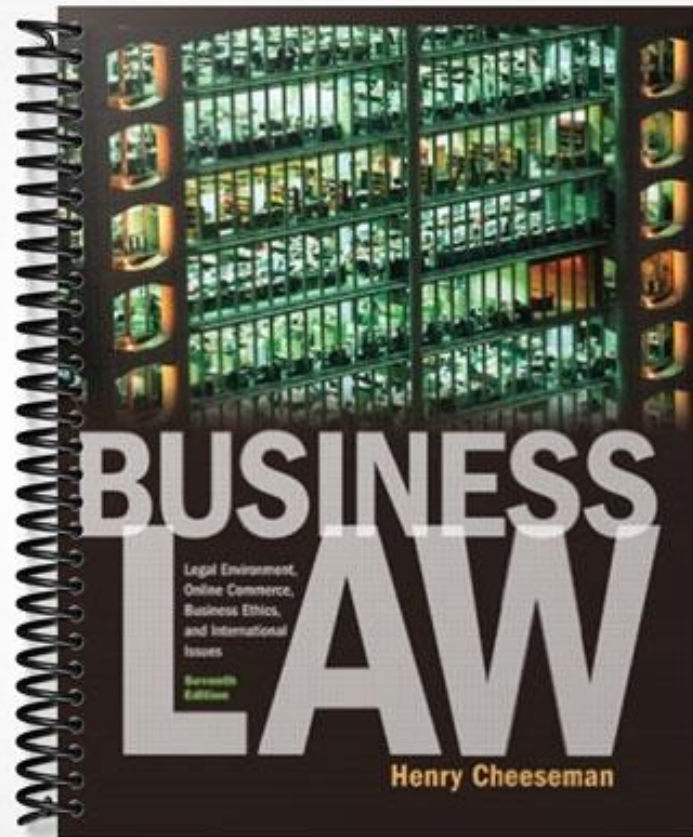


TEST BANK



Business Law, 7e (Cheeseman)
Chapter 2 Court Systems and Jurisdiction

1) General jurisdiction trial courts can be found in every state.

Answer: TRUE

Diff: 2

Topic: The State Court Systems

2) An inferior court is also known as a limited jurisdiction trial court.

Answer: TRUE

Diff: 1

Topic: The State Court Systems

3) In many situations, the parties in a small claims court cannot have a lawyer represent them.

Answer: TRUE

Diff: 2

Topic: The State Court Systems

4) An intermediate appellate court does not allow the introduction of new testimony or evidence.

Answer: TRUE

Diff: 1

Topic: The State Court Systems

5) Most states use specialized courts to handle commercial litigation.

Answer: FALSE

Diff: 2

Topic: The State Court Systems

6) General jurisdiction trial courts hear evidence and testimony.

Answer: TRUE

Diff: 1

Topic: The State Court Systems

7) Small claims courts are considered courts of record.

Answer: FALSE

Diff: 3

Topic: The State Court Systems

8) Decisions of state supreme courts can always be appealed to the U.S. Supreme Court.

Answer: FALSE

Diff: 2

Topic: The State Court Systems

9) In Delaware, the Chancery Court hears and decides business litigation.

Answer: TRUE

Diff: 2

Topic: The State Court Systems

10) The majority of states have a supreme court.

Answer: TRUE

Diff: 1

Topic: The State Court Systems

11) The U.S. courts of appeal were created by Congress rather than the U.S. Constitution.

Answer: TRUE

Diff: 2

Topic: The Federal Court System

12) The United States District Court is the general jurisdiction trial court in the federal system.

Answer: TRUE

Diff: 1

Topic: The Federal Court System

13) Each state has only one U.S. District Court.

Answer: FALSE

Diff: 1

Topic: The Federal Court System

14) In the U.S. Circuit Courts of Appeals, a review *en banc* is an appeal heard by a three-judge panel.

Answer: FALSE

Diff: 2

Topic: The Federal Court System

15) A majority decision of the U.S. Supreme Court that is not unanimous does not become precedent.

