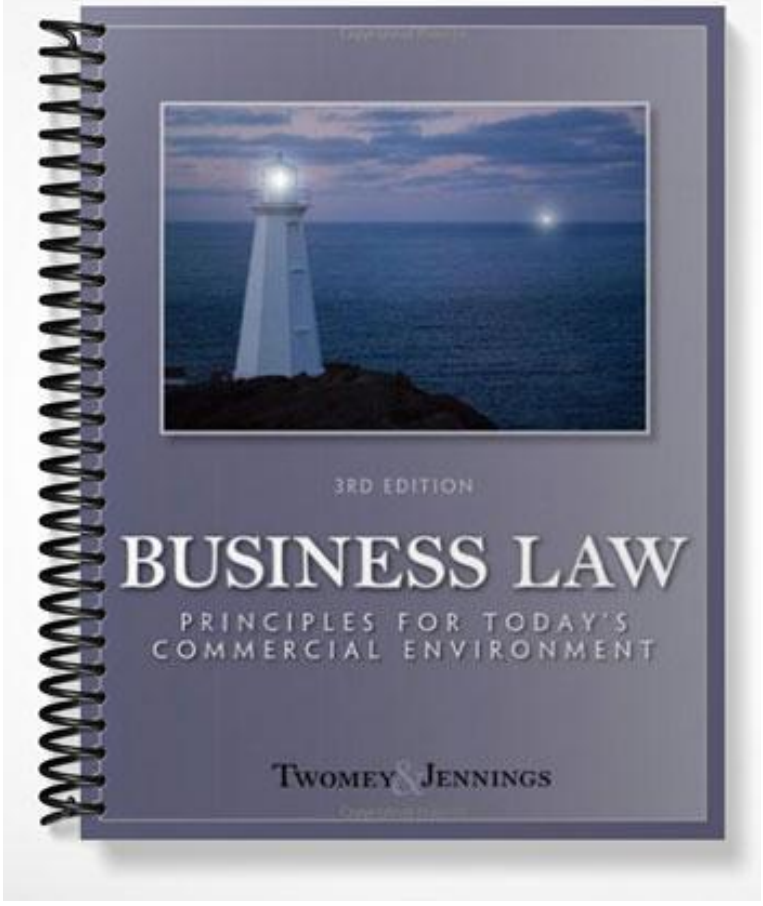
SOLUTIONS MANUAL



CHAPTER 2
THE COURT SYSTEM AND DISPUTE RESOLUTION

Matching Exercise

1. Answer
2. Original jurisdiction
3. Process
4. Counterclaim
5. Plaintiff
6. Complaint
7. Appellate jurisdiction
8. Garnishment
9. Limited jurisdiction
10. Reverse

True/False

1. T
2. F
3. T
4. T
5. T
6. F
7. T
8. T
9. T
10. T

Multiple Choice

1. c
2. a
3. b
4. b
5. d
6. a
7. b
8. b
9. c
10. d

Case Problem

1. Roger cannot file his lawsuit in any court he chooses. Each court has jurisdiction, i.e., the legal power, to decide only certain types of cases. A party must file a lawsuit in a court that has jurisdiction in that case.
2. A court may have original or appellate jurisdiction, or both. A court with original jurisdiction has the power to decide a case for the first time. Moreover, courts with original jurisdiction may have general jurisdiction to try all cases, or they may have limited jurisdiction to decide only a particular type of action. In this case, the State District Court has the original jurisdiction to hear and decide this case for the first time.
3. Roger will file his lawsuit in a civil court because civil courts have the power to decide lawsuits involving private wrongs.

Internet Exercise

The National Center for State Courts' web site can be found at http://www.ncsconline.org/.

1. At time of publication, the most current data available on this website was for 2006. For this year, the number of civil cases reported as being filed in state courts of general jurisdiction was 5,296,706. See http://www.ncsconline.org/D_Research/csp/2007_files/State%20Court%20Caseload%20Tables%20-%20Trial%20Courts.pdf, then select Table 1.
2. At time of publication, all states maintained some sort of state court web site. Using the http://www.ncsconline.org/, click on Information & Resources, then click on Browse by state, and then select the state of interest.

3. Some may argue that providing information on how to file a lawsuit, which is provided by some state and local court web sites, only serves to increase the number of frivolous lawsuits filed each year. Others may counter, however, that such information makes the legal system more accessible to everyone, one of the fundamental goals of our legal system.

ANSWERS TO

AICPA QUESTIONS

CHAPTER 10
INTELLECTUAL PROPERTY RIGHTS AND THE INTERNET

1. (a) Computer software is covered under the general copyright laws and is therefore usually copyrightable as an expression of ideas. Answer (b) is incorrect because copyrights in general do not need a copyright notice for works published after March 1, 1989. Answer (c) is incorrect because a recent court ruled that programs in both source codes, which are human readable, and in machine readable object code can be copyrighted. Answer (d) is incorrect because copyrights taken out by corporations or businesses are valid for 100 years from creation of the copyrighted item or 75 years from its publication, whichever is shorter.

2. (c) Computer databases are generally copyrightable as compilations. Answer (a) is not chosen because copies for archival purposes are allowed. Answer (b) is not chosen because in the case of corporations or businesses, the copyright is valid for the shorter of 100 years after the creation of the work or 75 years from its date of publication. Answer (d) is not chosen because computer programs are now generally recognized as copyrightable.

3. (d) Under the fair use doctrine, copyrighted items can be used for teaching, including distributing multiple copies for class use. Answer (a) is incorrect because although he originally purchased this software for personal use, he may still use it for his class, in which case, the fair use doctrine applies. Answer (b) is incorrect because databases can be copyrighted as derivative works. Answer (c) is incorrect because the use of the computer is not the issue but the fair use doctrine is.

