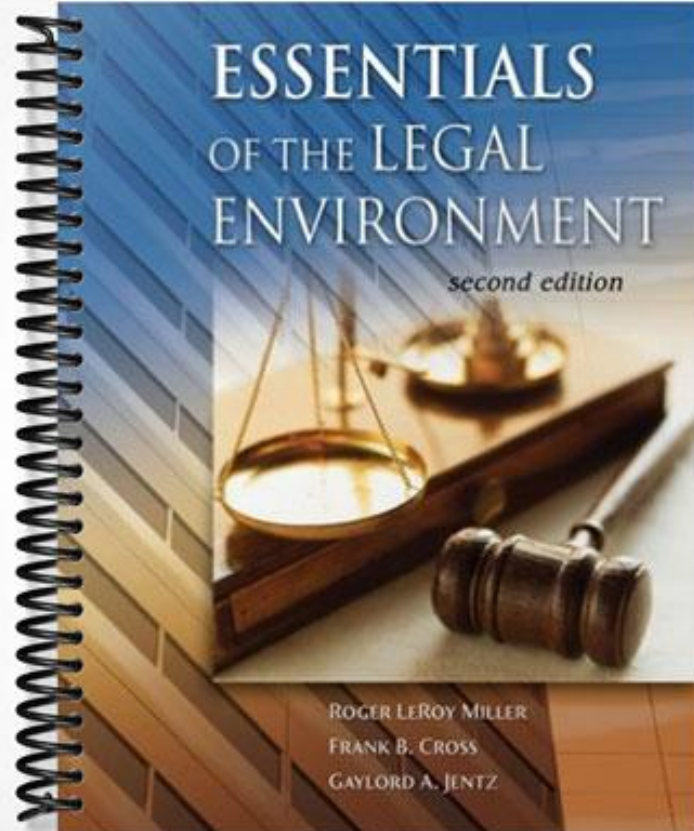


SOLUTIONS MANUAL



**ESSENTIALS
OF THE LEGAL
ENVIRONMENT**

second edition

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Chapter 2

The Courts and Alternative Dispute Resolution

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 than 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.

Finally, the chapter reviews alternatives to litigation that can be as binding to the parties involved as a court's decree. Thus, alternative dispute resolution, including methods for settling disputes in online forums, is the chapter's third major topic.

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** relate 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.

PBS Ethics in America Series

Video No. 8 of this series, entitled *Truth on Trial*, takes a critical look at the adversarial system of justice in the United States and the “courtroom truth” that results. Included on the panel discussing the issue is Supreme Court Justice Antonin Scalia.

Equal Justice Under Law Series

After you have covered the topic of judicial review, you might consider showing your students one or more of the following videos in “Equal Justice Under Law” series to introduce them to these landmark cases.

Marbury v. Madison
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 is to interpret and apply the law 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 text covers the origins of judicial review in the United States and its practice in other nations.

ANSWER TO CHAPTER OBJECTIVE/FOR REVIEW QUESTION NO. 1

What is judicial review? How and when was the power of judicial review established? The courts can decide whether the laws or actions of the legislative and executive branches of government are constitutional. The process for making this determination is judicial review. The doctrine of judicial review was established in 1803 when the United States Supreme Court decided *Marbury v. Madison*.

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE— BEYOND OUR BORDERS

In any country in which a constitution sets forth the basic powers and structure of government, some government body has to decide whether laws enacted by government are consistent with that constitution. Why might the courts be best suited to handle this task? What might be a better alternative? Arguments in favor of the courts' exercising judicial review include the checks and balance system. Arguments in favor of another government body's exercise of this function include the possibility of its greater independence from political influence. Also, in civil law jurisdictions, the courts are expected to apply the law, not to interpret it (which is necessary to assess its constitutionality).

II. Basic Judicial Requirements

A. JURISDICTION

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. 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.

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).

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.

