. Interrogatories are written questions asked of a party, who responds in writing. A request for an admission is a request that a party admit the truth of a matter. A request for a physical or mental examination will be granted only if the court decides that the need for the information outweighs the examinee's right of privacy. A request for documents, objects, and entry upon land is a request for access to these items to inspect them.

9. Briefly, what are the steps in the course of a trial? If the right to a jury trial has been requested, the jury is selected. Prospective jurors undergo voir dire. Once a jury is chosen, the trial begins

with the parties' opening statements. The plaintiff calls and examines the first witness. The defendant cross-examines the same witness, after which there is an opportunity for redirect and recross-examinations. In a jury trial, after the plaintiff's case has been presented, the defendant can move for a directed verdict. If this motion is denied, the defendant presents his or her case. At the end of the defendant's case, either party can move for a directed verdict. If this motion is denied, the plaintiff can refute the defendant's case in a rebuttal, and the defendant can meet that evidence in a rejoinder. After both sides have rested, the parties present their closing arguments, the jury is instructed in the applicable law, and the jury retires to consider a verdict. After the verdict, the losing party can move for a new trial or for a judgment notwithstanding the verdict. If these motions are denied, he or she can appeal.

10. Who can appeal from a trial court's decision? Either party—the party against whom the judgment of the trial court runs, or the party who was granted relief that was less than, or different from, the relief he or she sought.

11. Hearsay is literally what a witness says he or she heard another person say. What makes the admissibility of such evidence potentially unethical? Hearsay is inadmissible as evidence in a suit when it is offered to prove the truth of the matter asserted because it has dubious trustworthiness. When a witness repeats what another person has said, there is a reasonable likelihood that that he or she might misinterpret the statements. There is no opportunity to verify the accuracy of the statements because the declarant is not present in court to be questioned. These features make the use of hearsay potentially unethical.

ACTIVITY AND RESEARCH ASSIGNMENT

1. Have students prepare a chart showing the relationships between the various courts having jurisdiction in your state. (There is a digest of each state's courts in Martindale-Hubbell Law Directory, which might be placed on reserve in the library.) Assign a few jurisdiction hypotheticals. For example—Through which of these courts could a divorce decree be appealed? Which court(s) would have original jurisdiction in a truck accident involving out-of-state residents (does the dollar amount of injuries and damage make a difference)? Which court(s) would have jurisdiction to render a judgment in a case arising from food poisoning at a local cheeseburger stand that is part of a nationwide corporate chain? In which court(s) could you file a suit alleging discrimination, and if you lost, to which court could you appeal the decision?

2. Ask your students to visit a court, observe the proceedings, and report their observations. Ask them to find out how long it might be before a petition filed in the court would be granted a hearing (that is, how clogged is the court's calendar) and to what any delay might be attributed.

EXPLANATIONS OF SELECTED FOOTNOTES IN THE TEXT

Footnote 5: In International Shoe Co. v. State of Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the state of Washington sought unemployment contributions from the International Shoe Company based on commissions paid to its sales representatives who lived in the state. International Shoe claimed that its activities within the state were not sufficient to manifest its "presence." It argued that (1) it had no office in Washington; (2) it employed sales representatives to market its product in Washington, but no sales or purchase contracts were made in the state; and (3) it maintained no inventory in Washington. The company claimed that it was a denial of due process for the state to subject it to suit. The Supreme Court of Washington ruled in favor of the state, and International Shoe appealed to the United States Supreme Court.

The United States Supreme Court affirmed the Washington Supreme Court's decision—International Shoe had sufficient contacts with the state to allow the state to exercise jurisdiction constitutionally over it. The Court found that the activities of the Washington sales representatives were "systematic and continuous," resulting in a large volume of business for International Shoe. By conducting its business within the state, the company received the benefits and protections of the state laws and was entitled to have its rights enforced in state courts. Thus, International Shoe's operations established "sufficient contacts or ties with the state . . . to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligation" that the company incurred there.

Footnote 8: In Zippo Manufacturing Co. v. Zippo Dot.Com, Inc., 952 F.Supp. 1119 (W.D.Pa. 1997), a federal district court proposed three categories for classifying the types of Internet business contact: (1) substantial business conducted online, (2) some interactivity through a Web site, and (3) passive advertising. Jurisdiction is proper for the first category, improper for the third, and may or may not be appropriate for the second. Zippo Manufacturing Co. (ZMC) makes, among other things, "Zippo" lighters. ZMC is based in Pennsylvania. Zippo Dot Com, Inc. (ZDC), operates a Web page and an Internet subscription news service. ZDC has the exclusive right the domain names "zippo.com," "zippo.net," and "zipponews.com." ZDC is based in California, and its contacts with Pennsylvania have occurred almost exclusively over the Internet. Two per cent of its subscribers (3,000 of 140,000) are Pennsylvania residents who contracted over the Internet to receive its service. ZDC has agreements with seven ISPs in Pennsylvania to permit their subscribers to access the service. ZMC filed a suit in against ZDC, alleging trademark infringement and other claims, based on ZDC's use of the word "Zippo." ZDC filed a motion to dismiss for lack of personal jurisdiction. Holding that ZDC's connections to the state fell into the first category, the court denied the motion.