Answer: FALSE

Diff: 2

Topic: The Federal Court System

16) There is concurrent state and federal jurisdiction for diversity of citizenship cases so long as the minimum amount in controversy is met.

Answer: TRUE

Diff: 1

Topic: The Federal Court System

17) The Court of Appeals for the Federal Circuit was the thirteenth court of appeals that was created.

Answer: TRUE

Diff: 2

Topic: The Federal Court System

18) The Court of Appeals for the Federal Circuit may review the decisions made in the Patent and Trademark Office.

Answer: TRUE

Diff: 1

Topic: The Federal Court System

19) Appeals from the Court of International Trade are heard by the Court of Appeals for the Federal Circuit.

Answer: TRUE

Diff: 1

Topic: The Federal Court System

20) A federal question case brought in federal district court must meet the minimum dollar amount limit of \$75,000.

Answer: FALSE

Diff: 2

Topic: The Jurisdiction of the Courts

21) The concept of standing requires that the plaintiff have a stake in the outcome of the case that is filed.

Answer: TRUE

Diff: 1

Topic: The Jurisdiction of the Courts

22) Subject matter jurisdiction is not necessary in a lawsuit where there is in rem jurisdiction.

Answer: FALSE

Diff: 2

Topic: The Jurisdiction of the Courts

23) Where a long-arm statute is present, a defendant need not have minimum contact with a state for that state's courts to have jurisdiction over the defendant.

Answer: FALSE

Diff: 2

Topic: The Jurisdiction of the Courts

24) A forum-selection clause forbids parties to a contract to designate and agree to the jurisdiction of a court that otherwise might not have personal jurisdiction.

Answer: FALSE

Diff: 2

Topic: The Jurisdiction of the Courts

25) Courts generally frown upon *forum shopping*.

Answer: TRUE

Diff: 1

Topic: The Jurisdiction of the Courts

26) The document filed to initiate a lawsuit is known as an allegation.

Answer: FALSE

Diff: 2

Topic: Pretrial Litigation Process

27) In an answer filed for a lawsuit, the defendant must present the defendant's version of the events described in the complaint.

Answer: FALSE

Diff: 2

Topic: Pretrial Litigation Process

28) A party must file a motion to consolidate in order to become a party to a preexisting lawsuit between other parties.

Answer: FALSE

Diff: 1

Topic: Pretrial Litigation Process

29) A statute of limitation limits what can or cannot be mentioned in a party's complaint.

Answer: FALSE

Diff: 2

Topic: Pretrial Litigation Process

30) In general, a party must wait until the trial to find out the facts of the other party's case.

Answer: FALSE

Diff: 2

Topic: Pretrial Litigation Process

31) For a trial to be conducted with a jury, both parties must request a jury trial.

Answer: FALSE

Diff: 2

Topic: The Trial

32) Potential jurors are selected to hear specific cases through the process of *voir dire*.

Answer: TRUE

Diff: 1

Topic: The Trial

33) An arbitrator's decision is generally known as a judgment.

Answer: FALSE

Diff: 1

Topic: Alternative Dispute Resolution

34) The Uniform Arbitration Act is a federal statute that applies to all states.

Answer: FALSE

Diff: 1

Topic: Alternative Dispute Resolution

35) The U.S. Supreme Court has upheld the use of arbitration to solve employment disputes.

Answer: TRUE

Diff: 1

Topic: Alternative Dispute Resolution

36) The following are examples of limited jurisdiction trial courts **except**:

A) small claims court

B) appellate court

C) family law court

D) traffic court

E) probate court

Answer: B

Diff: 1

Topic: The State Court Systems

Skill: Legal Concepts

37) An inferior trial court is one that:

A) can hear only matters involving relatively small dollar amounts

B) has had a larger than normal portion of its decisions overturned on appeal

C) has an appointed judge rather than an elected judge

D) can only hear certain kinds of cases

E) must have all of its decisions approved by a higher court before they become effective

Answer: D

Diff: 2

Topic: The State Court Systems

Skill: Legal Concepts

38) The United States Constitution states that the federal government's judicial power lies with the:

A) state superior court

B) intermediate appellate court

C) small claims court

D) inferior trial court

E) supreme Court

Answer: E

Diff: 2

Topic: The State Court Systems

Skill: Legal Concepts

39) Which of the following statements is generally **not** true about state intermediate appellate courts?