B. JURISDICTION OF THE FEDERAL COURTS

The jurisdiction of the federal courts is limited by the Constitution. Congress can control the number and kind of federal courts (other than the United States Supreme Court). Congress can also regulate the appellate jurisdiction of the United States Supreme Court and set other limits on federal jurisdiction (although Congress cannot expand it). Whenever 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, and the suit can be brought in a federal court. In diversity of citizenship suits, 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. Whenever a

suit involves a question arising under the Constitution, a treaty, or a federal law, a federal question arises, and the suit can be brought in a federal court.

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 therefore 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.)

C. 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. The text discusses briefly why a case might be brought in one court or another when there is concurrent jurisdiction.

D. JURISDICTION IN CYBERSPACE

The basic question 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. 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 an ad but less than a lot of activity. A firm should attempt to comply with the laws of any jurisdiction in which it targets customers. To exclude customers, however, there are technical problems that need to be solved.

IHI

ANSWER TO VIDEO QUESTION NO. 1

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 NO. 2

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 NO. 3****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.

CASE SYNOPSIS—**Case 2.1: *Bird v. Parsons***

Darrell Bird, an Ohio citizen, operates Financia, Inc., which owns the domain name *financia.com*. Dotster, Inc., a domain-name registrar incorporated in Washington, allows registrants who lack an Internet server to which a name can be assigned to park their names on Dotster’s “Futurehome” page. Marshall Parsons registered the name *efinancia.com* on Dotster’s site and parked the name on the Futurehome page. The name *efinancia.com* was soon offered for sale at an auction site. Bird filed a suit against Dotster and others in a federal district court, alleging, in part, trademark infringement. Some of the defendants asked the court to dismiss the complaint for, among other reasons, lack of personal jurisdiction. The court dismissed the suit. Bird appealed.

The U.S. Court of Appeals for the Sixth Circuit concluded that the lower court erred in granting the defendants' motion (although the court ruled against Bird on the substance of his claims and affirmed the lower court's dismissal on this ground). To be subject to jurisdiction "[f]irst, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." All of these factors were present. Dotster "maintain[s] a website on which Ohio residents can register domain names" and "allegedly accept[ed] the business of 4,666 Ohio residents." Dotster's contacts with Ohio and Bird's claims 'stem from [the] defendants' operation of the Dotster website." Also, among other things, "Ohio has a legitimate interest in protecting the business interests of its citizens, even though all of Bird's claims involve federal law."

Notes and Questions

The court held that Bird established a case that the Dotster defendants were subject to jurisdiction in Ohio, but was that jurisdiction authorized under Ohio's long-arm statute? Yes. Under that statute, as under other state's long-arm statutes, courts may exercise personal jurisdiction over defendants whose actions cause, in the words of the Ohio statute, "tortious injury in this state by an act or omission outside this state if he 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 this state." According to the court, Bird's claims supported a finding that the Dotster defendants "regularly conducted activity in Ohio." The defendants' acts also allegedly "caused tortious injury in Ohio," because "violations of federal trademark law are analogous to tort cases." Finally, "because a plaintiff whose trademark has been violated potentially suffers economic harm as a result of the defendant's actions, the injury occurs both in places where the plaintiff does business and in the state where its primary office is located."

How much interactivity through a Web site is enough to confer personal jurisdiction? Very little might be enough. In *Maritz, Inc. v. Cybergold, Inc.*, 947 F.Supp. 1328 (E.D.Mo.1996), Cybergold's Web site merely promoted an upcoming Internet service, which was to consist of assigning users e-mail boxes to which ads for products and services that matched the users' interests would be forwarded. Users were asked to add their addresses to a mailing list to receive updates about the upcoming service. The court held that it had jurisdiction, reasoning that Cybergold was involved in "active solicitations" and "promotional activities."

An extreme example might be *Inset Systems, Inc. v. Instruction Set*, 937 F.Supp. 161 (D.Conn.1996). In a trademark infringement suit over a domain name, the court held that it had jurisdiction based mostly on a Web site that was accessible to approximately 10,000 local residents. The court felt that an ad on the Internet was enough because "unlike television and radio advertising, the advertisement is available continuously to any Internet user."