4. (c) Both patent and copyright law are used under modern law to protect computer technology rights. Answer (a) is incorrect because copyright law now also protects software. Answer (b) is incorrect because modern law also protects software as patentable. Answer (d) is incorrect because modern law generally protects intellectual property rights in software under both patent law and copyright law.

CHAPTER 12
NATURE AND CLASSES OF CONTRACTS: CONTRACTING ON THE INTERNET

1. (a) The offeror made a promise for an act. When the act was performed, a unilateral contract was created and the offeror is bound to pay. Answer (b) is incorrect because unjust enrichment is generally considered only if there was no contract and the court wishes to provide an "equitable solution." Answer (c) is incorrect because there are no public policy issues involved. Answer (d) is incorrect because a quasi-contract arises only if there was no contract to begin with and the law implies one to prevent an unjust enrichment. Since there was a unilateral contract, there can be no quasi-contract.

CHAPTER 13
FORMATION OF CONTRACTS: OFFER AND ACCEPTANCE

1. (c) If sent by a mode of communication expressly or impliedly authorized by the offeror (e.g., mail or telegram), acceptance of an offer is normally effective on dispatch, even if subsequently delayed or lost. Noll's telegram was an effective acceptance of the offer by Able. The rule applies to any situation in which acceptance is made in a manner expressly or impliedly authorized. This can include telegraph or telephone as well as mail in most circumstances. In this situation the acceptance was effective on dispatch, before Able's attempted revocation.

2. (b) Common law applies to this contract because it involves real estate. In this situation, Fox's reply on October 2 is a counteroffer and terminates Summers' original offer made on September 27. The acceptance of an offer must conform exactly to the terms of the offer under common law. By agreeing to purchase the vacation home at a price different from the original offer, Fox is rejecting Summers' offer and is making a counteroffer. Answer (a) is incorrect because the fact that Fox failed to return Summers' letter is irrelevant to the formation of a binding contract. Fox's reply constitutes a counteroffer as Fox did not intend to accept Summers' original offer. Answer (c) is incorrect because Summers' offer was rejected by Fox's counteroffer. Answer (d) is incorrect because with rare exceptions, silence does not constitute acceptance.

3. (c) Peters' offer had been revoked. Since revocation notice can be received either directly or indirectly, Mason, in effect, received the revocation notice when he was told the mower had been sold to Bronson; and therefore, Mason's acceptance was ineffective, even though the specified time of the oral contract had not expired. Peters' offer had been revoked prior to Mason's acceptance. There was no obligation on the part

of Peters to keep the offer open, since there was no consideration for him to do so.

CHAPTER 14
CAPACITY AND GENUINE ASSENT

1. (a) Where a mistake is made by only one party (a unilateral mistake), the rule is that the mistaken party is bound by the contract unless the nonmistaken party knew of the mistake or should have known of the mistake. In this question, the nonmistaken party knew of the mistake; thus, the mistaken party is not bound by the contract. Whether the mistake was a result of gross negligence is irrelevant.

2. (a) Answer (b) is incorrect because a disaffirmance need not be in writing. Answer (c) is incorrect because a minor can disaffirm at any time during minority or for a reasonable time thereafter regardless of payment. Answer (d) is incorrect because a minor need only return whatever consideration he/she has, even if damaged or lost. Answer (a) is correct because it is still a reasonable time after majority.

CHAPTER 16
LEGALITY AND PUBLIC POLICY

1. (d) There are two types of licensing statutes. First, there are licensing statutes intended primarily for revenue raising. Second, there are licensing statutes (regulatory) intended primarily to protect the public against dishonest or incompetent professionals. An individual without a license can collect his total compensation if the primary purpose of the statute was to raise revenue. However, if the purpose was regulatory in nature (intended to protect the public), the individual can collect nothing since the contract is voidable. Thus, an unlicensed individual who enters into a contract to provide regulated services will not be allowed to enforce the contract or recover even the value of the services rendered.

2. (d) Answer (a), (b), and (c) are correct statements because covenants not to compete must be reasonable in time and geographic scope. The answer is (d) because it is an incorrect statement regarding the value of goodwill.

CHAPTER 17
WRITING, ELECTRONIC FORMS, AND INTERPRETATION OF CONTRACTS

1. (d) The contract terms need not appear in a single document so long as the several documents refer to the same transaction. Only the signature of the party against whom enforcement is sought is required. If the performance *could* occur within a one-year period, the contract is not within the statute and need not be written. Only contracts of $500 or more that involve the sale of goods fall under the Statute of Fraud and must be in writing.

2. (c) The Statute of Frauds requires only that the written contract be signed by the party to be charged, not by all parties to the contract. Answer (a) is incorrect because it is not required that the contract be formalized in a single writing. Two or more documents can be combined to create a sufficient writing to satisfy the Statute of Frauds as long as one of the documents refers to the others. Answer (b) is incorrect because the Statute of Frauds does not require consideration to be fair and adequate. Answer (d) is incorrect because while the Statute of Frauds is applicable to the sale of goods only if the purchase price is $500 or more, it is always applicable to the sale of real estate, regardless of purchase price.

3. (c) The parole evidence rule will prevent the admission of evidence concerning the oral agreements regarding who pays the utilities, since the rule excludes evidence of prior or contemporaneous oral agreements, which would vary the written contract. However, the parol evidence rule will *not* prevent the admission of the fraudulent statements by Kemp during the original negotiations. Therefore, answers (a), (b), and (d) are incorrect.

CHAPTER 18
THIRD PERSONS AND CONTRACTS

1. (c) An assignment is rebuttably presumed to be an assignment of rights *and* a delegation of duties. Here, assignee Deep Sea Lobster Farms presumably could carry out the lobster delivery duties.

2. (c) Long is merely an incidental beneficiary B part of a large group that benefits from another's contract.