- A) The appellate court reviews the record of the trial court.
- B) The appellate court usually allows the parties to file briefs outlining support for their positions.
- C) The appellate court allows the parties to make oral arguments outlining their position.
- D) The appellate court allows the parties to introduce new evidence so long as it was not previously introduced at the original trial.
- E) Appellate court decisions are final and further appeal is not possible.

Answer: D

Diff: 3

Topic: The State Court Systems

Skill: Legal Concepts

40) Which of the following is correct about litigating commercial disputes?

- A) Nearly all states have specialized trial courts that hear commercial disputes.
- B) Commercial disputes, because of their specialized nature, are first heard at the appellate court level.
- C) A few states have established specialized trial courts for commercial disputes.
- D) Businesses generally dislike the concept of specialized trial courts for commercial disputes because the large numbers of consumers who sue businesses in these courts have led the judges to become generally biased against business.
- E) In all states, commercial disputes must be heard in a limited-jurisdiction court.

Answer: C

Diff: 3

Topic: The State Court Systems

Skill: Legal Concepts

41) The general jurisdiction trial court in the federal system is called the:

- A) United States Trial Court
- B) United States Circuit Court
- C) United States General Court
- D) United States District Court
- E) Federal Chancery Court

Answer: D

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

42) Which federal court or courts is directly established by the United States Constitution?

- A) The Supreme Court only
- B) Federal trial courts only
- C) The Supreme Court and federal trial courts
- D) The Supreme Court and federal courts of appeal
- E) The Supreme Court, federal courts of appeal, and federal trial courts

Answer: A

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

43) How are judges for the federal courts selected?

- A) by nationwide election
- B) by election by the voters within the state where they preside
- C) by the President, subject to confirmation by the Senate
- D) by the Supreme Court justices
- E) by the sitting federal judges within the same circuit

Answer: C

Diff: 1

Topic: The Federal Court System

Skill: Legal Concepts

44) The U.S. claims court hears what kinds of cases?

- A) any case with claims involving more than one state
- B) civil cases where at least \$75,000 is in dispute
- C) cases against the United States
- D) cases where counterclaims have been filed
- E) cases involving disputes in the way an earlier case was decided

Answer: C

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

45) Most federal circuits of the federal appellate court system are determined based on:

- A) geography
- B) the subject matter of the case being appealed
- C) whether the case is criminal or civil
- D) the amount in controversy in the appeal
- E) whether the appeals come from state or federal courts

Answer: A

Diff: 1

Topic: The Federal Court System

Skill: Legal Concepts

- 46) Which of the following is generally true about federal appellate court proceedings?
- A) The appeals can come only from a U.S. district court.
 - B) New evidence can be introduced, so long as it relates to the evidence introduced in the original trial.
 - C) Appeals are usually heard by a three-judge panel rather than by all the judges of the court.
 - D) To avoid being improperly influenced by the lower court decision, the appellate court must make its own decision on the case without knowing the outcome in the original trial.

Answer: C

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

- 47) Which of the following is correct with regard to the Court of Appeals for the Federal District?

- A) It hears appeals of all federal district court cases.
- B) It hears its cases in New York City.
- C) It includes three Supreme Court justices on its panel of judges.
- D) It hears appeals only from within the District of Columbia.
- E) It reviews decisions of the Patent and Trademark Office.

Answer: E

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

- 48) What happens if the U.S. Supreme Court reaches a tie in a decision?

- A) The case will be reconsidered in the following year.
- B) The decision will be held in abeyance until one of the justices decides to change his or her mind.
- C) The case will be returned to the Circuit Court of Appeals to reconsider the case in light of the tie decision by the Supreme Court.
- D) The lower court decision in the case is overturned.
- E) The lower court decision in the case is affirmed.