ADDITIONAL CASES ADDRESSING THIS ISSUE —

Recent cases identifying and applying principles concerning exercises of **jurisdiction over Internet activities** include the following.

- Cases in which there is a detailed discussion of the case law on this issue include *Verizon Online Services, Inc. v. Ralsky*, 203 F.Supp.2d 601 (E.D.Va. 2002) (exercise of jurisdiction over nonresidents who sent unsolicited bulk e-mail to and through an Internet service provider's servers located in the jurisdiction was proper).
- Cases in which the sliding-scale test is set out include *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D.Pa. 1997) (exercise of jurisdiction over nonresidents who did business within the jurisdiction via the Internet was proper); and *Blackburn v. Walker Oriental Rug Galleries, Inc.*, 999 F.Supp. 636 (E.D.Pa.1998) (exercise of jurisdiction over nonresidents who posted only a passive Web site accessible within the jurisdiction was not proper).
- Cases in which jurisdiction was exercised include *Maritz, Inc. v. Cybergold, Inc.*, 947 F.Supp. 1328 (E.D.Mo. 1996) (creating an online commercial mailing list by signing people up at their Web site for commercial purposes was sufficient); *Gary Scott International, Inc. v. Baroudi*, 981 F.Supp. 714 (D.Mass. 1997) (personal jurisdiction could be exercised because the defendant solicited and sold his product via his Web site to Massachusetts residents and had a major deal with a Massachusetts business); *Superguide Corp. v. Kegan*, 987 F.Supp. 481 (W.D.N.C. 1997) (personal jurisdiction may be exercised under the assumption that citizens of the forum state via the Internet have utilized the commercial services and acquired products from the defendant); and *Thompson v. Handa-Lopez, Inc.*, 998 F.Supp. 738 (W.D.Tex. 1998) (personal jurisdiction could be exercised when the defendant entered into online contracts for commercial purposes with residents of the forum state).
- Cases in which jurisdiction was held not supported include *Barrett v. Catacombs Press*, 44 F.Supp.2d 717 (E.D.Pa. 1999) (posting messages on listservs and USENET discussion groups on a passive website is insufficient for jurisdictional purposes); and *Bailey v. Turbine Design, Inc.*, 86 F.Supp.2d 790 (W.D.Tenn. 2000) (posting allegedly defamatory statements on a Web site, without more, is insufficient to confer jurisdiction).

ANSWER TO CHAPTER OBJECTIVE/FOR REVIEW QUESTION NO. 2

(Note that your students have the answers to the even-numbered *Review Questions* in Appendix A of their textbooks.

We repeat these answers here as a convenience to you.)

Over what must a court have jurisdiction to hear a case? How are the courts applying traditional jurisdictional concepts to cases involving Internet transactions? To hear a case, a court must have jurisdiction over the person against whom the suit is brought or over the property involved in the suit. The court must also have jurisdiction over the subject matter. Generally, courts apply a "sliding-scale" standard to determine when it is proper to exercise jurisdiction over a defendant whose only connection with the jurisdiction is the Internet.

E. INTERNATIONAL JURISDICTIONAL ISSUES

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

F. 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.

G. 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 several tiers—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 re-tried 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.

ANSWER TO CHAPTER OBJECTIVE/FOR REVIEW QUESTION NO. 3

What is the difference between a trial court and an appellate court? A trial court is a court in which a lawsuit begins, a trial takes place, and evidence is presented. An appellate court reviews the rulings of trial court, on appeal from a judgment or order of the lower 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 district courts. Federal trial courts of limited jurisdiction include U.S. Tax Courts and U.S. Bankruptcy Courts. Federal district courts have original jurisdiction in federal matters. Some administrative agencies with judicial power also have original jurisdiction.

2. **U.S. Courts of Appeal**

U.S. courts of appeal, or circuit courts of appeal, hear appeals from the decisions of the district courts located within their respective circuits. The decision of a court of appeals is binding on federal courts only in that circuit.

3. **United States Supreme Court**

The court at the top of the three federal tiers is the United States Supreme Court to which further appeal is not mandatory but may be possible. A party may ask the Supreme 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.

