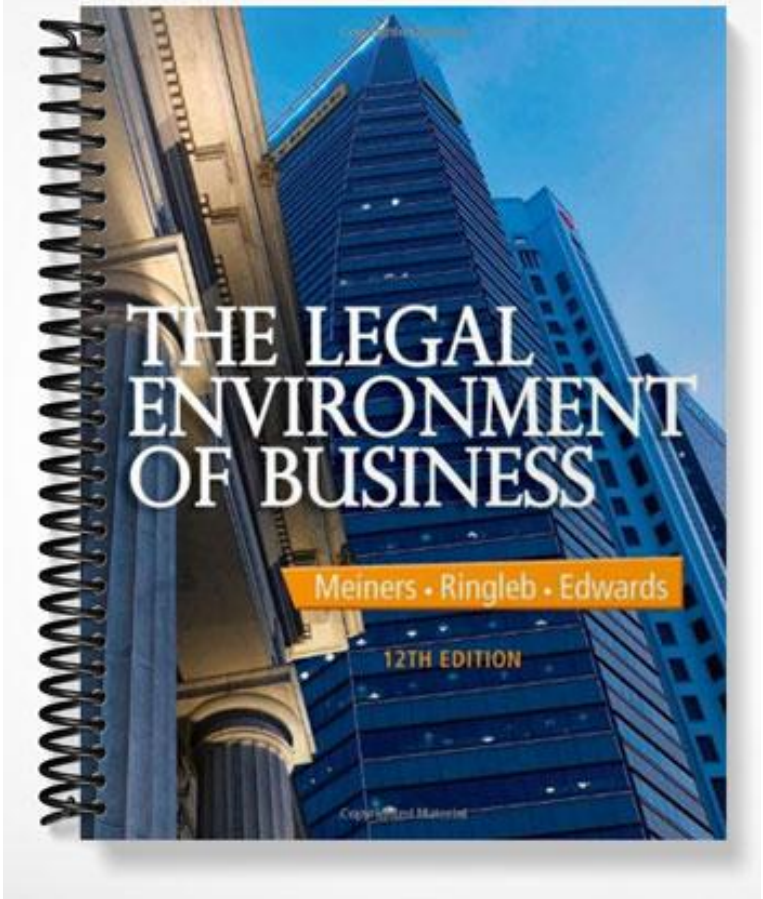
SOLUTIONS MANUAL



CHAPTER 2

THE COURT SYSTEMS

THE COURT SYSTEMS—The federal court system was created by the Constitution, which specifies Supreme Court and "inferior Courts" Congress chooses to establish. The three level court system has existed for many years. Judges in the U.S. are typically attorneys by training. Judges serve three basic functions in the legal system: 1) Provides decisions in resolving disputes among society members; 2) Assists the efforts of the parties to take the full benefits from our adversarial system of justice; and 3) Uphold the dignity of the law and the legal system.

Federal Judges—Under the U.S. Constitution, federal judges are guaranteed lifetime tenure "during good behavior." Impeachment is rare, but under the control of the Senate.

Add. Case: Nixon v. U.S. (S. Ct., 1993). *Background: Nixon, a federal district court judge, was convicted of making false statements before a federal grand jury and sentenced to prison. Because Nixon refused to resign from office, he continued to collect his salary while in prison. A Senate committee collected testimony, presented findings to the Senate, which impeached Nixon. He sought declaratory judgment that the Senate's failure to allow a full evidentiary hearing before the entire Senate violated its constitutional duty to try all impeachments. The court granted the government's motion to dismiss on the grounds that the claim was nonjusticiable. Nixon appealed. After the court of appeals affirmed, he petitioned for certiorari review.*

Decision: The Court held that the Senate had sole discretion to choose impeachment procedures and, thus, controversy was a nonjusticiable political question. "In the case before us, there is no separate provision of the Constitution which could be defeated by allowing the Senate final authority to determine the meaning of the word 'try' in the Impeachment Trial Clause. We agree with Nixon that courts possess power to review either legislative or executive action that transgresses identifiable textual limits. As we have made clear, 'whether the action of (either the Legislative or Executive Branch) exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.' But we conclude, after exercising that delicate responsibility,

that the word 'try' in the Impeachment Clause does not provide an identifiable textual limit on the authority which is committed to the Senate."

State Judges—Are chosen by a variety of methods: elected, appointed, and by various mixtures of the former two methods.

Judicial Immunity—Under established doctrine, a judge is absolutely immune from suit for damages for judicial acts taken within or even in excess of their jurisdiction.

CASE: *Davis v. West* (Ct. App., Tx.)—Attorney Davis never paid Houston Reporting Service (HRS) for court reporter service provided. HRS sued. Davis did not defend; HRS won default judgment and tried to collect. Radoff appointed as receiver; sent demand letter to Davis' bank; it paid. Davis sued Radoff for abuse of process. Trial court granted summary judgment for Radoff as entitled to judicial immunity. Davis appealed.

Decision: Affirmed. "A person entitled to derived judicial immunity receives the same absolute immunity from liability for acts performed within the scope of his jurisdiction as a judge." Radoff was appointed by the judge to act on the court's behalf to enforce judgment.

Questions: 1. Why did Radoff ask for, and get, $4,144.91 when the amount owed was $1,083.98?

Remember that the judgment for HRS was for $1,083.98, the rest of the amount is for attorney's fees, court costs, receiver cost and interest. Those numbers can run up fast.

2. Do you think Davis could have a cause of action against her bank for giving her money to Radoff without her permission?

She did sue the bank for that. The court held that the bank properly froze her account and transferred the funds to Radoff. "A financial institution that complies with an order to turn over assets to a receiver is not liable for such compliance to a judgment debtor." Radoff was executing a court order; the bank received the order and properly complied.

Add. Case:* Murphy v. Maine *(D. Maine, 2006) *Background: Murphy sued various Maine state judges in federal court, contending they violated her First, Fourth, Fifth, Eighth and Fourteenth Amendment rights and rights under the Maine constitution. The judges moved to dismiss the suit.*

Decision: Motion granted. Judges performing judicial acts within their jurisdiction are entitled to absolute immunity from civil liability. This applies even when the judge is accused of acting maliciously and corruptly. This principle does not exist to protect malicious or corrupt judges but to benefit the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. There are only two circumstances where absolute judicial immunity may be inappropriate: 1) functions that are not normally performed by a judge and are outside his or her judicial capacity, or 2) judicial actions taken in the clear absence of jurisdiction. All judges sued were acting in their official capacity and thus had absolute immunity.

Organization of the Court System—American system consists of the federal and state court systems. Both have courts of original and appellate jurisdiction. In trial courts, one judge

presides; a jury may sit to determine the facts and outcome of dispute in civil and criminal cases. Appellate courts focus on correcting errors in application of law and proper procedure at trial.

THE FEDERAL COURTS—The degree of independence of federal judges is quite unique. In most countries they are civil servants subject to much more control.

Federal District Courts—Courts of original jurisdiction in the federal system; the only court in the federal system to use juries. Each state has at least one federal court; 94 districts in total with 670 judges.

Add. Info: Three judge panels*—Usually, one judge presides over a case in district court, but statute requires a three-judge panel in some matters. Certain cases under the Civil Rights, Voting Rights, and the Presidential Election Campaign Fund Acts require panels. Under the Supreme Court Selections Act, the statutes that require three-judge panels at the district court level are the only cases that have a right of appeal at the U.S. Supreme Court (directly from the district courts).*

Federal Appellate Courts—Federal district court decisions are reviewable in the U.S. courts of appeals. There are 11 regional circuit courts of appeals, plus one in Washington, D.C. Limited to appellate jurisdiction, these courts usually assign three-judge panels to review decisions of the district courts.