3. (a) Union is a creditor beneficiary under the insurance policy. It is not a donee or incidental beneficiary. Privity of contract is not the issue in this question.

CHAPTER 19
DISCHARGE OF CONTRACTS

1. (b) Glaze will win because he "substantially performed" on the contract. Glaze should receive the contract price less the cost of damages due to minor deviations from the required performance. Glaze can also collect because Parc refused to allow Glaze the opportunity to complete the contract. Glaze can recover for substantial performance of the contract. The breach was a minor breach. Glaze breached the contract by purchasing minor accessories not allowed under the contract. In response, Parc refused to allow Glaze to complete the contract. This is not considered to be anticipatory breach by Parc.

2. (b) The statute of limitations in an action for breach of contract begins to toll from the time the contract is breached.

3. (c) No official explanation given.

CHAPTER 20
BREACH OF CONTRACT AND REMEDIES

1. (a) Answer (a) is correct because liquidated damage clauses are valid if they are not a penalty on top of other damages and are agreed to as a reasonable projection of damages.

2. (b) The repudiation or renunciation of the contract before performance is due is known as anticipatory breach. Answers (a) and (c) are alternative choices for Foster. Answer (d) is the usual remedy for a breach of contract. Answer (b), which asks for the remedy of specific performance, is not available where the breaching party's performance requires personal services.

3. (a) No discussion provided.

CHAPTER 21
PERSONAL PROPERTY AND BAILMENTS

1. (a) In order for there to be a valid bailment, personal property must be delivered to the intended bailee, who must then retain possession of the property. Although the bailee has a duty to hold the property for the bailor and to follow any of the bailor's reasonable instructions as to the disposition of the property, the bailee's duty is not an absolute one.

CHAPTER 22
LEGAL ASPECTS OF SUPPLY CHAIN MANAGEMENT

1. (d) A common carrier has liability for even slight negligence. A common carrier would thus be liable if the goods were stolen while in the carrier's custody. The carrier would also be liable if the goods were destroyed as a result of its employees' negligence. The carrier would not, however, have any knowledge of or control over how the goods were packed by the bailor or other party.

2. (d) Under a nonnegotiable bill of lading, a carrier who accepts goods for shipment, must deliver the goods to the consignee of the bill of lading. Answers (a), (b), and (c) would be correct if the bill of lading was negotiable.

3. (a) A negotiable warehouse receipt is a document issued as evidence of the receipt of goods by a person engaged in the business of storing goods for hire. The warehouse receipt is negotiable if the face of the document contains the words of negotiability (order or bearer).

4. (d) No discussion provided.

CHAPTER 23
NATURE AND FORM OF SALES

1. (a) The Statute of Frauds requires that a contract for goods of $500 or more be in writing. UCC 2-207, however, provides that in a contract between merchants, the Statute of Frauds is satisfied if a written confirmation is sent within a reasonable time. The confirmation must be received by the other party who knows or should know the confirmation's contents. If the recipient merchant fails to object to the confirmation's contents within a reasonable time they will be bound to the contract.

2. (c) Merchant's firm offers cannot be revoked.

3. (b) An agreement for the sale of goods under $500 need not be in writing to be enforceable. Thus, Bond and Spear had a valid oral contract, and Spear has breached the contract by agreeing to sell the car to a third party. The adequacy of consideration is not a contract issue. The agreement does not need to be in writing because it was under $500. Paying a deposit is not the deciding factor in this case. The key point is that the agreement was for the sale of goods under $500.

4. (a) Under common law, an acceptance must be unequivocal and unqualified in agreeing to the precise terms specified by the offer. However, the Uniform Commercial Code alters this general rule as far as the sale of goods is concerned. Under the UCC, an acceptance containing additional term sis a valid acceptance unless the acceptance is expressly conditional upon the offeror's agreement to the additional terms. In this situation, a valid contract has been formed between Cookie Co. and Distrib Markets. Answer (b) is incorrect because Distrib Markets' acceptance was not conditional upon Cookie's agreement to the additional term and, thus, a contract is formed regardless of Cookie's agreement or objection to the additional term. Answers (c) and (d) are incorrect because this contract was for the sale of goods and is governed by the UCC rather than by common law. Under common law, Distrib Markets' reply would have been a rejection and counteroffer, but under the UCC, a contract was formed.

CHAPTER 24
TITLE AND RISK OF LOSS

1. (a) Risk of loss passes upon *tender* of delivery when the seller is not a merchant. If the seller was a merchant, risk of loss would pass upon the buyer's receipt of the goods. In this problem, the facts clearly specify that Wool is not a merchant in the goods being sold, so we can determine that risk of loss passed to Bond upon tender of delivery.

2. (c) The purchase of goods on a sale on approval allows the buyer to return the goods even if they conform to the contract. Therefore, the seller retains the title and the risk of loss until the buyer accepts the goods. Thus, answer (d) is incorrect. Answers (a) and (b) are incorrect because these are not requirements for a sale on approval to be valid.

3. (d) Under a sale or return contract, the sale is considered as completed although it is voidable at the buyer's election. As such, risk of loss passes to the buyer, who also has title to the goods until they are returned; therefore, answer (c) is incorrect. Furthermore, the return of the goods is at the buyer's risk and expense; thus, answer (b) is incorrect. Answer (a) is incorrect because, under the definition of a sale or return contract, the buyer is acquiring the goods for resale.

4. (d) The UCC places risk of loss on the breaching party. Since Cey shipped nonconforming goods, it breached the contract and would have risk of loss until the nonconforming goods were accepted by the buyer or until the goods were cured by Cey. Since Deck rejected the goods and Cey did not cure the goods, risk of loss remained with Cey. Shipping terms have no bearing on risk of loss in this situation because the goods did not conform to the contract. Answer (a) is incorrect because Deck would only bear risk of loss if the goods conformed to the contract. Answer (b) is incorrect because the risk of loss was never transferred to Deck since the goods were nonconforming. Answer (c) is incorrect because if the goods were conforming, risk of loss would pass to Deck at Cey's warehouse based on the shipping terms AFOB Cey's warehouse.