IV. **Following a State Court Case**

The common law system is an adversary system. Each adversary is entitled to present his or her version of the facts through an advocate. An attorney is the client's advocate. A judge assumes an unbiased role, but this role is not entirely passive. A judge is responsible for the appropriate application of the law and does not have to accept the adversaries' arguments. There are rules of procedure to govern the way in which disputes are handled in courts. These rules differ from court to court, but there are similarities.

A. **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.

1. **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.

2. **Answer**

An 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).

3. **Motion to Dismiss**

A 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.

4. **Other Pretrial Motions**

After the pleadings are filed, either party can file a motion for judgment on the pleadings or 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.

B. DISCOVERY

To prepare for trial, parties obtain information from each other and from witnesses through the process of discovery. This can involve depositions, interrogatories, requests for admission, requests for physical or mental examinations, and requests for documents, objects, and entry upon land. These discovery devices (which are defined in the text) save time by preserving evidence, narrowing the issues, preventing surprises at trial, and avoiding a trial altogether in some cases. Any relevant material, including information stored electronically, such as e-mail and other computer data, can be the object of a discovery request. This may include data that was not intentionally saved by a user, such as concealed notes and earlier versions.

ANSWER TO CHAPTER OBJECTIVE/FOR REVIEW QUESTION NO. 4

(Note that your students have the answers to the even-numbered *Review Questions* in Appendix A of their textbooks.

We repeat these answers here as a convenience to you.)

In a lawsuit, what are pleadings? What is discovery, and how does electronic discovery differ? What is electronic filing? The pleadings include a plaintiff's complaint and a defendant's answer (and the counterclaim and reply). The pleadings inform each party of the other's claims and specify the issues involved in a case. Discovery is the process of obtaining information and evidence about a case from the other party or third parties. Discovery entails gaining access to witnesses, documents, records, and other types of evidence. Electronic discovery differs in its subject (e-media rather than traditional sources of information). Electronic filing involves the filing of court documents in electronic media, typically over the Internet.

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE— CONTEMPORARY LEGAL DEBATES

Should discovery of e-evidence be treated differently than other types discovery just because it is more expensive? Should there be one rule establishing who pays the costs of e-discovery in all cases, or should the court determine who should bear the expense of providing e-evidence on a case-by-case basis? At what point, if ever, should the costs of producing e-discovery be shifted to the requesting party? In case not involving e-documents, the presumption is that the responding party must bear the expense of complying with discovery requests. It could be argued that e-evidence should be subject to this same presumption. Cost-shifting can effectively end discovery, especially when private parties are engaged in litigation with large corporations. This would undermine the strong public policy favoring resolving disputes on their merits and could ultimately deter the filing of genuine claims. With that in mind, perhaps cost-shifting should be considered only when e-discovery imposes an undue burden or expense on the responding party.

C. PRETRIAL CONFERENCE

After discovery, a pretrial hearing is held.

D. JURY SELECTION

If the right to a jury trial has been requested, the jury is selected. Prospective jurors undergo *voir dire* (questioning by the attorneys to determine impartiality).

E. AT THE TRIAL

Once a jury is chosen, the trial begins with the attorneys' opening statements. These statements concern facts that they expect to prove during the trial. 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 then 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, 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. 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. After both sides have rested, the attorneys present their closing arguments, the jury is instructed in the law that applies to the case, and the jury retires to consider a verdict.

F. POSTTRIAL MOTIONS

After the verdict, the losing party can move for a new trial or for a judgment notwithstanding the verdict (judgment *n.o.v.*). If these motions are denied, he or she can appeal.

ENHANCING YOUR LECTURE—

KK } SHOULD “UNPUBLISHED” OPINIONS BE LAW? || KK

Appellate courts churn out thousands of decisions that are labeled “unpublished” and are not included in appellate reporters. Typically, these decisions do not contain the same detailed recital of facts or comprehensive legal analysis as published opinions. The idea is that by designating the opinion as unpublished, the judges will be able to spend less time writing and editing the decision. Traditionally, the rules of many courts banned the citation of unpublished decisions.