Add. Case: Ritter v. Ross (7th Cir., 1993). *Background: The Ritters bought land that was later sold by the county because they failed to pay property taxes. Despite being notified, they failed to respond. They asserted their inaction was because they were "unsophisticated in legal matters." The Ritters filed an action in federal district court against the county arguing (1) that they were not properly notified and (2) that the action was an unjust taking because the county kept all proceeds from the sale ($18,000 more than the taxes). The court dismissed the action on the grounds that state remedies had not been exhausted and that it lacked subject matter jurisdiction. The Ritters appealed to the U.S. Court of Appeals.*

Decision: Affirmed. The ***Rooker-Feldman Doctrine*** *bars litigation of the dispute in federal court. The doctrine is based on Supreme Court ruling in Rooker (1923). It stands for the proposition that lower federal courts lack jurisdiction to engage in appellate review of state-court determinations. Lower federal courts may not review a decision reached or that could be reached by the highest state court; that authority is vested only in the Supreme Court. "The Ritters, like the plaintiff in Rooker, are essentially seeking a federal district court appellate review of a state judicial proceeding; their claims against the defendants are inextricably intertwined with the merits of that proceeding. As in Rooker, the lower federal courts have no jurisdiction over this complaint. ... Any relief for the Ritters must come from the Wisconsin judicial system and not from us."*

Specialized Federal Courts—The Court of Appeals for the Federal Circuit is most prominent court with special jurisdiction. Its subject matter jurisdiction is limited to intellectual property cases (patents, trademarks and copyrights), cases in which the government is sued, and appeals for certain federal courts with special jurisdiction. There is also the U.S. Court of International Trade hears customs matters. U.S. Tax Court hears appeals from the IRS.

U.S. Supreme Court—Established by the Constitution; the highest court of appeal. It also has original jurisdiction in certain cases, such as disputes between two states. The Court issues a writ of certiorari when it agrees to accept an appeal.

Add. Info: Writ of Certiorari; Why Cases Are Not Accepted for Review. *In* Maryland v. Baltimore Radio Show, *the Supreme Court refused to issue a writ of certiorari, explaining:*
"The sole significance of such denial of a petition for writ of certiorari .... simply means that fewer than four members of the Court deemed it desirable to review a decision of the lower court as a matter 'of sound judicial discretion.' A variety of considerations underlie denials of the writ, and as to the same petition different reasons may lead different Justices to the same result. This is especially true of petitions for review on writ of certiorari to a State court. Narrowly technical reasons may lead to denials. Review may be sought too late; the judgment of the lower court may not be final; it may not be the judgment of a State court of last resort; the decision may be supportable as a matter of State law, not subject to review by this Court, even though the State court also passed on issues of federal law. A decision may satisfy all these technical requirements and yet may commend itself for review to fewer than four members of the Court. Pertinent considerations of judicial policy here come into play. A case may raise an important question but the record may be cloudy. It may be desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening. ...It becomes necessary to say that denial of this petition carries no support whatever for concluding that either the majority or the dissent in the court below correctly interpreted the scope of our decisions. It does not carry any implication that either, or neither, opinion below correctly applied those decisions to the facts in the case at bar."

International Perspective: The French Court System
A major difference between the French and U.S. courts is in the authority of the French Supreme Court (*cour de cessation*) to review appeals from the appellate court (*cour d'appel*). It has authority to reject the appeal, in which case the proceedings are finished. Or it can hear and invalidate the decision and return it to the cour d'appel for reconsideration—although the cour d'appel need not follow the supreme court's determination of the law (as it would in the U.S.). After reconsideration, if the decision is appealed to the supreme court, a panel of 25 judges hears the case. Again, the appeal can be rejected or invalidated and returned to the cour d'appel for reconsideration. This time the cour d'appel must follow the supreme court's determination of the law.

THE STATE COURTS—Key features of state court systems are much alike in all states, involving more than one level and having similar jurisdiction authority.

State Courts of Original Jurisdiction—The courts of original jurisdiction include courts of general and limited or special jurisdiction. Trial courts have different names in different states (district court, superior court, supreme court, etc.). The courts with limited or special jurisdiction include municipal courts (for cases not meeting the state's amount-in-controversy requirements for its district courts), justice of the peace courts, probate courts, and small claims courts.

State Courts of Appellate Jurisdiction—All states have at least one court of appellate jurisdiction but many have two levels of appellate courts. A party normally has a right of appeal to at least one appellate court. A party seeking review from the highest state court may seek review from the U.S. Supreme Court, but it is rarely granted.

Add. Info: Appeals*—If an appeal to the U.S. Supreme Court involves only a matter a state law the state courts are supreme and no appeal is permitted. But, the Court hears appeals in cases where a state's highest court has found a federal law invalid or has upheld a state law that is challenged as violating federal law or the Constitution. The Supreme Court grants review at its discretion. In* Michigan v. Long *the Court explained: "When ... a state court decision ... appears to rest primarily on federal law, ... and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." The "independent" and "adequate" requirements are distinct. A state-law ground may be adequate, but if it is not clear that it is independent of federal-law grounds, the Supreme Court may accept jurisdiction. The rule means that "state courts be left free and unfettered ... interpreting their state constitutions ... (but) that ambiguous or obscure adjudications by state courts do not" bar the Court from determining whether state action violates the federal constitution.*

Add. Info: Small Claims*—Businesses have lobbied state legislatures to expand the jurisdiction of small claims courts. Low limits leaves companies in a difficult position. Many claims are too large for small claims but too small to justify the expense and delays associated with the regular courts.* The Wall Street Journal *reports: "Empire Wholesale Lumber Company ... writes off as much as $500,000 in unpaid bills annually because the amounts in question exceed Ohio's $2,000 limit on small claims cases ... the company's president ... believes some customers buy his product fully intending not to pay, because they know the ... company will not take them to court. 'We're caught in the crossfire of judicial system that's not taking care of us.'"*

Add. Case: Acuna v. Gunderson Chev. (Ct. App., Cal., 1993). *Background: Acuna filed a small claims action against Gunderson seeking damages of $5,000 and was awarded $3,500. Gunderson appealed according to the California Small Claims Act and a trial de novo was set in superior court. Acuna then filed a counter-claim against Gunderson for breach of contract, fraud, misrepresentation, and concealment. Acuna requested that superior court transfer the small claims action and consolidate it with the new action filed and that the small claims order be dismissed without prejudice because the appeal by Gunderson vacated the small claims decision. The request was denied for lack of jurisdiction; Acuna appealed.*

Decision: Affirmed. The Small Claims Act provides a forum in which minor civil disputes can be resolved quickly and inexpensively. A plaintiff who files an action in small claims court has no right to appeal. If the defendant appeals, with the exception that attorneys may participate, the hearing is to be conducted in the same way as the original hearing. Thus, the court noted that if the request had been granted, several of the statutory limitations would have been violated including the prohibitions against pretrial discovery, jury trial, and a plaintiff's appeal. "Most importantly, the effect of an order granting consolidation would have been to thrust this action into the morass of superior court litigation, with its attendant delays and complexities, in direct contravention of the Legislature's intent that small claims cases be resolved expeditiously and inexpensively. Additionally, allowing such transfer and consolidation would create a risk of impermissible forum shopping by a plaintiff dissatisfied with the result obtained in the small claims court."