5. (c) Under an FOB place of shipment contract, the risk of loss passes when the goods arrive at their destination and are available to the buyer (tender). In this case, arrival at the loading dock is tender.

CHAPTER 25
PRODUCT LIABILITY: WARRANTIES AND TORTS

1. (c) Warranty of title may be given as well as disclaimed by merchants or non-merchants, orally or in writing. The disclaimer must be in specific language or circumstances, not simply a phrase such as "AS IS".

2. (a) Any description of goods that is part of the basis of the bargain creates an express warranty that the goods shall conform to that description. Express warranty is not formed when the seller selects goods knowing the buyer's intended use. Therefore, answer (b), (c), and (d) are incorrect.

3. (b) An injured plaintiff may sue any seller of a good under strict liability if the plaintiff can show that the good was sold in a defective or unreasonably dangerous condition. The plaintiff need not prove fault or wrongdoing by the defendant; thus, not having an opportunity to inspect or following industry customers are not defenses available to the defendant. Although contributory negligence is a defense available in negligence, it is generally not a defense in strict liability actions.

4. (c) An implied warranty of merchantability automatically arises in all sales of goods made by a merchant who deals in such goods. Handy Hardware did not specify a use for the goods or rely on the seller's judgment in making the purchase, so there is no implied warranty of fitness for a particular purpose. An implied warranty of title arises automatically in most sales contracts. There is no evidence to the contrary in this problem, so we can assume that the warranty of title does exist.

CHAPTER 26
OBLIGATIONS AND PERFORMANCE

1. (a) UCC 1-102(3) imposes an obligation on the parties to contract in good faith. Merchants are frequently treated differently under UCC 2 provisions. UCC 2 covers contracts for goods regardless of the contract price, and the UCC permits the parties to a contract to disclaim many if the UCC's provisions.

2. (c) The Sales Article of the UCC provides that a buyer has the right to reject goods which are not in conformity with the terms of contract between seller and buyer. The buyer also has the option to accept nonconforming goods and recover damages resulting from the nonconformity. Answers (a) and (b) are incorrect because the UCC allows the buyer to inspect the goods before payment except when they are shipped COD. Answer (d) is incorrect because when goods are shipped COD, the buyer's payment for the goods is required for delivery.

3. (a) Answer (a) is correct since the buyer has a reasonable time in which to reject defective goods. Discovering the defect on Monday would be considered within a reasonable time, considering the goods had been delivered on Friday. Answer (d) is incorrect since the specification concerning the linings in the sales contract would be an express warranty which was breached when the linings were found to be inferior to what had been stated. Thus, the merchantable quality of the linings would be irrelevant.

4. a. Yes
   b. No
   c. Yes
   d. Yes
   e. Yes

CHAPTER 27
REMEDIES FOR BREACH OF SALES CONTRACTS

1. (b) A seller who discovers that an insolvent buyer has received goods on credit may reclaim the goods by making a demand for their return within ten days after receipt of the goods by the buyer. This ten day limitation, however, does not apply if the buyer made a written misrepresentation of its solvency within three months prior to its receipt of the goods. Anker's fraudulent financials constitute a written misrepresentation of solvency; therefore, Bold may demand return of goods even though 14 days have passed. Answer (b) is incorrect because the seller's right to reclaim the goods is subject to the rights of a third party who purchases the goods in good faith from the insolvent buyer. Answer (c) is incorrect because the ten day limitation does not apply when the buyer (Anker) provides the seller (Bold) with a written misrepresentation of solvency (the financial statements) within three months prior to receipt of the goods. Answer (d) is incorrect because Anker may make a demand for the goods rather than sue for damages.

2. (a) By advising Mazur on June 1 that it would not accept or pay for the wheat, Good was engaged in

anticipatory repudiation. Anticipatory repudiation occurs when a party renounces the duty to perform the contract before the party's obligation to perform arises. Anticipatory repudiation discharges the nonrepudiating party (Mazur) from the contract and allows this party to sue for breach immediately. In this situation, Mazur could successfully sued Good for the difference between the resale price and the contract price on June 2. Answer (b) is incorrect because Mazur was discharged from the contract on June 1 and would not have to wait until after June 23 to resell the wheat. Answer (c) is incorrect because Good would only be allowed to retract its anticipatory breach if Mazur had ignored this breach and awaited performance at the appointed date. Answer (d) is incorrect because specific performance is only allowed for unique goods or for other situations in which monetary damages are not appropriate.

3. (b) A seller has the right to resell goods to another if the buyer refuses to accept the goods upon delivery. Answer (a) is incorrect because specific performance is not a remedy available to the seller. Baker cannot force Lazur to accept the word processor. Answer (c) is incorrect because Baker has a couple of additional remedies available. Baker can recover the full contract price plus incidental damages if he is unable to resell the identified goods. Alternatively, if the difference between the market value and contract price is inadequate to place Banker in as good a position as performance would have, then Banker can sue for lost profits plus incidental damages. Answer (d) is incorrect because Baker could sue for consequential damages that Lazur had reason to know Baker would incur as a result of Lazur's breach.

CHAPTER 28
KINDS OF INSTRUMENTS, PARTIES, AND NEGOTIABILITY

1. (a) To be negotiable, an instrument must be in writing, signed by the maker or drawer, contain an unconditional promise or order to pay a sum certain in money on demand or at a specific time, and be payable to order or to bearer. Negotiability is not affected by the fact that the instrument recites the transaction which gave rise to the instrument and negotiability is not affected by the fact that it is stated with a specific rate of interest. The note is negotiable from the time it is made on October 2, 2007. It is a note (two-party instrument between maker and bearer-payee) and not a draft (which is a three-party instrument).