Answer: E

Diff: 2

Topic: The Federal Court System

Skill: Legal Concepts

- 49) The consequence of a plurality decision is that:

- A) the decision of the Circuit Court of Appeals is affirmed
- B) the case is not decided and will be reheard at a later date
- C) the case is decided but is not precedent for later cases
- D) the case is decided and becomes precedent for later cases
- E) the case is not decided, but the applicable legal reasoning becomes precedent for later cases

Answer: C

Diff: 3

Topic: The Federal Court System

Skill: Legal Concepts

- 50) Which of the following is true with regard to the appellate process?
- A) Very important cases are usually initially tried in the U.S. Supreme Court.
 - B) When a case is appealed, the appellate court usually holds a new trial.
 - C) In the federal court system, there are usually two levels of appeal by right.
 - D) The U.S. Supreme Court chooses to review only a small fraction of those cases that it is asked to review.
 - E) The vote of only one justice is needed for the U.S. Supreme Court to hear a case.

Answer: D

Diff: 3

Topic: The Federal Court System

Skill: Legal Concepts

51) Sam, who weighs 250 pounds, calls his 110-pound girlfriend, Alice, one morning while she is at work. He says, "You are to stay in your office until midnight. If you come to my house before midnight, I will make you sorry that you did." Assuming that Alice usually leaves her office at 5 p.m. but stays until midnight that night because of the threat, if Alice files a false imprisonment case against Sam, a court most likely will find which of the following?

- A) There was false imprisonment because Sam's threat forced Alice to stay in the office.
- B) There was no false imprisonment because Sam and Alice previously knew one another.
- C) There was no false imprisonment because Alice could have left the office and stayed away from Sam's house, and because the threat related to future harm.
- D) There was no false imprisonment because Alice's office was not a prison, even though it might feel like one to Alice.

Answer: C

Diff: 2

Topic: Intentional Torts Against Persons

Skill: Factual Application

52) The power or authority of a court to hear a case is known as:

- A) voir dire
- B) appellate
- C) extradition
- D) forum-selection
- E) jurisdiction

Answer: E

Diff: 2

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

53) What are sellers responsible to provide for regarding the assembly of products they sell?

- A) rebates
- B) adequate instructions for safe assembly
- C) adequate instructions for use of the product
- D) A and B
- E) B and C

Answer: E

Diff: 1

Topic: The Concept of Defect

Skill: Legal Concepts

54) Which of the following kinds of jurisdiction would be necessary and sufficient for a court to hear a case?

- A) Subject matter **and** in personem **and** in rem.
- B) Subject matter **or** in personem **or** in rem.
- C) Subject matter **and either** in personem or in rem.
- D) In rem **and either** subject matter or in personam.

Answer: C

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

55) The term for jurisdiction based on the location of a piece of property is:

- A) long-arm jurisdiction
- B) in personam jurisdiction
- C) in rem jurisdiction
- D) subject matter jurisdiction
- E) de facto jurisdiction

Answer: C

Diff: 2

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

56) What does it mean if a court has "in personam jurisdiction?"

- A) It means the court has the power to make and enforce a judgment against a particular person.
- B) It means a party has a personal stake in the outcome of a particular case.
- C) It means the court must meet special requirements in nonbusiness cases involving individuals.
- D) It means the case has been filed at the correct location with the state.
- E) It means the court has personal jurisdiction but not subject matter jurisdiction.

Answer: A

Diff: 2

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

57) How are long-arm statutes and forum-selection clauses similar?

- A) They both eliminate the necessity for a court to have subject matter jurisdiction.
- B) They both eliminate any requirement that there be a connection between a state and a party over whom that state is attempting to exercise jurisdiction.
- C) They both can be factors in determining whether or not a state has personal jurisdiction over a defendant.
- D) They both eliminate the need to meet venue requirements in a case.

Answer: C

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

58) How is a forum-selection clause related to questions of personal jurisdiction?