Rules of Civil Procedure—Plaintiff files suit; defendant responds. Most courts have adopted the Federal Rules of Civil Procedure to govern procedural aspects—pleadings, discovery, and trial procedure.

JURISDICTION—The literal meaning of the term is "the power to speak of the law." It defines court limits and it is generally established by statute or Constitution. The plaintiff must select a court with 1) subject matter jurisdiction and 2) jurisdiction over the person or property of the defendant.

Subject-Matter Jurisdiction—Subject matter jurisdiction is a statutory limitation on the types of disputes a court may hear, such as only suits involving more than $2,000.

Subject-Matter Jurisdiction in the Federal Courts—As dictated by the Constitution, federal subject matter jurisdiction is limited to cases involving a *federal question* and cases involving diversity of citizenship, where $75,000 or more is in controversy requirement.

Add. Case: Terrebonne Homecare v. SMA Health Plan (5th Cir., 2001)—*THI a home health care agency, sued TGMC in Louisiana state court contending that it conspired with an HMO to terminate THI as a provider and to favor the HMO. THI asserted this was a violation of Louisiana antitrust and unfair competition laws. TGMC removed the case to federal court. The federal district court refused to remand the case to state court on the grounds that the state antitrust claims were actually federal in nature because they involved interstate commerce. The court held that THI had artfully pleaded its complaint to avoid a necessary federal question, so the federal court had jurisdiction. THI appealed.*

Decision: Vacated and remanded. "The well-pleaded complaint rule governs whether a defendant can remove a case based on the existence of a federal question. Under the well-pleaded complaint rule, 'federal jurisdiction exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint.' The artful pleading doctrine is a narrow exception to the well-pleaded complaint rule, and it prevents a plaintiff from defeating removal by failing to plead necessary federal questions. The artful pleading doctrine does not apply, however, unless federal law completely preempts the field." State antitrust laws are not completely preempted by federal antitrust law. The federal court lacks jurisdiction over the matter since the matter involved intrastate commerce subject to state law.

Add. Info: Class Action Suits and Diversity. *In a class action suit brought on behalf of a large group (for example, all college football fans in the United States), only the citizenship of the representative of the class is used to determine the existence of diversity.*

Personal Jurisdiction—After the plaintiff has selected the appropriate court on the basis of subject matter, she must determine if that court may exercise jurisdiction over the defendant. In personam jurisdiction is generally established through service of process (summons), notifying the defendant, usually in person, of the suit that has been filed. If there is no response, there is a default judgment.

Add. Case: Alston v. Advanced Brands and Importing Co. (6th Cir., 2007)—*In federal courts in Michigan and in Ohio, the parents of children sued makers of alcoholic beverages, claiming their advertising is responsible for the illegal (underage) purchase of alcoholic beverages by*

children and that their children have been subjected to defendant's advertising campaigns. They sought to recover money spent on alcoholic beverages by children and sought an injunction against further advertising. The trial courts dismissed the suits; the plaintiffs appealed. The appeals were consolidated into one action for consideration.

Decision: The parents of the children have no viable remedy against the beverage makers. Hence, they failed to establish standing. Illegal sales of alcoholic beverages to children may create a cause of action against the retailer, but not against the manufacturers or importers. The parents here suffered no economic injury, which also eliminates standing.

***Add. Case: Brown v. Thaler (Sup. Ct., Maine, 2005)**--Brown sued Thaler and mailed him the summons and complaint by certified mail. Maine law states that service may be made: "By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service … is received by the sender within 20 days after the date of mailing, service of the summons and complaint shall be made [by personal service]." Brown's mailing did not include an acknowledgment and Thaler did not reply. Brown requested default judgment from the court, claiming that Thaler did not respond to service. Brown was granted judgment, but it was vacated when Thaler protested that he had not been served. The court dismissed Brown's suit. Brown appealed.*

Decision: Affirmed. Service by mail without an acknowledgment is not proper service. It means that the other party has not been provided adequate notice and means the trial court does not have personal jurisdiction over the defendant. The trial court ruling to dismiss the suit was appropriate.

***Add. Case: Gilbreath v. Brewster (Sup. Ct., Va., 1995)**--Brewster sued Gilbreath for injuries incurred in a car accident. Thirteen months after the case was filed Gilbreath was served. Gilbreath moved to have the case dismissed because it violated Rule 3.3 that service must be made within 12 months. Trial court found that Brewster had not exercised due diligence in trying to effect service but granted Brewster's request to dismiss the suit without prejudice. Gilbreath appealed, contending that dismissal should have been with prejudice.*

Decision: Reversed for Gilbreath. "A dismissal with prejudice generally is 'as conclusive of the rights of the parties as if the suit had been prosecuted to a final disposition adverse to the plaintiff,' and it not only terminated the particular action, 'but also the right of action upon which it is based.' … a dismissal with prejudice … is conclusive as to the rights of those parties, even though the substantive claim of the plaintiff has not been litigated on the merits." "If a dismissal under [Rule 3.3] were without prejudice, a litigant could repeatedly file an action without serious attempt to serve the defendant. This practice clearly would be an abuse of the system.... A dismissal without prejudice ... would condone the plaintiff's lack of diligent prosecution."

International Perspectives: London's Commercial Court

A 10-judge court formed 100 years ago, it only takes commercial matters; handled by one judge, no juries. Most cases are finished in less than a year from filing; loser pays. Respected for accuracy, many foreign parties are willing to submit cases there.

Jurisdiction over Out-of-State Defendants—Defendant must be within the territorial jurisdiction of the court to be served. Out-of-state defendants can be served if they are served in the state or if they can be reached by a long-arm-statute. Focus on the state in which the firm is incorporated, the state in which the firm has its headquarters or main plant; and the state in which the firm does business.

Add. Case: Clearwater Artesian Well v. LaGrandeur (Sup. Ct., Maine, 2007)--*Clearwater, a NH corporation, sued LaGrandeur in state court in Maine to recover $2,850, which it claimed she owed for a well pump installed on her property. LaGrandeur contended the suit should be set aside because Clearwater, a foreign corporation, was not licensed to do business in Maine. Clearwater responded that it needed no particular authority to transact business in Maine. The district court held that suit could proceed. LaGrandeur appealed.*

Decision: Affirmed. Maine law holds that a "foreign corporation may not transact business in this State until the foreign corporation files an application for authority to transact business with the Secretary of State." The statute further states: "Transacting business in interstate commerce" does not mean transacting business in Maine. Thus, a foreign corporation may transact business in interstate commerce without authorization from the State of Maine and so may maintain legal proceedings in the state. To require corporations to prove their capacity to sue in Maine's courts would complicate civil practice because authority to sue is not a contested issue in most cases.