2. (a) This instrument is a draft because it is a three-party instrument where a drawer (Dexter) orders a drawee (Middlesex National Bank) to pay a fixed amount in money to the payee (Silver). Answer (b) is incorrect because in order for the instrument to qualify as a check, the instrument must be payable on demand. In this situation, the instrument held by Silver is a time draft which specifies the payment date as October 1, 1998. Answer (d) is incorrect because a promissory note is a two-party instrument in which one party promises to pay a fixed amount in money to the payee. Answer (c) is incorrect because a trade acceptance is a special type of draft in which a seller of goods extends credit to the buyer by drawing a draft on that buyer directing the buyer to pay a fixed amount in money to the seller on a specified date. The seller is therefore both the drawer and payee in a trade acceptance.

3. (a) Under the Commercial Paper Article of the UCC, for an instrument to be negotiable, it must be in writing, signed by the drawer or maker, contain an unconditional promise or order to pay a sum certain in money, on demand, or at an ascertainable time, and be payable to order or to bearer. Answers (b), (c), and (d) do not contain requirements for negotiability.

4. (a) This instrument satisfies all of the requirements for negotiability except for the requirement that it be payable on demand or at a definite time. Since it is payable 10 days after the sale of the maker's diamond ring, the time of payment is not certain as to the time of occurrence. Answer (b) is incorrect because a negotiable instrument may contain a promise to provide collateral. Answer (c) is incorrect because although it is a two-party note, it is not negotiable because it is not payable at a definite time. Answer (d) is incorrect because it is not negotiable and is not a draft. A draft requires a drawer ordering a drawee to pay the payee.

5. (c) No model answer given. New question released in 2000.

CHAPTER 29
TRANSFERS OF NEGOTIABLE INSTRUMENTS AND WARRANTIES OF PARTIES

1. (d) Rex's endorsement did not specify the person to whose order the instrument was then payable; it was, therefore, a blank endorsement. As executed by Hand, the instrument was bearer paper since it was made payable to "Rex or bearer." Ford could, therefore, qualify as a holder without Rex's endorsement. Bearer

paper can be converted to order paper by making the last endorsement in the chain of endorsement a special endorsement.

2. (c) If the last endorsement on a negotiable instrument is a special endorsement, the instrument is order paper. A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Answer (a) is incorrect because a check made payable to the order of cash is bearer paper. Answers (b) and (d) are incorrect because a check endorsed in blank is bearer paper.

Chapter 2

THE COURT SYSTEM AND DISPUTE RESOLUTION

RESTATEMENT

A court is a government-established tribunal created to hear and decide matters brought before it. Courts have specific types or classes of cases assigned to them and over which they have authority; referred to as jurisdiction. The types of jurisdiction include original jurisdiction which is the authority to conduct the first proceedings in the case. Appellate jurisdiction is the authority to review the proceedings of other courts. Courts can have broad authority over a variety of cases, or general jurisdiction as with a trial court, or can have special or limited jurisdiction as with juvenile or probate courts.

There are federal and state court systems. The federal court system consists of specialty courts such as tax court and bankruptcy courts, a general trial court called federal district court, the U.S. court of appeals and the U.S. Supreme Court. State court systems have a general trial court, called a county, circuit or superior court, an appellate court, and a state supreme court.

When a dispute is taken to court, it begins with a plaintiff filing a complaint. The defendant answers the complaint by denying the allegations or counterclaiming. The parties may be represented by lawyers who are officers of the court trained to represent others in the presentment of a case.

Following the pleadings in a case, the parties begin discovery whereby they determine the facts of the case through depositions, requests for production and interrogatories.

Based on the evidence obtained during discovery, the parties may move for summary judgment which is a decision in a case in which the facts are not in dispute.

A trial begins with voir dire, or the process of questioning jurors for bias or arbitrary exclusion through the use of peremptory challenges. The trial proceeds with opening statements and then the plaintiff's case. The order for questioning witnesses is direct, cross-, redirect, and recross-examination. A directed verdict can be granted if the plaintiff's proof was insufficient to establish the elements of the case. Following a jury verdict, the losing party can move for a judgment N.O.V. or a new trial. The collection of a judgment is obtained through execution on a writ of execution or garnishment.

Other methods, besides litigation, that can be used to settle disputes are called alternative dispute resolution. The methods of alternative dispute resolution include arbitration, mediation, medarb, reference to third person, association tribunal, summary jury trial, rent-a-judge, minitrial, contract provisions and ombudsmen. These methods vary in formality but are all non-judicial means for dispute resolution.

STUDENT LEARNING OUTCOMES

LO.1: Explain the federal and state court systems.

LO.2: Describe court procedures.

LO.3: List the forms of alternative dispute resolution and distinguish among them.

INSTRUCTOR'S INSIGHTS

Break the chapter down into three components – related Learning Outcomes are indicated in ( ):

1. *What are the court systems and names of the various courts?*

   - Cover the federal court system (LO.1)
   - Explain generally how state court systems work (LO.1)
   - Discuss the types of courts and their jurisdiction (LO.1)

2. *How does a case go through a court?*

- List the parties involved in a court case
- Explain the initial steps in a law suit (LO.2)
- Describe how a trial proceeds (LO.2)
- Discuss the parties' options after a trial is finished

3. *What are the alternatives to litigation for dispute resolution?*

- Explain arbitration (LO.3)
- Discuss mediation (LO.3)
- Cover MedArb (LO.3)
- Define and discuss reference to a third person, association tribunals, summary jury trials, rent-a-judge, mini-trial, contract provisions, and ombudsmen as alternative means of dispute resolution (LO.3)