- A) The two are not related at all.
- B) The forum-selection clause will be valid only if it names a jurisdiction that would have personal jurisdiction over the parties to the contract even in the absence of the forum-selection clause.
- C) Forum-selection clauses are attempts by some parties to contracts to take away jurisdictional rights from the other party, and are generally found to be invalid.
- D) A forum-selection clause will specify which courts have personal jurisdiction over the parties to the contract, and for disputes related to the particular contract, the forum-selection clause will control over the general jurisdiction rules.
- E) Forum-selection clauses are usually enacted by one party to select a jurisdiction most favorable to that party, thus they are effective only if, after a lawsuit has been filed, the defendant in the action agrees to jurisdiction as provided in the clause.

Answer: D

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

59) A motion for a change of venue would typically be granted where:

- A) a court does not have personal jurisdiction over the plaintiff
- B) selection of an impartial jury is unlikely at the original venue location
- C) the party losing a case would like a retrial in another location
- D) the judge committed errors in a trial
- E) the plaintiff but not the defendant requests it

Answer: B

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Legal Concepts

60) Which of the following pleadings could typically be filed by a **defendant** in a lawsuit?

- A) answer and complaint
- B) complaint and cross-complaint
- C) motion to intervene and complaint
- D) answer and cross-complaint
- E) cross-complaint and reply

Answer: D

Diff: 3

Topic: Pretrial Litigation Process

Skill: Legal Concepts

61) Sandy lives on the top floor of a 10-story building in a big city. There is a 30-story apartment building under construction next door to her building. One morning while eating her corn flakes, a brand new toilet comes crashing through the roof of Sandy's apartment and injures her. She would like to sue the construction firm, but has no way of finding out or proving what persons were involved or exactly what happened. The doctrine that would most help Sandy is:

- A) last clear chance
- B) res ipsa loquitur
- C) strict liability
- D) comparative negligence
- E) negligence per se

Answer: B

Diff: 2

Topic: Special Negligence Doctrines

Skill: Factual Application

62) Someone who is not a party to a lawsuit but has an interest in the outcome and therefore wants to become a party to the suit must:

- A) await the outcome of this trial and then file a separate action
- B) assault
- C) counter-sue
- D) consolidate
- E) file a cross-complaint

Answer: B

Diff: 2

Topic: Pretrial Litigation Process

Skill: Legal Concepts

63) Which of the following is **not** a purpose of discovery?

- A) To eliminate surprise at trial.
- B) To save the time of the court.
- C) To promote the settlement of cases.
- D) To preserve evidence.
- E) To avoid the use of the evidence at trial.

Answer: E

Diff: 2

Topic: Pretrial Litigation Process

Skill: Legal Concepts

64) A motion asserting that there are no factual issues in dispute in a trial is known as a:

- A) motion for settlement
- B) motion for judgment on the pleadings
- C) motion for summary judgment
- D) motion to intervene
- E) motion for determination

Answer: C

Diff: 2

Topic: Pretrial Litigation Process

Skill: Legal Concepts

65) Forms of discovery include all but which one of the following?

- A) rational
- B) interrogatories
- C) physical examinations
- D) of any type
- E) voir dire

Answer: E

Diff: 2

Topic: Pretrial Litigation Process

Skill: Legal Concepts

66) A party who is making a motion for summary judgment is asserting that:

- A) most of the factual evidence is in its favor, so that the judge, rather than a jury, should decide the factual disputes
- B) the factual disputes are relatively simple and straightforward such that a full-detailed judgment is not necessary in the case
- C) the case can be decided solely on the information contained in the complaint and the answer
- D) a jury is not needed in deciding the case because there are no relevant facts that are in dispute

Answer: D

Diff: 3

Topic: Pretrial Litigation Process

Skill: Legal Concepts

67) What is "voir dire?"