Add. Info: Consent*—A defendant who would not be subject to a court's jurisdiction can consent to jurisdiction. California Statutes.: "A state has power to exercise judicial jurisdiction over a competent individual who has consented to the exercise of such jurisdiction." Jurisdiction must be exercised in conformity with the terms of consent. Consent may be expressed by words or by conduct and may given for a particular action before or after it is brought. Consent may be given by contract either waiving service of process or authorizing extra-territorial service of process; by a power of attorney to confess judgment, unless such confessions are illegal in the state; by an acknowledgment of "due service;" by a contractual provision for arbitration by a state arbitration board; or by the designation of an agent to receive process. Examples are: the non-resident motorist and mail order insurer situation; a general appearance; and a plaintiff's submission to jurisdiction on a defendant's counterclaim or cross-complaint. The consent of a party is effective to give a state jurisdiction over his person; it cannot enlarge the competency of the court to include another case which a court has not been authorized to hear or a case involving either a greater or lesser amount in controversy.*

Add. Info: Appearance*. Regardless of the ability of a court to exercise jurisdiction, the defendant automatically submits to the court's personal jurisdiction if he makes an appearance. If a person brings a lawsuit before a court—is a plaintiff—the court has jurisdiction over the person for other matters. If as a defendant, a person files a motion to dismiss, an answer to plaintiff's complaint, or other court papers he has made an appearance. Thus, a person must contest jurisdiction before taking any other action that might be interpreted as an appearance.*

Cyberlaw: The Long Arm of the Internet—Jurisdiction over firms that do business on the Internet have the same principles as traditional business. Mere Internet advertisement is not enough; there must be actual doing business in another state for there to be jurisdiction in that state.

Jurisdiction over Out-of-State Corporate Defendants—Usually, a corporation may be served in the:

1. State of incorporation;
2. State in which headquarters are located; and,
3. Corporation is doing business in the state. This requires that the corporation have "minimum contacts" with the state.

ISSUE SPOTTER: Can Your Firm Be Reached?

Because the Florida firm directly solicited clients in New York, it fell under New York long-arm jurisdiction. To make it even stronger, New York, as other states, regulates real estate agents.

One must have a New York realtor license to be in the business of soliciting real estate clients. The Florida business did not have a license to solicit customers in New York, which created another ground for long-arm jurisdiction by New York courts.

CASE: *Blimka v. My Web Wholesalers* (S.Ct., Id.)—Blimka, in Idaho, bought a large quantity of distressed jeans from My Web, a Maine company. When 16,000 of the 26,500 pair ordered arrived, Blimka complained about the quality. My Web said tough. Blimka sued in Idaho state court and won a default judgment. My Web appealed that Idaho courts did not have jurisdiction.

Decision: My Web's actions were sufficient to subject the firm to Idaho jurisdiction for purposes of this litigation. It falls within Idaho's long-arm statute; the fact that most communications were electronic does not affect the outcome. My Web intended to do business in Idaho.

Questions: 1. The Idaho high court held that Idaho courts did have jurisdiction over an out-of-state seller who misrepresented goods sold over the internet. Does this mean most internet-based sellers are subject to jurisdiction in every state where they do business?

Yes, if they do active business. The standard is the same as it is for traditional businesses. Once a business "enters" a state to do business, especially when there are actual sales, not just discussions, it subjects itself to its law.

2. Why did My Web not move the case from Idaho state court to federal court?

The case was probably for less than $75,000, since the money paid was about $21,000. Even allowing for lost profits Blimka may have earned by resale, it would be unlikely to be enough for diversity jurisdiction. In any case, My Web failed to show up to defend itself and lost. So later when it lost on the claim of lack of jurisdiction, it could not ask for another day in court.

***Add. Case: World-Wide Volkswagen v. Woodson (S. Ct., 1980)**--On a road trip, the Robinsons suffering injuries in an accident in Oklahoma involving an Audi they bought in New York. They sued Audi, the importer, and the New York dealer (World-Wide VW) in state court in Oklahoma. World-Wide contested the right of the court (Judge Woodson) to exert jurisdiction over it, as it did no business in Oklahoma. The OK courts asserted jurisdiction existed; World-Wide appealed.*

Decision: World-Wide had no contacts in Oklahoma as its business was limited to selling cars in the east. Minimum contacts were not established in OK just by the fact that one of the cars the company sold ended up in OK. For there to be minimum contacts to make a business subject to the laws and jurisdiction of a state, there must be intent to do business in the state. Even if a firm is unsuccessful, if they attempt to solicit business or accept business in a state, they will be subject to its laws. Without a minimum contacts standard, businesses would be subject to jurisdiction anywhere their products were carried. It would be very expensive for firms to defend themselves in actions in far away jurisdictions where they had no intent to do business or to benefit from the laws. A firm must have made an effort to do business in a state to become subject to the jurisdiction of its courts. Audi intended to distribute cars in the U.S., so it was subject to jurisdiction in every state.

***Add. Case: Digi-Tel Holdings v. Proteq Telecommunications (8th Cir., 1996)**--After several meetings in Singapore, Digi-Tel ordered 240,000 cellular phones from Proteq, a Singapore company. The contract said that Minnesota law would govern and called for the phones to be delivered to Digi-Tel in Singapore (F.O.B. Singapore). The phones were not ready on time and Digi-Tel sued Proteq in federal court in Minn. under its long-arm statute. The district court dismissed the case, holding that it did not have personal jurisdiction over Proteq. Digi-Tel appealed.*

Decision: Affirmed. Proteq had no business in Minnesota. Its representatives never entered the state; all business was done in Singapore and the goods were delivered there. The long-arm statute tests were not met. Letters, faxes, and shipment of samples from Singapore to MN were not enough to establish jurisdiction. The choice of MN law was also not sufficient, although it is a factor. "The negotiations, meeting, production, and delivery were all centered in Singapore." Digi-Tel cannot get the case in MN on the basis of convenience of the parties. It must sue in Singapore.

***Add. Info: Jurisdiction over corporations**—In addition to the ways listed in the text, according to the California Statutes Annotated: A state has power to exercise judicial jurisdiction over a corporation on one or more of the following bases:*
(1) Incorporation in the state;
(2) Consent;
(3) Appointment of agent;
(4) Appearance in an action;
(5) Doing business in the state;
(6) Doing an act in the state;
(7) Causing an effect in the state by an act elsewhere;
(8) Ownership, use or possession of thing in the state;
(9) Other relationships to the state which make the exercise of judicial jurisdiction reasonable.
Calif. Statutes defines "doing business" as: "A state has power to exercise judicial jurisdiction over a nonresident individual who does business in the state with respect to cause of action arising out of that business. A state has power to exercise judicial jurisdiction over a nonresident individual who has done business in the state, but has ceased to do business there at the time when the action is commenced, with respect to causes of action arising out of that business. A state has power to exercise judicial jurisdiction over a nonresident individual who does business in the state with respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make the exercise of such jurisdiction reasonable. ...Doing business is doing a series of similar acts for the purpose of thereby realizing pecuniary profit, or otherwise accomplishing an object, or doing a single act for such purpose with the intention of thereby initiating a series of such acts. It is immaterial whether a state has power to prevent a nonresident from doing business within its territory, or to regulate such business, or whether the business involves interstate commerce. The question in each case is whether an individual has a sufficient relationship to the state arising out of such business that makes it reasonable for the state to exercise judicial jurisdiction over the individual as to the particular cause of action."

***Add. Case: Hollinger v. Sifers (Ct. App., Mo., 2003**--Hollinger saw Sifers, a doctor, being interviewed on TV. Sifers practiced in Kansas City, Kansas. Hollinger lived in Missouri. She visited Sifers in his office and he performed surgery on her. After problems arose, she sued Sifers*

in state court in Missouri. The court held that it did not have jurisdiction over Sifers. Hollinger appealed.