CHAPTER OUTLINE

I. What are the Court Systems and Names of the Various Courts?

A. Types of courts

1. Subject matter jurisdiction – courts have authority based on type of case

2. Original jurisdiction – trial courts; where case is heard initially

3. General jurisdiction – authority of broad subject matter in cases

4. Limited or special jurisdiction – narrow scope of subject matter; e.g., probate, domestic relations, juvenile courts

5. Appellate jurisdiction – court that reviews the work of other courts

a. Reversible error – mistake in lower court with the potential to affect the outcome
b. Court can affirm, reverse, or remand

CASE BRIEF: *Yates v. State*
171 S.W.3d 215 (Tex. App. 2005)

FACTS: Andrea Yates was charged with capital murder in the drowning deaths of her five young children. Mrs. Yates had been in and out of treatment facilities, had been taking antidepressants, and was under the care of several experts for her depression. She was also experiencing postpartum depression when she drowned each of her five children in the bath tub at their family home. She then called her husband to ask him to come home because the children were hurt. She also called 9-1-1 and told the operator that she needed a police officer to come to her home.

She entered a "not guilty by reason of insanity" plea and ten psychiatrists and two psychologists testified at the trial about Mrs. Yates's mental condition before, during, and after the deaths of the children.

Dr. Parke Dietz, the psychiatrist for the prosecution, testified that he believed Mrs. Yates knew right from wrong and that she was not insane at the time of the drownings. Dr. Dietz also served as a consultant for the television series "Law and Order," and testified as follows about one of the shows in the series:

> As a matter of fact, there was a show of a woman with postpartum depression who drowned her children in the bathtub and was found insane and it was aired shortly before the crime occurred.

The prosecution used this information about the television show to cross-examine witnesses for Mrs. Yates and also raised its airing in its closing argument to the jury.

The jury found Mrs. Yates guilty. The defense lawyers later discovered that Dr. Dietz was mistaken, that there had been no such "Law and Order" show on postpartum depression. They appealed on the grounds that the evidence was material, prejudiced the jury, and required a new trial.

ISSUE: Is a new trial required because false evidence was used in the original trial?

HOLDING: Yes, the court grants Mrs. Yates a new trial.

REASONING: If the evidence that turned out to be false was not material, then a new trial would not be required. But, with this evidence on the TV show, both sides had to talk about it – the prosecution for its ability to show premeditation and sound mind and the defense to respond to the TV show and its impact on Mrs. Yates. Its continuing presence at the trial showed that it was a critical part of the case and its falsity requires a new trial.

ANSWERS TO CASE QUESTIONS:

1. Mrs. Yates had had 5 children in quick succession, did not have her own home (living in an RV) and was undergoing treatment for depression. She had been in and out of mental hospitals, was under the treatment of a psychiatrist and was taking medication. Her mother-in-law described her as catatonic, not eating, and scratching her head until she had bald spots. She had attempted suicide and on at least one occasion had filled the bath tub with water for mysterious reasons.
2. The court finds the testimony highly significant because of its impact in showing premeditation and a conscious act as opposed to insanity and an unconsciousness about the rightness or wrongness of the act. Also, the testimony became part of cross-examination of other witnesses as well as a part of closing arguments.
3. Because it was evidence that was relied upon by the lawyers for both sides in the case, it was probably relied upon by the jury. It was false material evidence and required a new trial to address the prejudice it introduced.

B. Federal court system (See Figure 2-1)

1. Federal district court

a. Trial court
b. General jurisdiction

i. U.S. is a party
ii. Cases between citizens of different states ($75,000 or more)
iii. Cases arising under U.S. Constitution or statute

c. Each state is at least one federal district
d. Specialty courts

i. Limited jurisdiction
ii. Bankruptcy, tax, Indian tribal court

2. U.S. Court of Appeals (See Figure 2-2 in text)

a. Twelve geographic circuits (districts grouped together) plus one additional circuit
b. One court of appeals per circuit
c. Three-judge panel reviews cases

3. U.S. Supreme Court

a. Appellate jurisdiction

i. U.S. Courts of Appeals
ii. State supreme courts when constitutional issue is involved

b. Review is granted pursuant to *writ of certiorari* process

c. Trial court for ambassadors, public ministers, consuls and state vs. state

C. State court systems (See Figure 2-3 in text)

1. General trial courts: civil and criminal jurisdiction
2. Specialty courts – probate, family
3. City, municipal, and justice courts
4. Small claims courts
5. State appellate courts
6. State supreme courts

II. How Does a Case Go Through a Court? – Court Procedure

A. Participants in the court system

1. Plaintiffs – initiates proceeding (criminal case: prosecutor)
2. Defendant – party against whom proceedings are brought
3. Judge – presides over proceedings
4. Jury – citizens sworn to reach a verdict

B. Which law applies – conflicts

1. Law of state in which court is located governs procedural questions
2. Law of state in which contract was made governs
3. Choice of law provisions in contracts govern

C. Initial steps in a lawsuit

1. Complaint – states cause of action – commencement of lawsuit
2. Service of process – notifies defendant
3. Answer – response of defendant

a. Motion to dismiss – demurrer
b. Deny
c. Counterclaim

4. Complaint, answer, counterclaim – referred to as pleadings
5. Discovery – process of learning the evidence that exists prior to trial

a. Deposition – sworn testimony not in court room; can be used to impeach differing recollection or testimony at trial
b. Interrogatories – questions answered under oath
c. Requests for production of documents – obtaining paper evidence

6. Motion for summary judgment – asks for decision when facts are not in dispute
7. Designation of expert witnesses

D. The trial

1. Jury selection

   a. *Voir dire* examination – use Martha Stewart example from text and on website update
   b. Challenge for cause – bias, conflict
   c. Peremptory or arbitrary challenge – lawyer need not give reason

2. Opening statements

3. Plaintiff's case: presentation of evidence – witnesses are examined by direct, cross-, re-direct, and recross-examination

4. Motion for directed verdict granted if plaintiff did not establish case

5. Defendant's case

DISCUSSION POINTS: Ethics & the Law
Qualcomm E-mails

The court found that the evidence was not only withheld and destroyed, but that the evidence was key to the case that showed Broadcom had not infringed any patents. The court thereby dismissed the patent claim brought by Qualcomm. Referring to Qualcomm's conduct as "concealment efforts" and "carefully orchestrated plan," the court found that the misconduct established the case in favor of Broadcom.