- A) the jury deliberation process in a trial
- B) the U.S. Supreme Court's case selection process
- C) the jury selection process in a trial
- D) a discovery method to learn about the other party's case
- E) a motion to dismiss a case

Answer: C

Diff: 2

Topic: The Trial

Skill: Legal Concepts

- 68) Which of the following is true about cross examination of a plaintiff's witness in a trial?
- A) Cross examination is conducted by the plaintiff's attorney, and can cover any matters relevant to the case.
 - B) Cross examination is conducted by the plaintiff's attorney, and can cover only matters that were brought up during the discovery process.
 - C) Cross examination is conducted by the defendant's attorney, and can cover any matters relevant to the case.
 - D) Cross examination is conducted by the defendant's attorney, and can cover only matters that were brought up in the direct examination.
 - E) Cross examination is conducted by the defendant's attorney, and can cover only matters that were brought up during the discovery process.

Answer: D

Diff: 3

Topic: The Trial

Skill: Legal Concepts

- 69) In a civil case, which of the following is true about the order of the presentation of the case?
- A) The plaintiff is first to present, followed by the defendant.
 - B) The defendant is first to present, followed by the plaintiff.
 - C) The judge decides who goes first, which depends on the circumstances of the case.
 - D) The order of presentation is determined by the flip of a coin or other random selection method.

Answer: A

Diff: 2

Topic: The Trial

Skill: Legal Concepts

- 70) Under what circumstances is it appropriate for a judge to issue a judgment n.o.v.?
- A) When there are no disputes as to the facts of the case.
 - B) When the evidence cannot support the verdict of the jury.
 - C) When the judge would have reached a different conclusion than the jury based on the evidence.
 - D) When the judgment n.o.v. is issued pursuant to a fair and impartial pretrial hearing.

Answer: B

Diff: 3

Topic: The Trial

Skill: Legal Concepts

- 71) When an appellate court receives a case appealed to it, it will:
- A) retry the case with a new jury
 - B) review the jury's verdict to see if the appellate court judges would have reached the same result
 - C) retry the case with the appellate court judge acting as the jury
 - D) review the record of the trial court to see if there were any errors of law made by the judge

Answer: D

Diff: 3

Topic: Appeal

Skill: Legal Concepts

72) In general, an appellate court might typically reverse which of the following?

- A) the trial court's findings of fact
- B) the trial court's conclusions of law
- C) both of these are correct
- D) neither of these are correct

Answer: B

Diff: 2

Topic: Appeal

Skill: Legal Concepts

73) Two friends, Mary and Dean, are hiking in the Colorado Mountains when a dog being walked by its owner, Wally, who is from Wyoming, bites Dean, causing injury. Mary wants Dean to sue Wally, but Dean does not want to incur the cost. Which of the following is true?

- A) Mary does not have standing to sue Wally, the owner of the dog.
- B) Mary will have standing only if she files the lawsuit in Wyoming.
- C) Whether Mary has standing depends on whether Mary files the suit in state or federal court.
- D) Mary has standing if Dean consents to Mary filing the suit.
- E) Mary's presence at the time of Dean's injury gives her standing to file suit.

Answer: A

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

74) Tammi Tenant was a university student in Ohio who rented a house from Loretta, who also lived in Ohio. Upon graduation, Tammi moved to Nebraska. Assuming that one party sued the other in connection with the lease after Tammi had moved to Nebraska, which of the following correctly describes the court(s) with jurisdiction over the defendant?

- | | |
|--|---|
| <p>If Loretta sued, there would be
<u>personal jurisdiction over Tammi in:</u></p> <ul style="list-style-type: none">A) Ohio onlyB) Nebraska onlyC) Nebraska or OhioD) Nebraska or OhioE) Nebraska or Ohio | <p>If Tammi sued, there would be
<u>personal jurisdiction over Loretta in:</u></p> <ul style="list-style-type: none">Ohio onlyOhio onlyNebraska onlyNebraska or OhioOhio only |
|--|---|

Answer: E

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

75) Paul and Dan are involved in a traffic accident at an intersection where there is a traffic circle but no posted signs or traffic lights. They are in agreement as to everything that happened in the accident, including the locations of the two cars and the timing of events leading to the accident. Based on their pleadings and on information obtained during discovery, the only dispute they have is the interpretation of the state law affecting who had the right of way when they collided. The appropriate motion for one of the parties to file is:

- A) motion for judgment on the pleadings
- B) motion for judgment n.o.v.
- C) A and B only
- D) motion for summary judgment

Answer: D

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

76) Mike, an 80-year-old resident of North Dakota, has long wanted to experience driving in New York City during rush hour. He realizes his goal, but gets into an accident with a taxi driver who has never been outside of New York City. The accident causes \$24,000 in damage to Mike's Porsche Boxster. Mike wants to sue the taxi driver. Where can Mike file his lawsuit?