Decision: Affirmed. Sifers offers his services only in Kansas. He did not advertise for patients from Missouri; he was simply seen on TV discussing medicine by a Missouri resident who went to Kansas to see him. So the long-arm statute does not apply to Sifers and Missouri courts have no jurisdiction.

***Add. Case: Trustees of Columbia University v. Ocean World, S.A. (Ct. App., Fla., 2009)**--Ocean World (OW), a foreign corporation, operates Ocean World Adventure Park in the Dominican Republic (DR). It contracted with Briggs to buy 12 dolphins from Japan for delivery in the DR. The DR denied a permit to import the dolphins. OW sued various defendants for intentional interference with a contract or business relationship. Among the defendants was Columbia University of NY. Suit was filed in Florida, contending that Columbia was "doing business" in FL through its alumni association, interactive internet classrooms, and a website providing online courses for students to obtain degrees and professional certificates. Columbia also owns property in FL. OW contends that Columbia encouraged the DR to refuse to allow the dolphins to be imported, which was interference with a business relationship. Reiss and Columbia moved for dismissal for lack of jurisdiction in FL courts. The trial court refused that motion. They appealed.*

Decision: Reversed. Florida courts do not have jurisdiction over the defendants. None of the alleged tortious acts occurred in FL, as would be required for personal jurisdiction. The facts that Columbia has alumni associations in FL and offers internet lectures and owns property in the state do not amount to continuous and systematic general business contacts with FL to warrant exercise of personal jurisdiction. The existence of a website that may be visible in every location does not make the owner of the website subject to jurisdiction in every location.

Jurisdiction over Property—When the court is unable to obtain jurisdiction over the person of the defendant, it has limited authority to establish jurisdiction based on the existence of the defendant's property in the state. *In Rem* Jurisdiction—When the defendant's property is the subject of the dispute, the court in the area in which that property is located will have the jurisdiction to resolve all claims against that property. It will not matter if the defendant is present.

***Add. Info: International Service**—The Hague Convention sets out specific procedures for service of process. For example:*
Article 2-6: Through the country's central authority
Article 8: Through Diplomatic channels
Article 19: By any means acceptable in the country where service is to be made.
In Bankston v. Toyota Motor, *the 8th Circuit held that service by registered mail from the U.S. to Japan violated the Hague Convention. Service had to be made through the Japanese central authority (in Japanese).*

RELATIONS BETWEEN THE COURT SYSTEMS—There are disputes that can only be resolved in the state courts, disputes that can only be resolved in the federal courts, and disputes that can be resolved in either the federal or the state court systems.

Exclusive Jurisdiction—Federal courts have exclusive jurisdiction over disputes involving federal crimes, bankruptcy, patents, and copyrights. State courts have exclusive jurisdiction over such disputes as divorce and other matters under state law. The court hearing the case—whether federal or state—applies its procedural rules and follow its substantive law.

Concurrent Jurisdiction—When both federal and state systems have the power to hear a case, concurrent jurisdiction exists. As Exhibit 2.6 illustrates, both systems have jurisdiction when:
(1) there is diversity of citizenship (and the amount in controversy exceeds $75,000); or
(2) the dispute involves a federal question and Congress has not conferred exclusive jurisdiction on the federal courts.

Federal Question Jurisdiction—The state and federal courts may hear a federal questions case except when Congress has stated "explicitly or implicitly" that state courts may not have jurisdiction over a particular matter of federal law. In explicit cases, Congress provides by statute that the federal courts have exclusive jurisdiction. In implicit cases, Congress provides exclusive jurisdiction "by unmistakable implication from the legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." Such cases must be heard in federal court.

***Add. Case: Elliott v. Tilton (5th Cir., 1995)**--Robert Tilton founded and operated the Word of Faith, a TV ministry in Dallas that broadcast nationwide. Elliott, who had contemplated suicide, saw Tilton on TV in Florida and thought that he was speaking to her. She called, pledged money, and made a video testimony about how Tilton helped her. Later she asked that the testimony not be shown, but it was. She sued Tilton in federal district court for fraud, breach of contract, infliction of emotional distress, and conspiracy. The jury awarded her $1.5 million; Tilton appealed.*

<u>Decision:</u> *Reversed. "The plaintiffs ... stated in their complaint that federal jurisdiction was based on diversity of citizenship." They were Florida residents, Tilton was in Texas. "However, 'in order for a federal court to assert diversity jurisdiction, diversity must be complete; the citizenship of all of the plaintiffs must be different from the citizenship of all of the defendants.' Thus, we must be concerned also with the citizenship of defendant Word of Faith." "As a widespread and diffuse television ministry, or 'church,' Word of Faith ... must be considered ... for purposes of diversity." The church asserts that its membership includes people around the country, including in Florida. "This type of jurisdictional defect ordinarily should be discovered at an early management or status conference prior to a substantial investment in case preparation."*

***Add. Case: U.S. v. Denalli (11th Cir., 1996)**--Denalli was convicted on 21 counts of an indictment, "all of which sprang from indignities, outrages, and fraudulent acts committed by Denalli." The victims were the Federles, his next-door neighbors [he did everything imaginable to the Federles, including burning down their house]. Denalli appealed his conviction under Count 21, a federal arson statute.*

Decision: *Reversed. Under the standard from the Lopez case (115 S.Ct. 1624), the government must "prove that the destruction of the Federles' private residence had a substantial effect on interstate commerce. It failed to make this showing." This was a regular private residence; he may have violated a state law against arson, but there is no federal issue here.*

Concurrent Jurisdiction and Removal—In cases where concurrent jurisdiction exists, if the plaintiff chooses the state court system, the defendant has a right to have the case "removed" from state court to a federal court. The court requires the plaintiff to show that a defendant is a real and substantial party to the lawsuit. The plaintiff is not allowed to name a defendant simply to destroy the federal court's diversity jurisdiction over the case.

Add. Case: Thornton v. Holloway (8th Cir., 1995)--*Thornton sued Holloway in state court in Arkansas for defamation for claiming that Thornton violated federal law against sex discrimination in employment. Holloway removed the case to federal district court. That court remanded the case to the state court on the ground of lack of jurisdiction (only state-law claims were involved). Holloway appealed to the federal court of appeal that the case should be in federal district court (a petition for write of mandamus).*

Decision: *Affirmed. "We have no jurisdiction to review this holding, by appeal or otherwise. [Federal law] expressly provides ... that 'an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.'" The fact that Holloway claims that the case was based on a claim she made under a federal statute does not raise a federal issue in this case which concerns a matter of state law.*

Add. Info: *A federal court may refrain from exercising removal jurisdiction under the Abstention Doctrine. The court may assert that an issue in the case revolves around a question of state law that is uncertain. The court will generally assert that the state court should resolve that question and then it either remand the entire case to the state court, or retain jurisdiction but wait until the state court has decided just that particular question.*

Applying the Appropriate Law in Federal Court—Under the Erie Doctrine, federal courts in diversity cases are required to apply the appropriate state's statutory and common law. The federal court may follow its own procedural law.

CASE: *Erie Railroad v. Tompkins* (S.Ct.)—Tompkins, a Pennsylvania citizen, was injured at night when hit by a train owned by Erie, a New York corporation. Tompkins sued in New York federal district court. Under the old ruling in *Swift v. Tyson,* the court was to apply federal common law, which meant that Erie would be liable for Tompkins' injuries. Under Pennsylvania common law, Erie would not be liable since Tompkins was a trespasser. The federal district and appellate courts found for Tompkins. Erie appealed to the Supreme Court.