Emphasize to the students the importance of just telling the truth in discovery and letting the case be decided as it should be – on a full and fair statement of all the facts. When someone withholds information, all in the system are affected because then each representation has to be tested and verified.

DISCUSSION POINTS: Thinking Things Through
Why Do We Require Sworn Testimony?

Discuss with students the inconsistency in the statements. The oath makes a difference in what is said. Discuss the ethics of Microsoft's differing positions.

6. Summation

7. Motion for mistrial

8. Jury instructions

9. Jury verdict or mistrial if deadlocked

10. Motion for new trial or judgment N.O.V. (judgment *non obstante verdicto*)

E. Posttrial procedures: Recovery

1. Costs

2. Attorney fees

3. Execution of judgment and suit

4. Writ of execution or writ of garnishment

III. What are the Alternatives to Litigation for Dispute Resolution? (See Figure 2-4 in text)

A. Arbitration

1. Means of avoiding expensive legal costs

2. Federal Arbitration Act and Uniform Arbitration Act govern

3. Arbitration can be mandatory or elective

4. Scope of arbitration: as broad as possible

5. Finality of arbitration

   a. Usually provided for by the parties
   b. If non-binding, any litigation begins anew for a trial de novo

B. Mediation

1. No authority to make a decision

2. Third party is a go-between to facilitate communication

C. MedArb – party has authority to hear case and suggest resolution to each side

D. Reference to third person: case is given to outsider(s) – ordinarily, parties agree that the decision is final

E. Association tribunals

1. These groups have a board or committee to settle disputes

2. The National Association of Home Builders requires arbitration

F. Summary jury trial: a dry run or mock trial to see how the case is perceived

G. Rent-a-Judge: an experienced judge is hired to hear the case

H. Minitrial: heart of dispute is heard; parties agree to limit issues of dispute

I. Judicial triage: cases are sent to judge for immediate evaluation to see if the cases should be dismissed or expedited for trial

DISCUSSION POINTS: E-Commerce & Cyberlaw
Google Mistrial

Discuss the importance of jurors using only the evidence presented. Discuss importance of following the Judges' cautions and being forthright.

J. Disposition of complaints and ombudsmen

1. A statute may create a government official for the purpose of examining complaints

2. Trend is toward other forms of dispute resolution

ANSWERS TO QUESTIONS AND CASE PROBLEMS

1. *Trial process.* Steps in litigation:

1. Complaint by plaintiff
2. Service of process on defendant
3. Defendant's answer: deny, counterclaim, admit
4. Discovery: depositions, interrogatories, requests for production
5. Motion for summary judgment (if no factual issues)

6. Trial
   a. Jury selection: voir dire, challenge for cause, peremptory challenge
   b. Opening statements
   c. Plaintiff's case: direct, cross, redirect, recross
   d. Motion for directed verdict
   e. Defendant's case
   f. Summation
   g. Jury instructions
   h. Jury verdict or mistrial (deadlocked)
   i. Motion for new trial or judgment
   j. Recovery: fees, execution, garnishment

2. *Arbitration*. Arbitration is a hearing process. Mediation is the use of a third party as a go-between in negotiating a settlement. The two forms of arbitration may be distinguished on three grounds:

   (1) *Source*. Initially, the two are distinguished by the fact that mandatory arbitration is imposed on the parties by statute or administrative regulation while voluntary arbitration is voluntarily adopted by the parties.
   (2) *Scope*. Mandatory arbitration is limited to the particular subject matter specified by the statute or regulation that makes the arbitration mandatory. In contrast, voluntary arbitration may cover any subject the parties choose.
   (3) *Finality*. The decision of the arbitrator, in the case of voluntary arbitration, is typically final by virtue of the agreement of the parties. In the case of mandatory arbitration, an appeal is normally allowed that proceeds as a trial de novo, meaning that what was before the arbitrator is ignored, and the matter begins again, as though there had been no arbitration.

3. *Jurisdiction*. Ralph's case will go to federal district court because it is a trial involving a violation of a federal statute.

4. *Trial process.* No. Jerry could be removed for cause. There is a conflict with his independence.

5. A*rbitration*. The danger feared by the three developers is a real one. It would be better for them to agree to submit the matter to arbitration. Persons who were experienced with real estate developments and the law of such developments could be selected as arbitrators; this would eliminate the potential dangers.

6. *Mandatory arbitration clauses*. The U.S. Supreme Court held that the arbitration clause was valid because (1) there was strong federal policy favoring arbitration; and (2) the party challenging the validity of an arbitration clause has the burden of showing that arbitration is an unsuitable method for resolving the dispute. In this case, Mrs. Randolph had alleged that the arbitration costs made pursuit of her remedies too expensive. However, she had not presented evidence to indicate why arbitration would be more expensive than litigation. [*Green Tree Financial Corp. v. Randolph*, 531 U.S. 79]

7. *Expert witnesses; evidence*. The answer can be found in the *Yates* case. When an expert does not disclose evidence that helps to evaluate his or her credibility, there has been a reversible error that is grounds for reversal. This information that the expert has been a defendant in a case and lost goes to their expertise and credibility both.