The rules regarding unpublished decisions may be changing, however. As a 2000 opinion by the U.S. Court of Appeals for the Eighth Circuit pointed out, it goes against the doctrine of precedent *not* to allow these unpublished decisions to affect later court decisions, and it may even be unconstitutional.^a After all, the role of the judge is not to invent new law, but to interpret the law in a particular context by looking at previous court decisions. That court's opinion—as well as the online posting of unpublished decisions—has influenced judges' views around the nation. Some courts now permit unpublished decisions to be cited, though usually as persuasive rather than binding authority. In 2002, for example, the U.S. Court of Appeals for the D.C. Circuit adopted new rules that allow unpublished decisions to be cited as precedent. Some state courts, such as those in Texas, are also beginning to allow unpublished opinions to be cited.

THE BOTTOM LINE

Increasingly, judges are allowing unpublished opinions to be cited as authority in their courtrooms and permitting the reasoning used in those cases to persuade their way of thinking.

a. *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), opinion vacated as moot on rehearing *en banc*, 235 F.3d 1054 (8th Cir. 2000). This opinion involved a woman who sought a tax refund for overpaid taxes. When the Internal Revenue Service refunded the taxes, the decision was vacated as moot (irrelevant) because the tax issue was resolved.

G. 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, post-trial 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. 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. 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.

H. ENFORCING THE JUDGMENT

A judgment may not be enforceable because a defendant may not have sufficient assets to pay it.

V. Courts Adapt to the Online World

Technology can save judges' and lawyers' time and space. Filing court documents may involve a transfer over the Internet, a transmission via e-mail, or a delivery of a computer disk. The text mentions some of the details of specific systems and their problems. Courts are also using electronic case-management systems. Most courts also have Web sites, though they do not generally contain vast archives of case law. Next on the horizon are virtual courtrooms, or cyber courts.

CASE SYNOPSIS—

Case 2.2: *Phansalkar v. Andersen, Weinroth & Co.*

Andersen Weinroth & Co. (AW) finds and creates investment opportunities. Some AW employees receive stock and "investment opportunities" rather than salaries. Rohit Phansalkar worked for AW from February 1998 until June 2000. After Phansalkar left, AW refused to pay him the returns on certain "investment opportunities." Phansalkar filed a suit in a federal district court against AW, alleging in part breach of contract. The court awarded him more than \$4.4 million. On AW's appeal, the judgment was reversed. AW then asked for an award of the amount that it spent to create copies of the briefs and other documents involved in the appeal in hyperlinked CD-ROM format.

The U.S. Court of Appeals for the Second Circuit ruled that AW could not recover these costs. The court could find "no local rule or holding * * * that allocates CD-ROM costs," and "[n]o guidance" in the *Federal Rules of Civil Procedure*, which authorize an award of costs incurred to produce "necessary" copies of briefs and other costs of an appeal. Also, "the CD-ROM costs * * * were duplicative," and "there is no * * * understanding between the parties concerning the allocation."

.....
Notes and Questions

Under the Federal Rules of Appellate Procedure, was it appropriate for the court to refuse the appellants' request for the cost of producing appellate documents in hyperlinked CD-ROM format? Yes. Although the *Federal Rules of Appellate Procedure* provided the court with no direct guidance on this question, the court noted that the rules authorize an award of costs incurred to produce “necessary” copies of briefs and other costs of an appeal. Factors that are important in determining if a cost is authorized by the rules include “whether the party seeking disallowance has clearly consented to the expense; whether a court has previously approved the expense; and whether the alternative arrangement costs less than the expense specifically authorized.” None of these factors was present in this case.

ANSWER TO CRITICAL ANALYSIS QUESTION IN CASE 2.2

How might the result in this case have been different if the court had required, rather than merely encouraged, the submission of electronic copies of the appeal documents? Possibly. In its opinion, the court pointed out that some jurisdictions required the submission of electronic copies, while emphasizing that it did not. The court also noted, however, that no rule required the submission of hyperlinked documents, and that in any case, an award of the costs was subject to the same general rules that governed this case.