Decision: Reversed and *Swift* is overturned. Federal courts in diversity cases are required to apply the appropriate state's statutory and common law. Since the accident occurred in Pennsylvania, Tompkins was a Pa. resident and Erie operated its train in Pa., its law should govern.

Questions: 1. Why had the decision in *Swift v. Tyson* prevented uniformity in the administration of the law of the state?

The rule meant that federal courts could develop their own common law standards that could be different from the common law in a state. This could mean that identical cases, one tried in a state court, the other tried in a federal court in the same state, could have different rules of law applied. The S.Ct. wanted there to be only one rule of law applied in similar cases from the same jurisdiction. If a state's law is the proper law to apply to a case in a given court, it should not matter whether the court is state or federal.

2. After *Erie,* which court's procedural law must be applied in a diversity-of-citizenship case?

Under *Erie*, if a court has jurisdiction over the parties in a dispute, then the procedural and substantive law of that state will apply. Should the case be in federal court, then federal procedural rules would be followed, but state substantive law would apply.

Applying the Appropriate Law in State Court—When a dispute is brought in a state court involving incidents that have taken place in more than one state, a conflict-of-law may rise. Traditional conflict-of-law rules are gradually being replaced by significant interest tests. The court examines the various state interests in need of consideration and then determines which state has the more significant interest. That state's law would then apply in the resolution of the dispute.

Add. Case: Williamson Pounders Architects v. Tuncia Co. (5th Cir., 2010)—Tuncia County, MS, hired Williamson (WPA), a Tennessee company, to design and construct a park. Later, Tuncia personnel approved an expansion of the project but then refused to pay WPA because the County Board had not approved the expansion. WPA sued in federal court in Mississippi for breach of contract. The contract stated that TN law would govern; Tuncia argued that MS law should. District court dismissed suit. WPA appealed.

Decision: Generally a choice of law provision is upheld. However, state public policy cannot be avoided by such. Under MS law, a county Board must approve any changes to a contract. That is not so in TN, but MS public policy controls in MS. Hence, the oral permission by administrators to alter the contract was not enforceable, so the case should be dismissed.

Add. Case: Miller v. Pilgrim's Pride (8th Cir. 2004)—*Applewhite, a Texas resident and an employee of Simmons, a Texas company, was killed when working construction at a Pilgrim's Pride plant in Arkansas. Simmons gave Applewhite's heir, Miller, what was owed under Texas workers' compensation law. Miller sued Pilgrim's, claiming it was negligent. Pilgrim's paid an out-of-court settlement and then sued Simmons in federal court in Arkansas for indemnification of the payment. The court held that Texas law governed and it prohibited such repayment. Pilgrim's appealed, contending that Arkansas law should govern.*

Decision: Affirmed. Arkansas uses a five factor test: predictability of results, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests, and application of the better rule of law. This case turns on the fourth factor. While the accident happened in Arkansas, Applewhite was a Texan and worked for a Texas company under Texas workers' compensation law. Hence, Texas law is more relevant given the nature of the claim than is Arkansas law.

Add. Case: Hughes v. Wal-Mart (8th Cir., 2001). *Background: Hughes' daughter was burned when he used a fuel container, bought at a Wal-Mart in Louisiana, to burn stumps on his property and the container exploded. He sued Wal-Mart for product liability in federal court in Arkansas (Wal-Mart HQ), contending that Arkansas law applied–which was more favorable to him than LA law. The district court held that LA law governed and that there could be no recovery. Hughes appealed.*

Decision: Affirmed. The 8th Circuit applied Arkansas law to determine which law would apply. Maintenance of interstate order, one factor, points to Louisiana because Wal-Mart sold the product there to a Louisiana resident, which is where the injury occurred. The state of Arkansas has little interest in the matter.

Add. Case: Jacobson v. Mailboxes (Sup. Jud. Ct., Mass., 1995)--Jacobson executed a franchise agreement with Mailboxes (MB) to operate a Mailbox in Massachusetts. The business failed. Jacobson sued, claiming that MB used deceit to induce her to sign the franchise agreement and that it violated the franchise agreement. MB moved for summary judgment--the franchise agreement contained a forum selection clause: "Venue and Jurisdiction for all actions enforcing this agreement are agreed to be in the City of San Diego, County of San Diego, California. ...[the agreement] is to be construed under and governed by the laws of the State of California." The trial court refused to grant summary judgment; MB appealed.

Decision: Remanded. The forum selection clause was to be upheld. California law should govern and "all actions enforcing this agreement" would be brought in California. However, the claim that deceit was used to induce plaintiff to sign the contract is an event that occurred before the contract was signed and may be tried in Massachusetts court under Massachusetts law: "...the forum selection clause does not apply to wrongs that Mailboxes allegedly committed before the parties entered into a contractual relationship, including allegations of pre-contract violations...."

VENUE—On the basis of fairness, state statutes provide that a lawsuit must be brought in a court located in the district where either the defendant or the plaintiff lives.

Add. Case: Mylle v. American Cyanamid (4th Cir., 1995)--*Mylle, a PA resident, was killed while crop dusting in SC. His widow sued in federal court in PA, claiming wrongful death. Finding that venue was improper, the court transferred case to federal court in SC. Her suit was dismissed for failure to comply with registration requirements SC imposes on out-of-state executors. She appealed.*

Decision: Affirmed. The proper venue was federal court in SC; "South Carolina has a far greater interest in the outcome of this case than does Pennsylvania." All events happened in SC and all witnesses are in SC. The proper law to be applied, whether the case had been heard in federal court in Pennsylvania or in SC, is SC law. The federal court in SC properly applied SC law in dismissing the suit.

Add. Case: Barnes v. IBM (Ct. App., Mich., 1995)--*Barnes sued his employer, IBM, for race discrimination in state court in Wayne Co., Michigan. IBM moved to have the case moved to Oakland Co., MI, the place of employment. The court in Wayne Co. refused; IBM appealed.*

Decision: *Reversed. "The venue provision of the [Michigan] Civil Rights Act states that an action 'may be brought in the circuit court for the county where the alleged violation occurred, or for the county where the person against whom the civil complaint is filed resides or has his principal place of business.'" That is Oakland County. Barnes lives in Wayne County and claims he suffered from the effects of racial discrimination while he was at home. Barnes "has provided no credible factual evidence that any of the allegedly discriminatory decisions were made in Wayne County," so the proper venue is Oakland County.*

Change of Venue—Defendants may request a change of venue from where the case is filed because of witnesses or, in some cases, due to extreme publicity that will reduce the ability to get a fair trial.

CASE: *BancorpSouth Bank v. Hazelwood Logistics Center* (8th Cir., 2013)—Hazelwwood (HLC) was formed for commercial real estate development in Missouri. It got a loan from BancorpSouth of Mississippi and more money from four Missouri banks. Owners of HLC guaranteed the loan. Development stalled, HLC sued owners on the loan in fed. dist. ct. in Missouri. HLC claimed venue was improper, but court held it had jurisdiction. HLC appealed.

Decision: This is a diversity case in which the law of Missouri applies as the loan contract was written under that law. Further, there is diversity of citizenship that allows the federal court in Missouri to have jurisdiction. Even more, there was a forum selection clause that allowed the bank to choose among listed jurisdictions. As that clause was freely agreed to, it will be enforced.

Questions: 1. What law will the federal district court use to resolve the matter?

Missouri law—as the court notes, the parties agreed to that, so the federal court will use it to resolve the dispute (which was already held to be summary judgment for the banks.