- A) In state or federal court in either North Dakota or New York.
- B) In state or federal court in New York only.
- C) Only in state court in New York.
- D) Only in federal court in New York.
- E) In federal court in either New York or New Jersey.

Answer: C

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

77) The Double Diamond Dude Ranch is located in Montana and maintains a Web site on the Internet. Before the Internet, the ranch had relied exclusively on word-of-mouth advertising. The Web site simply provides some general information and lists the ranch's phone number for reservations, but reservations cannot be made online. The ranch has no other connections or presence outside of Montana. Bob lives in Ohio and learned of the ranch through its Web site. Bob then spent a week as a paying guest at the ranch, but was injured when he fell off a horse. Can Bob sue the dude ranch in an Ohio state court?

- A) No, because the mere ability of an Ohio resident to view the ranch's Internet advertising does not amount to the minimum contacts necessary for personal jurisdiction over the ranch in Ohio.
- B) No, because the minimum contacts standard simply cannot be met based on Internet activity.
- C) No, because cases involving residents of two different states must be filed in federal, not state, court.
- D) Yes, because Bob noticed the advertisement when he was in Ohio.
- E) Yes, assuming that other Ohio residents had visited the ranch before Bob's visit.

Answer: A

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

78) Discuss foreseeability and resolution of contractual relationships.

Answer: Foreseeability is a way to put a limit on the chain of causation. If a defendant should ask what could reasonably be expected to happen if he/she engages in certain conduct, the defendant should only be responsible for the expected consequences of the conduct. There are situations where a party is injured but there is no one who is legally obligated to compensate the injured party.

Diff: 2

Skill: Ethics and Policy

79) Is it reasonable for appellate courts to not hear new evidence in an appeal? Should new available evidence be grounds for appeal? In many cases additional evidence is available by the time of the appeal. If this is the case, wouldn't justice be best served by allowing the appellate court to consider it? And even if there is no new evidence available, should the appellate court be able to reconsider the trial evidence and impose a different verdict from that of the jury?

Answer: If new evidence could support an appeal, no case would ever be final. The parties would always have to worry that the other side might find new evidence. The appellate court cannot hear new evidence because there are no juries at the appellate court level, and the evidence would likely involve factual matters. Lastly, if the appellate court could replace jury verdicts with its own fact finding, it would be usurping the role of the jury.

Diff: 3

Skill: Ethics and Policy

80) When the U.S. Constitution was written and established the Supreme Court, the population of the country was under 5 million. Today the population is more than 260 million. Because this means that there are far more lawsuits today than in the early days of our nation, the chances that the Supreme Court will accept a case is much smaller today than in the past. Should one or more additional "supreme" courts be established so that more cases are reviewed twice?

Answer: Even if several times as many cases could be accepted, it will nonetheless be a tiny fraction of the cases for which a petition for certiorari is filed. The Supreme Court has some ability to adjust the number of cases it hears by changing the number of judicial clerks that it hires to assist in researching and writing opinions.

Diff: 3

Skill: Ethics and Policy

81) If the discovery process results in learning about the other side's case, what is the purpose of having a trial? Wouldn't it be redundant to have the trial if both parties already know what is going to be said?

Answer: The purpose of discovery is to learn about the other party's case, not to have discovery take the place of the trial. It is still the jury's job to determine the facts of a case. Thus, even though both parties might know in advance the general evidence that will be presented, they often cannot predict how the jury will decide. Furthermore, the discovery process is not perfect, and there is often evidence at trial that did not come out during discovery.