VI. Alternative Dispute Resolution

The advantage of alternative dispute resolution (ADR) is its flexibility. Normally, the parties themselves can control how the dispute will be settled, what procedures will be used, and whether the decision reached (either by themselves or by a neutral third party) will be legally binding or nonbinding. Approximately 95 percent of cases are settled before trial through some form of ADR.

A. NEGOTIATION

One form of ADR is negotiation, in which the parties attempt to settle their dispute informally, with or without attorneys. They try to reach a resolution without the involvement of a third party acting as mediator.

B. MEDIATION

In mediation, the parties attempt to negotiate an agreement with the assistance of a neutral third party, a mediator. Mediation is essentially a form of “assisted negotiation.” The mediator does not make a decision on the matter being disputed.

C. ARBITRATION

A more formal method of ADR is arbitration, in which a neutral third party or a panel of experts hears a dispute and renders a decision. The decision can be legally binding. Formal arbitration resembles a trial. The parties may appeal, but a court’s review is more restricted than an appellate court’s review of a trial court’s decision. An arbitrator’s decision, or award, will only be set aside if the arbitrator’s conduct or “bad faith” substantially prejudiced the rights of one of the parties, if the award violates an established public policy, or if the arbitrator exceeded his or her powers.

1. Arbitration Clauses and Statutes

Virtually any commercial matter can be submitted to arbitration. Often, parties include an arbitration clause in a contract. Parties can also agree to arbitrate a dispute after it arises. Most

states have statutes (often based on the Uniform Arbitration Act of 1955) under which arbitration clauses are enforced, and some state statutes compel arbitration of certain types of disputes. At the federal level, the Federal Arbitration Act (FAA), enacted in 1925, enforces arbitration clauses in contracts involving maritime activity and interstate commerce.

2. **The Issue of Arbitrability**

A court can consider whether the parties to an arbitration clause agreed to submit a particular dispute to arbitration. The court may also consider whether the rules and procedures that the parties agreed to are fair.

CASE SYNOPSIS—

Case 2.3: *Buckeye Check Cashing, Inc. v. Cardegna*

Buckeye Check Cashing, Inc., cashes personal checks for consumers in Florida. For each transaction, a consumer signs a “Deferred Deposit and Disclosure Agreement,” which states that in a dispute of any kind, “either you or we or third-parties involved can choose to have that dispute resolved by binding arbitration.” John Cardegna and others filed a suit in a Florida state court against Buckeye, alleging that its “finance charge” represented an illegally high interest rate in violation of state law. Buckeye filed a motion to compel arbitration. The court denied the motion. On Buckeye’s appeal, a state intermediate appellate court reversed, but on the plaintiffs’ appeal, the Florida Supreme Court reversed again. Buckeye appealed.

The United States Supreme Court reversed and remanded. A challenge to the validity of a contract as a whole, and not specifically to an arbitration clause contained in the contract, must be resolved by an arbitrator. The Federal Arbitration Act “allows a challenge to an arbitration provision ‘upon such grounds as exist at law or in equity for the revocation of any contract.’ There can be no doubt that ‘contract’ . . . must include contracts that later prove to be void. Otherwise, the grounds for revocation would be limited to those that rendered a contract voidable—which would mean (implausibly) that an arbitration agreement could be challenged as voidable but not as void.”

Notes and Questions

Does the holding in this case permit a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void? Yes. “But,” in the words of the Court, “it is equally true that respondents’ approach permits a court to deny effect to an arbitration provision in a contract that the court later finds to be perfectly enforceable.” This is why the Court ruled that arbitration provisions are separately enforceable.

If the Court had ruled in favor of the respondents, how might its holding have affected the interpretation of other statutes? One answer to this question is best illustrated by the Court’s example. “[T]he Sherman Act * * * states that ‘[e]very contract * * * in restraint of trade * * * is hereby declared to be illegal.’ Under respondents’ reading of ‘contract,’ a bewildering circularity would result: A contract illegal because it was in restraint of trade would not be a ‘contract’ at all, and thus the statutory prohibition would not apply.”