2.Could HLC have avoided being in federal court?

Yes, the banks could agree to submit to Missouri state court jurisdiction in the loan agreements, but, as the appeals court notes, the venue was permissive, so the banks chose to file in federal court in Missouri.

***Add. Case: R&D Transport, Inc. v. A.H. (Sup. Ct., Ind., 2006)**--Hazel, a truck driver for R&D, lives in Hendricks Co., Indiana, where R&D is located. His truck was in an accident in Dearborn Co., IN. The accident injured A.H., a minor, who lives in Porter Co. IN. Suit was filed on behalf of A.H. against R&D and Hazel in Porter Co. They moved to have the case transferred to either Hendricks or Dearborn Co. The trial court refused to change venue; defendants appealed. The appeals court affirmed. Defendants appealed that ruling.*

Decision: *Reversed. Venue is the proper or possible place for a lawsuit to proceed. In general, any lawsuit may proceed in any county, but certain counties are granted preferred venue status. That is the case here. Actions for the recovery of real property, or for the determination in any form of such rights or interest, and for injuries to real property, must be commenced in the county in which the subject of the action, or some part of it, is situated. In cases involving motor vehicle accidents, the preferred venue is where the accident occurred. Porter Co. is not the county of preferred venue.*

Forum Non Conveniens—(the forum is not suitable) A doctrine that applied based on fairness and convenience of the parties, even though the original court has jurisdiction.

Add. Case: Design88 v. Power Uptik Productions (W.D. Va., 2001)*--Design88, a VA company, built a website called The Underground Trader for a non-Virginia company that sold its services to stock day traders. For designing and maintaining the website, Design88 was given a 13% interest in the trading operation. Things fell apart and Design88 sued the other parties in state court in VA. The case was moved to federal court in VA. Defendants moved to dismiss the suit for lack of personal jurisdiction because they had insufficient contacts with VA.*

Decision: Motion denied. Due process requires sufficient minimum contacts within a forum state such that maintenance of a suit against a nonresident defendant does not offend notions of fair play and substantial justice. The defendants came to VA to discuss business with Design88. That was sufficient minimum contact to permit the federal court in VA to have jurisdiction. Furthermore, Design88 did work for defendants in VA and defendants knew that most of the work was done in VA. Transfer of venue to the home state of some of the defendants is not warranted on the grounds of forum non conveniens.

Add. Case: Peile v. Skelgas, (App. Ct., Ill., 1993)*—When Peile attempted to light a gas furnace at home, an explosion resulted in serious injuries to him in Pike Co., Illinois. Defendants operate a pipeline-storage facility in St. Clair Co., where case was filed. After the filing, defendants filed a motion to change the venue of the trial to Pike Co. which was denied. Defendants appealed.*

Decision: Affirmed. Forum non conveniens is usually applied in interstate cases where the plaintiff chooses a forum to place a burden on the defendant. Then the court can decline jurisdiction even if it has jurisdiction over parties and subject matter. The doctrine also applies to intrastate venue. The factors considered are "the availability of an alternative forum, the access to sources of proof, the accessibility of witnesses, the relative advantages and obstacles to obtaining a fair trial, the congestion of the courts dockets, and the convenience of the parties." Unless these strongly favor defendant, plaintiff should be allowed to exercise choice of forum. Here the court found: 1) there is a significant connection between St. Clair County and this action because acts were committed in St. Clair (failure to odorize the gas); 2) there may be a site in St. Clair for the jury to see, while the site in Pike County (plaintiff's house) no longer exists; 3) the St. Clair court docket would allow trial to be set within four months. St. Clair's connection and interest in resolving this case does not unfairly impose jury duty on St. Clair citizens.

Add. Info: Change of Venue Motions*—A judge writing a concurring opinion in the Peile case noted the judicial costs associated with change of venue motions. According to the judge: "Many attorneys do not realize the considerable amount of time that an appellate judge spends ruling on various motions and petitions. One of the most common petitions and probably the most time-consuming petition to the appellate courts is the petition for leave to appeal ... from an order entered as to forum non conveniens."*

Discussion Question

Judges in Europe and Japan play a quasi-prosecutor role, so they are quite different than U.S. judges. The instruct attorneys on what evidence they want to see. So in that sense, their roles are

quite different. Further, judges in most countries do not have as much independence as do U.S. judges. Not relying on the legislature or executive to retain a job, and having the power to strike down statutes for violating constitutional rights, is important in the integrity of the U.S. system and its structure. That does not address the issue of competence, but I have never seen a study that tries to address that issue.

Case Questions

1. The trial court asserted it had jurisdiction over Columbia but the Florida appeals court reversed and remanded. Florida courts do not have jurisdiction over the defendants. None of the alleged tortious acts occurred in Florida, as would be required for personal jurisdiction. The facts that Columbia has alumni associations in Florida and offers internet courses and owns property in the state do not amount to continuous and systematic general business contacts with Florida to warrant exercise of personal jurisdiction. The existence of a website that may be visible in every location does not make the owner of the website subject to jurisdiction in every location.

2. (answer on Internet for students) The traditional rule—apply the law where the injury occurred—would call for the application of Missouri law. Here, the court, like many jurisdictions, rejected the traditional rule and adopted the significant interests test. "The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in [the *Restatement (2d)*]."

"South Dakota has all of the important contacts. First, the principal conduct which allegedly caused the injury was the distribution of the candy in the bus on the first leg of the trip. Missouri had no contact with that conduct. Even if Missouri could claim some limited contact with Dakota Charter's alleged failure to maintain a safe premises after the candy was distributed, Missouri's contact was relatively unimportant to the issue of comparative negligence because comparative negligence law is not a rule of the road nor does it regulate the conduct of bus companies using Missouri's highways…

Second, South Dakota was the domicile, residence, place of incorporation and place of business of the parties, as well as the place where the relationship of the parties was centered. These contacts are important to the issue of comparative negligence because the economic impact of the law applied will be felt where the parties reside."

Applying the tests from the *Restatement:*
(a) the needs of the interstate and international systems,
"First, neither Missouri nor South Dakota's laws significantly affect the needs of interstate systems because neither interstate relations nor automobile movement would be influenced by either law."
(b) the relevant policies of the forum,
"This state's policy has been clearly expressed by the legislature in our comparative negligence statute."
(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
"Although Missouri also has a comparative negligence policy, South Dakota has the only significant interest in a determination of the comparative negligence issue because all of the

contacts are in South Dakota, and Missouri's policy would not be furthered by its application to South Dakota domiciliaries who have no important contact with Missouri. Where the forums interests are the "most deeply affected" under these factors, it is generally fitting that forum's law should be applied."
(d) the protection of justified expectations,
"The protection of justified expectancy, although important in consensual relationships, has no importance in this negligence action. Generally, people do not consider the legal consequences of their conduct or how law may be applied prior to becoming involved in an accident."
(e) the basic policies underlying the particular field of law,
"The policy of ameliorating the harsh consequences of common law contributory negligence rules is furthered by both states' comparative negligence laws. Although Chambers argue that Missouri's policy is better, that contention is debatable. Furthermore, even if Missouri's policy could be considered 'better,' conflicts analysis should not be used to apply the law of a state that has no interest in having its rule applied. The proper solution in such cases is to change the forum's inferior law."
(f) certainty, predictability and uniformity of result,
"Little significance can be attached to the ease of determining and applying comparative negligence law or to the certainty, predictability and uniformity of result. Both states' laws are easy to determine and apply. Furthermore, because the differences in the law are so minor, there will be few differences in result."
(g) ease in the determination and application of the law to be applied.
"Both states' laws are easy to determine and apply. Furthermore, because the differences in the law are so minor, there will be few differences in result."