ANSWERS TO ESSAY QUESTIONS IN STUDY GUIDE TO ACCOMPANY THE LEGAL ENVIRONMENT OF BUSINESS, SEVENTH EDITION BY HOLLOWELL & MILLER

1. What is jurisdiction? How does jurisdiction over a person or property differ from subject matter jurisdiction? To consider a case, a court must have power over the person or the property involved in the action. Power over the person is often referred to as in personam jurisdiction. In personam jurisdiction is required before a court can enter a personal judgment against a party to the action. Power over property is often referred to as in rem jurisdiction. An in rem proceeding is taken directly against property. Subject matter jurisdiction involves limitations on the types of cases a court can hear—a court of general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court of limited jurisdiction.

2. What permits a court to exercise jurisdiction based on contacts over the Internet? For a court to exercise jurisdiction based on contacts over the Internet, generally the contacts must be with the court's geographic jurisdiction. For a court to compel any defendant to come before the court, there must be at least minimum contacts (an office within the jurisdiction, for example, or a salesperson in the state, and so on). The issue in the context of cyberspace is whether there are sufficient minimum contacts if the only connection to a jurisdiction is an ad on the Web originating from a remote location. Some courts have upheld exercises of jurisdiction on the basis of the accessibility of a Web page. Other courts have concluded that without more, a presence on the Web is not enough to support jurisdiction over nonresident defendants. The most reasonable standard is probably a "sliding scale," according to which a court's exercise of personal jurisdiction depends on the amount of business that an individual or firm transacts over the Internet. Substantial business or a lot of interactivity would support an exercise of jurisdiction. A passive ad would not.

REVIEWING—

HIH THE COURT SYSTEM HIH

Stan Garner resides in Illinois and promotes boxing matches for SuperSports, Inc., an Illinois corporation. Garner created the concept of "Ages" promotion—a three-fight series of boxing matches pitting an older fighter (George Foreman) against a younger fighter, such as John Ruiz or Riddick Bowe. The concept included titles for each of the three fights ("Challenge of the Ages," "Battle of the Ages," and "Fight of the Ages"), as well as promotional epithets to characterize the two fighters ("the Foreman Factor"). Garner contacted George Foreman and his manager, who both reside in Texas, to sell the idea, and they arranged a meeting at Caesar's Palace in Las Vegas, Nevada. At some point in the negotiations, Foreman's manager signed a nondisclosure agreement prohibiting him from disclosing Garner's promotional concepts unless the parties signed a contract. Nevertheless, after negotiations between Garner and Foreman fell through, Foreman used Garner's "Battle of the Ages" concept to promote a subsequent fight. Garner filed suit against Foreman and his manager in a federal district court located in Illinois, alleging breach of contract. Ask your students to answer the following questions, using the information presented in the chapter.

1. On what basis might the federal district court in Illinois exercise jurisdiction in this case? The federal district court exercises jurisdiction because the case involves diversity of citizenship. Diversity jurisdiction requires that the plaintiff and defendant be from different jurisdictions and that the dollar amount of the controversy exceed $75,000. Here, Garner resides in Illinois, and Foreman and his manager live in Texas. Because the dispute involved the promotion of boxing matches with George Foreman, the amount in controversy exceeded $75,000.

2. Does the federal district court have original or appellate jurisdiction? Courts having original jurisdiction are courts of the first instance, or trial courts—that is courts in which lawsuits begin and trials take place. In the federal court system, the district courts are the trial courts, so the federal district court has original jurisdiction.

3. Suppose that Garner had filed his action in an Illinois state court. Could an Illinois state court exercise personal jurisdiction over Foreman or his manager? Why or why not? Because the defendants were from another state, the court would have to determine if they had sufficient contacts with the state for the Illinois court to exercise jurisdiction based on a long arm statute. Here, the defendants never went to Illinois, and the contract was not formed in Illinois. Thus, it is unlikely that an Illinois state court would find sufficient minimum contacts to exercise jurisdiction.

4. Assume that Garner had filed his action in a Nevada state court. Would that court have personal jurisdiction over Foreman or his manager? Why or why not? A state can exercise jurisdiction over out-of-state defendants under a long arm statute if defendants had sufficient contacts with the state. Because the parties met Garner and negotiated the contract in Nevada, a court would likely hold these activities were sufficient to justify a Nevada court's exercising personal jurisdiction.

HIH

ANSWERS TO QUESTIONS—

HIH

SPECIAL CASE ANALYSIS

HIH

Case No. 2.2

Cruz v. Fagor America, Inc.

California Court of Appeal,
Fourth District, Division 1, 2007.
52 Cal.Rptr.3d 862,
146 Cal.App.4th 488.

(a) Issue: What was the main issue in this case? The issue was if there had been proper service to notify defendant of the lawsuit.

(b) Rule of Law: What rule of law did the court apply? If there is evidence that proper service of a lawsuit was given, then the other party is presumed to have an obligation to respond. The notice was delivered at the defendant company, and there was written evidence it was received by a party authorized to accept such notices.

(c) Applying the Rule of Law: Describe how the court applied the rule of law to the facts of this case. The court was persuaded that the defendant had received proper service of process. The evidence showed delivery to a proper address and receipt by a qualified person.

(d) Conclusion: What was the court's conclusion in this case? The court concluded that the defendant had received service of process as required by California law but had ignored it, so the defendant is subject to the default judgment entered against it. The plaintiff will receive the recovery requested in the complaint

HIH