3. Mandatory Arbitration in the Employment Context

Generally, mandatory arbitration clauses in employment contracts are enforceable.

D. OTHER TYPES OF ADR**1. Mini-Trials**

In a mini-trial, each party's attorney briefly argues the party's case before the other party. Typically, a neutral third party acts as an adviser and an expert in the area being disputed. If the parties fail to reach an agreement, the adviser renders an opinion as to how a court would likely decide the issue.

2. Early Neutral Case Evaluation

In early neutral case evaluation, the parties select a neutral third party (generally an expert in the subject matter of the dispute) to evaluate their respective positions. This evaluation forms the basis for negotiating a settlement.

3. Summary Jury Trials

A form of ADR used in the federal system is the summary jury trial (SJT). The litigants present their arguments and evidence, and a jury renders a nonbinding verdict. Mandatory negotiations immediately follow. Because no witnesses are called, an SJT is speedier than a regular trial. If no settlement is reached, both sides have the right to a full trial.

ADDITIONAL BACKGROUND—			
ADR and the Courts			
States in which one or more local state court has—		States in which one or more federal court has—	
Arbitration	Mediation	Arbitration	Mediation

Alabama Alaska Arizona California Delaware Florida Georgia Hawaii Illinois Michigan Minnesota Missouri Nevada New Hampshire New Jersey New Mexico New York North Carolina Ohio Oregon Pennsylvania Rhode Island Texas Washington	Alabama Alaska Arizona California Connecticut Delaware Florida Georgia Hawaii Indiana Illinois Iowa Kansas Kentucky Louisiana Maine Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Carolina Ohio Oklahoma Oregon Pennsylvania Rhode Island South Carolina South Dakota Tennessee Texas Utah Vermont Virginia Washington West Virginia Wisconsin	Alabama Arizona California Connecticut Florida Georgia Idaho Michigan Missouri New Jersey New York Ohio Oklahoma Pennsylvania Rhode Island Texas Utah Washington	California Delaware Florida Indiana Kansas Kentucky Louisiana Minnesota Missouri Nebraska New Jersey New York North Carolina Ohio Oklahoma Oregon Pennsylvania Rhode Island South Carolina Tennessee Texas Utah Virginia West Virginia Washington Wisconsin
Source: Richard Reuben, "The Lawyer Turns Peacemaker," <i>ABA Journal</i> (August 1996), p. 56.			

E. PROVIDERS OF ADR SERVICES

A major provider of ADR services is the American Arbitration Association (AAA). Most of the largest law firms in the nation are members of this nonprofit association. For-profit firms around the country also provide dispute-resolution services.

VII. Online Dispute Resolution

When outside help is needed to resolve a dispute, there are a number of Web sites that offer online dispute resolution (ODR). This help may be best for resolving small- to medium-sized business liability claims, which may not be worth the expense of litigation or traditional alternative dispute resolution (ADR).

A. WHAT LAW IS APPLIED?

In most of the online forums, there is no automatic application of the law of any specific jurisdiction. Results are often based on general legal principles (for example, that one should fulfill one's contracts).

B. NEGOTIATION AND MEDIATION SERVICES

CyberSettle, ClickNSettle, and other Web-based firms offer online forums to negotiate monetary settlements through blind bidding (for example, for insurance companies and claimants to work out settlements). These services do not evaluate the merits of a claim. A party submits an offer that is revealed to the other party if it falls within a previously agreed range. Offers include deadlines.

Online mediation is the same as normal mediation, except that the parties never see each other. Everything is done via email. SquareTrade resolves disputes involving \$100 or more between eBay customers. SquareTrade also resolves other disputes related to online transactions, using software to walk participants through a step-by-step resolution process.

C. ARBITRATION PROGRAMS**1. Internet Corporation for Assigned Names and Numbers (ICANN)**

ICANN is a nonprofit organization established by the federal government to oversee the distribution of domain names. ICANN authorizes other organizations to arbitrate domain name disputes according to ICANN's rules.