3. The Nevada Supreme Court held that state courts had jurisdiction. The courts have personal jurisdiction because Direct did business in Nevada by intentionally sending offers to people in Nevada by their fax machines. The Nevada court cited the U.S. Supreme Court that state courts are empowered to hear cases based on federal law unless forbidden by Congress from doing so. Since Congress said nothing about jurisdiction in the Act, the states are presumed to have jurisdiction over the subject matter. The court also noted that if the Nevada legislature instructed the courts not to accept cases based on this Act, then they would not have jurisdiction, but that had not happened either.

4. (answer on Internet for students) Vacated and remanded. The district court lacked jurisdiction, so the judgment is void. Parrot Bay, a foreign corporation, is not responsible for the actions of the fishing boat operator, another foreign entity. The relationship between Parrot Bay and the fishing boat operator did not arise out of, or relate to, Parrot Bay's contacts with the United States. It was not foreseeable by Parrot Bay that Oldfield might suffer an injury on a boat that it did not own or operate while he stayed at Parrot Bay as a result of his having visited the resort's website and made a reservation for a room there. Therefore Parrot Bay cannot be subject to U.S. court jurisdiction in this matter. Oldfield can pursue his claim against the fishing boat operator in court in Costa Rica.

5. The Alabama high court ordered the case moved to Florida on that ground. There were 25 witnesses to the accident–other drivers, ambulance personnel, hospital personnel–all in Florida. Only the plaintiff was from Alabama. The court considers ease of access to sources of proof,

location of evidence, compulsory process for attendance of unwilling witnesses, the cost of obtaining attendance of willing witnesses, the possibility of a visit to the site of the accident, and other factors relevant to the proceedings.

6. (answer on Internet for students) There was a sufficient basis for specific jurisdiction. This exists when: 1) the non-resident defendant purposefully availed himself of the privilege of conducting activities in the forum by some affirmative act or conduct; 2) plaintiff's claim just arise out of or result from defendant's forum-related activities; and 3) the exercise of jurisdiction must be reasonable. Williams and Ritzman purposely availed themselves of the privilege of conducting activities in California as required to establish specific jurisdiction in CA for medical malpractice proceedings. They knew that Jones would have felt benefit or harm in CA from their therapy. Hence, defendants will have to defend themselves in CA from the claims made by Jones.

7. Koh argued, and the appeals court agreed, that courts in Washington had *quasi in rem* jurisdiction. Koh had a valid judgment from a court in another jurisdiction. Courts honor such judgments under the full faith and credit rule. Koh's claim was valid, so the court had jurisdiction over the property for that purpose.

8. Transfer of case ordered. Under the *forum non conveniens* doctrine, a court may decline jurisdiction if the case more conveniently could be tried in another forum. A transfer of venue must be in the interest of justice. The party seeing to transfer venue must show good cause. Factors relating to private interests are: 1) the relative ease of access to sources of proof; 2) the availability of compulsory process to secure the attendance of witnesses; 3) the cost of attendance for willing witnesses; and 4) all other practical problems. Factors relating to public interests are: 1) the administrative difficulties flowing from court congestion; 2) local interests in having local interests decided at home; 3) the familiarity of the forum with the law that will govern the case; and 4) the avoidance of unnecessary problems of conflict of laws. Some of these factors are not relevant here; the ones that are weigh in favor of moving to Dallas. The only reason the case was in court in Marshall was because plaintiff decided to file there; there was no other factor favoring that location.

Ethics Question

It is hard to imagine that judges do not consider the social consequences of their decisions. Some judges say that it is important that they take such consequences into account. Others argue that it is important to stick to precedent even when the social consequences of a particular case are against the personal positions held by the judge. There are cases in which judges release persons from prison who they are sure have committed crimes, but whose legal rights were violated by police procedure. While this is an injustice, the courts recognize that if procedural safeguards are ignored then procedural rights will become irrelevant—or worse, at the mere whim of the police or of the judiciary. Such cases serve as a warning to the police and to other state officials that procedural safeguards cannot be ignored. Mistakes will be made in the application of safeguards but the costs of those mistakes are outweighed by the benefits derived by society members from the consistent application of these legal rules.

Internet Assignments

Many federal court opinions can be found on the Internet. Many federal circuit courts post their opinions. PACER allows low-cost access to court opinions and docket information from federal district and bankruptcy courts. Check these major sites. U.S. Courts, Court Locator: www.uscourts.gov/courtlinks/
FindLaw, Cases and Codes:
www.findlaw.com/casecode/
Emory Univsersity, Hugh F. MacMillan Law Library:
library.law.emory.edu/
U.S. Courts, Public Access to Court Electronic Records (PACER):
pacer.psc.uscourts.gov/
Essay test questions based on cases:

1. Brian Bermudez and Amanda Schmidt shared custody of their son after their divorce. Schmidt suspected Bermudez of abusing the child, so she refused to let him visit. Bermudez filed a petition requesting that Schmidt be held in contempt of court for denial of visitation. During the hearing, the judge said that he believed that Schmidt and her new husband were lying. He stated to Schmidt: "you committed perjury" and, if done again, "you are going to leave this courtroom in handcuffs," and "you are playing games with this court," and "you have diarrhea of the mouth," and other such comments. The judge awarded custody of the child to Bermudez. Schmidt appealed. The appeals court affirmed. Schmidt appealed. Is there anything Schmidt can do if she believes the judge was clearly biased against her? [5 So.3d 1064, Sup. Ct., Miss., (2009)]

Answer: Reversed and remanded. The judge insulted and badgered Schmidt repeatedly. He would cut her off before she finished answering his questions. He insulted the professionals who had been consulted on the matter. He threatened to have Schmidt and an expert witness arrested. The federal and state constitutions require a fair, impartial tribunal. The judge's combative, antagonistic, discourteous, and adversarial conduct deprived Schmidt of a fair trial on the custody petition. The judge was not impartial, so did not provide substantial justice in the case. There will be a new trial before a new judge.

2. Ruth Creech, an Ohio resident, filed an action for malpractice against the City of Faith Hospital of Tulsa, Oklahoma. The claims arose out of injuries suffered while Creech was a patient at the hospital in Tulsa and treated by Dr. McGee. Creech had heard of it through the Expect a Miracle television program featuring Oral Roberts. Broadcast nationally, the program invited people to come to the hospital for treatment. The case was tried in federal court in Ohio. The court found for Creech. Defendants appealed on the ground that the federal court could not exercise jurisdiction over them under the Ohio long-arm statute. They contended that they did not have sufficient minimum contacts with Ohio to confer jurisdiction. Do you think the court's exercise of jurisdiction reasonable? [*Creech v. Roberts*, 908 F.2d 75 (6th Cir., 1990)]

Answer: The court ordered that McGee be dismissed from the case because he was not subject to the district court's jurisdiction. He did not practice medicine in Ohio or directly advertise his services there. The Center, on the other hand, had sufficient contact with the state of Ohio to allow the court to exercise jurisdiction. (The court also remanded the case for a reconsideration of the damage award.) The court applied a three-part significant interests test: First, the defendant must purposely 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 the consequences must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.