8. *Types of courts.* (a) Small claims court – original; limited
   (b) U.S. Bankruptcy court – original; limited
   (c) Federal district court – general; original
   (d) U.S. Supreme Court – appellate; original
   (e) Municipal court – limited; original
   (f) Probate court – limited; original
   (g) Federal or U.S. Court of Appeals – appellate

9. *Discovery.* Yes, the Pension Fund would be entitled to have access to determine whether Mr. Ellison had said anything that contradicted his public statements. The court did, in fact, allow the Pension Fund to have access. However, all but 15 of the e-mails had been destroyed. The court did not sanction Mr. Ellison, but it did allow the jury to have an instruction read that allowed them to presume that those e-mails contained information that would have been adverse to Mr. Ellison. [*Nursing Home Pension Fund, Local 144 v. Oracle Corp.,* 380 F.3d 1226 (C.A. 9)]

10. *Federal Arbitration Act*. Yes. When the seller delivered pursuant to the purchase order, it became bound by the terms of the purchase order, including the arbitration clause of that order. Because the buyer and seller were corporations of different states, the contract between them related to an interstate transaction. The Federal Arbitration Act was therefore applicable, and the arbitration agreement was made binding by the act. Both parties were required to arbitrate the dispute. [*Application of Mostek Corp.,* 120 App.Div.2d 383, 502 N.Y. S.2d 181]

11. *Arbitration/mandatory clauses*. The presumption that arbitration clauses in contracts (here in a collective bargaining agreement) are valid and enforceable does not extend to those statutory rights that parties to the contract may have. In this situation, the employee had a clear right to pursue remedies under federal statute and by litigation. For that right to be waived and the case to go to arbitration, the contract must expressly provide that these statutory rights are waived. The waiver must be clear and unmistakable and, in this case, the language was not enough to indicate a waiver of right to litigation under the ADA. The arbitration clause in the union collective bargaining agreement is too general to indicate a waiver of rights. The court reversed and remanded the case for trial. Distinguish for the students the difference between these litigation rights and generic statutory protections, such as in the *Green Tree* case, that provide simple remedies and not a specific right of litigation. Also, point out that union, disability and labor issues have an extensive federal statutory scheme with rights, protections and processes that would require more than a generic arbitration clause. [*Wright v. Universal Maritime Service Corp.,* 525 U.S. 70]

12. *Trial; jury selection*. The lawyers can obtain information about prospective jurors through questionnaires as well as the process of *voir dire*. Some of the background questions on *voir dire* are place of employment and whether they know any of the parties in the case. Mr. Guber could be excused because of his relationship with Ms. Ryder. The prosecuting attorney could find this out using *voir dire*, the process of questioning the jury panel for screening them for bias, connection and relationship. The attorney could use a challenge for cause or a peremptory challenge. In the Ryder case, both sides let Mr. Guber remain and he served on the jury after his assurances that he would be impartial. Ms. Ryder was found guilty of theft and burglary. She was sentenced to community service and probation. [Rick Lyman, "For the Ryder Trial, a Hollywood Script," *New York Times,* November 3, 2002, SL-1]

13. *Original v. appellate jurisdiction.* Trial court hears case initially and renders decision. Appellate court reviews trial court's procedure to determine whether reversible error has occurred.

14. *Discovery evidence*. Trial. On cross-examination, the lawyer can confront the witness on the business practice.

LAWFLIX

Twelve Angry Men (1957) (G)

A movie that shows the jury process, rights of parties in court, jury instructions, and group think, all wrapped up in terrific dialogue.

Class Action (1991) (R)

Good movie to illustrate discovery and the ethics of withholding documents in production of evidence/paperwork.

Perry Mason (1st Season) (NR)

The discovery of evidence, its disclosure, and procedural rights are covered in every episode. The series is available on Amazon.

To access additional movie clips that illustrate business law concepts, visit **www.cengage.com/blaw/dvl.**

TO THE INSTRUCTOR

The instructor's manual has been carefully prepared for this 3rd edition of Twomey/Jennings's *Business Law: Principles for Today's Commercial Environment*. Each chapter begins with a brief Restatement of the laws and issues covered in the chapter. Then, at a glance, the instructor can determine the key coverage areas by zeroing in on the learning objectives listed in the Student Learning Outcomes.

Following the Student Learning Outcomes, there are suggestions for structuring the presentation of the material. These Instructor's Insights break the chapter materials down into several components, with most chapters broken into three or four components. With this organizational overview, an instructor can provide the students with a broad picture of the material and how each class session will be organized.

New to this edition of the book and the instructor's manual are the learning objectives (LOs). The book walks the student through these objectives from the first page of each chapter all the way through to the summary and list at the end of the chapter. At the end, students can go back through and look up the case or discussion that provides them with the understanding they need to accomplish that objective. This manual coordinates those learning objectives with all of the cases and concepts you will be covering with the students.

All chapters include a chapter outline correlated to the Insights organizational format. The outline follows the chapter materials. The case briefs have been inserted into the outline in the location in which they appear in the text. All case briefs have been expanded and reorganized to help instructors present them or prepare for class discussion. Each referenced case has the appropriate learning objective connected with it along with a discussion point for instructors to emphasize as they cover the material.

At the appropriate place in the outline materials, the answers and follow-up questions for the Ethics & the Law, Sports & Entertainment Law, E-Commerce & Cyberlaw, and Thinking Things Through segments are included in the manual. The detailed answers for the chapter questions and case problems are included.

There are also suggested movie clips in the book at the end of most chapters. These chapters include a LawFlix section with a suggested clip for use to help students with application and understanding. These clips can be used in class throughout a course to encourage discussion. You can also have your students purchase access to the films through the Digital Library.

You can find information on additional instructor and student resources that are available with this text in the preface of the textbook or at www.cengage.com/blaw/twomey.