2. Resolution Forum, Inc. (RFI)

RFI, a nonprofit organization associated with the Center for Legal Responsibility at South Texas College of Law, offers mediation and arbitration. Parties access a "conference room" via a standard browser, using an RFI password. When multiple parties are involved, private communications & break-out sessions are possible.

3. Virtual Magistrate Project (VMAG)

VMAG is affiliated with the American Arbitration Association, Chicago-Kent College of Law, Cyberspace Law Institute, and others. VMAG arbitrates disputes involving users of online systems; victims of wrongful messages, postings and files; and system operators subject to complaints or similar demands. VMAG resolves online-related contract, intellectual property, property, and tort disputes. VMAG's goal is quick resolution (seventy-two hours). Appeal of a result may be made to a court.

ANSWER TO CHAPTER OBJECTIVE/FOR REVIEW QUESTION NO. 5

How are online forums being used to resolve disputes? To resolve disputes, online forums are used in the same ways in which offline forums are used. Most online forums do not automatically apply the law of any specific jurisdiction, however, but apply general, universal legal principles. Any party may appeal from an online forum to a court at any time.

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. Divide students into small groups and assign one of the text chapter's end-of-chapter problems to each group. Have each group determine whether or not the assigned problem is one that would lend itself to alternative dispute resolution. *If not, why not? If so, which form of alternative dispute resolution would the group recommend?*
3. Obtain a standard arbitration agreement form from a national arbitration organization such as the American Arbitration Association. Ask students to discuss specific features of these agreements and the factors that might make them hesitant to submit a dispute to arbitration.
4. Some students may find it enlightening to be reminded 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.
5. 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.

6. *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.

7. 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.

Cyberlaw Link

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

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?***

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 venue?*** Venue is a term that refers to the most appropriate location for a trial. ***What is the effect of filing a case with improper venue?*** The case is removed to a court with proper venue.
- 3. *What is the difference between a court of general jurisdiction and a court of limited jurisdiction?*** A court with general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court with limited jurisdiction. Trial courts with general jurisdiction include county, district, and superior courts. Trial courts with limited jurisdiction include local municipal courts (which handle mainly traffic cases), small claims courts, and domestic relations courts. Thus, for example, small claims disputes are typically assigned to courts that hear only small claims disputes.
- 4. *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.

5. ***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 \$75,000. 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.

6. ***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.

7. ***When can 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.

8. ***How does the process of negotiation work?*** In the process of negotiation, the parties come together informally, with or without attorneys to represent them. Within this informal setting the parties air their differences and try to reach a settlement or resolution without the involvement of independent third parties. Because no third parties are involved and because of the informal setting, negotiation is the simplest form of alternative dispute resolution.

9. ***What is the principal difference between negotiation and mediation?*** The major difference between negotiation and mediation is that mediation involves the presence of a third party called a mediator. The mediator assists the parties in reaching a mutually acceptable agreement. The mediator talks face to face with the parties and allows them to discuss their disagreement in an informal environment. The mediator's role, however, is limited to assisting the parties. The mediator does not decide a controversy; he or she only aids the process by helping the parties more quickly find common ground on which they can begin to reach an agreement for themselves.

10. ***What is arbitration?*** The process of arbitration involves the settling of a dispute by an impartial third party (other than a court) who renders a *legally binding* decision. The third party who renders the decision is called an arbitrator. Arbitration combines the advantages of third-party decision making—as provided by judges and juries in formal litigation—with the speed and flexibility of rules of procedure and evidence less rigid than those governing courtroom litigation.

ACTIVITY AND RESEARCH ASSIGNMENTS

1. 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.

2. 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?

3. Ask the class to research the reasons behind the earlier hostility of the courts towards arbitration procedures. *Were they concerned solely with parties being divested of their rights or did they see arbitration as a challenge to their own authority?*
4. Have students investigate the dispute resolution services discussed in this chapter by going online and reading some of the disputes submitted for resolution or the results in individual cases (on the ICANN Web site, for example).

EXPLANATION OF SELECTED FOOTNOTES IN THE TEXT

Footnote 2: 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 4: 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 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.