Diff: 2

Skill: Ethics and Policy

82) Increasing numbers of consumer contracts contain arbitration clauses in which the consumer agrees in advance that any dispute related to the contract will be submitted to an arbitrator, often chosen by the other party to the contract. Agreements between consumers and insurance companies, as well as agreements between stockbrokers and their clients, are two areas where these clauses are increasingly common. What are the advantages and disadvantages to the consumer of such a clause? Should these clauses be effective to allow consumers to give up their rights to use the court system? Does it affect your analysis if you learn that many consumers are not aware of these provisions or do not understand them when they enter into these agreements? How enforceable should these mandatory arbitration clauses be?

Answer: Has the consumer knowingly consented to give up access to courts? There can be problems if the arbitrator(s) is biased, either individually or by virtue of being industry-sponsored; absent these problems, the courts generally enforce arbitration clauses. A related issue is the responsibility of a party to a contract to make sure the contract is understood.

Diff: 2

Skill: Ethics and Policy

83) Steve often purchases office supplies from Supplymax, a company with stores in many states, but none in Steve's home state of Missouri. Supplymax does, however, maintain a distribution center in Kansas City, Missouri. Supplymax does not advertise in Missouri except that it places a few advertisements in national magazines, some of which are sold in Missouri. Steve has an arrangement with its store in Chicago, and Steve will often contact the Chicago store and have it hold items for him to pick up when he is on one of his frequent business trips to Chicago. Last year, Steve purchased eight chairs from Supplymax to use with his conference table at his business. At a recent meeting with his local sales staff, one of the chairs collapsed, injuring Steve. Steve has sued Supplymax in state court in his hometown of St. Louis. Supplymax does not want to have this case heard in St. Louis, or anywhere in Missouri for that matter. But if it must be in Missouri, Supplymax demands that the case be heard in Kansas City. Discuss the issues and likely outcome of this situation.

Answer: Supplymax probably meets the minimum contacts requirement with the state of Missouri, given its distribution center and advertising in national publications that reach Missouri, thus Missouri would have personal jurisdiction. Because the lawsuit arises out of events in St. Louis and there are witnesses from St. Louis, proper venue would be in St. Louis. If the amount in controversy were more than \$75,000, Supplymax could transfer the case to federal court.

Diff: 3

Topic: The Jurisdiction of the Courts

Skill: Factual Application

84) Susan is part owner of one of the best restaurants in a medium-sized city. This restaurant is operated as a partnership. In October, 2004, the local newspaper published a story about Bill, who is Susan's business partner in the restaurant. In this article it is stated that Bill's net worth is several million dollars. About 10 days later, Susan receives a summons notifying her that the restaurant is named as the defendant in a negligence case. The plaintiff in the case alleged that she slipped and fell to the floor inside the restaurant near the rear door late one night in December, 2002. According to the plaintiff, she slipped on water from snow that had been tracked in and had melted. The plaintiff also alleged that there were no employees or other customers in sight of the back door when the plaintiff slipped and fell, and that she was leaving the restaurant when the accident occurred. The plaintiff did not notify anyone at the restaurant when the accident occurred or anytime thereafter prior to the filing of the lawsuit. Although the majority of diners at this restaurant make reservations in advance, and pay with a credit card, the restaurant has no records of reservations or payment by the plaintiff. The plaintiff claims to have paid with cash. Susan and Bill have heard about alternative dispute resolution and would like to know more about how it works and about its advantages and disadvantages. If you were the attorney for Susan and Bill, what would you explain to them about mediation and arbitration, including their advantages and disadvantages. What would you recommend to them?

Answer: Mediation uses a neutral third party to assist the disputants in settling their case, but the mediator has no authority to create a binding outcome. With arbitration, the third-party arbitrator has the power to impose a binding decision on the parties. Either mediation or arbitration would likely save time and money, but a regular trial would be public and set precedent with regard to questions of law. They might choose to use normal litigation to show resolve to fight and discourage similar suits because the claims in this suit might appear to others to be questionable, whether or not the claims are, in fact, legitimate.

Diff: 3

Topic: Alternative Dispute Resolution

Skill: Factual Application