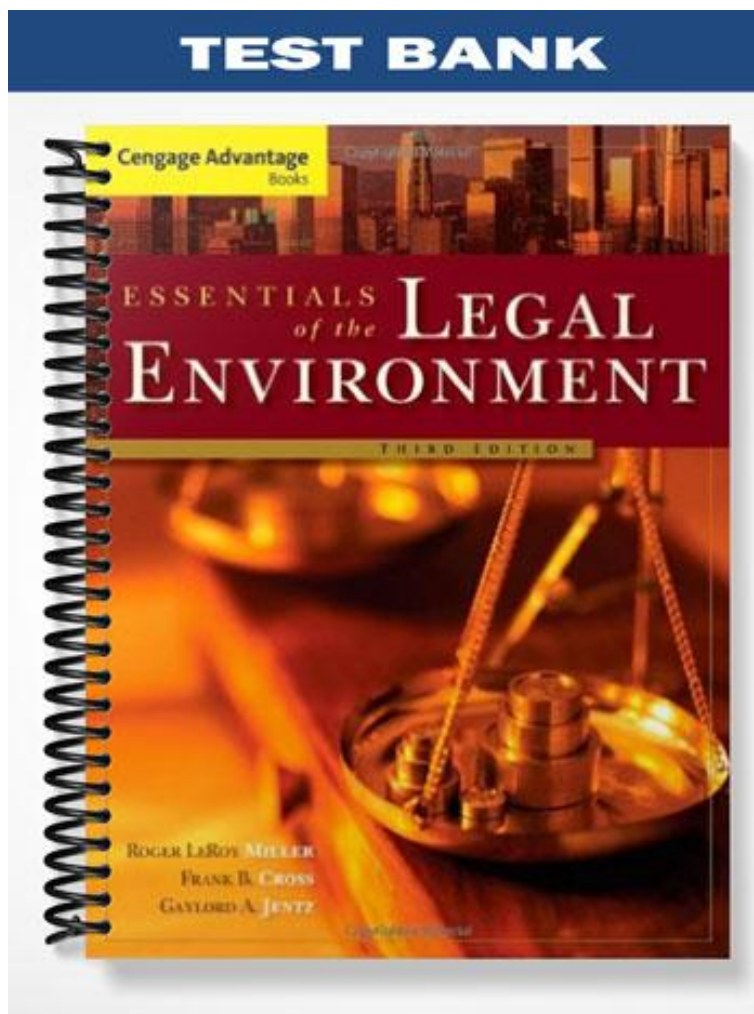


TEST BANK



Chapter 2

The Courts and Alternative Dispute Resolution

N.B.: TYPE indicates that a question is new, modified, or unchanged, as follows.

- N A question new to this edition of the Test Bank.
- + A question modified from the previous edition of the Test Bank.
- = A question included in the previous edition of the Test Bank.

TRUE/FALSE QUESTIONS

1. Federal courts are superior to state courts.

ANSWER: F PAGE: 32 TYPE: =
NAT: AACSB Analytic AICPA Legal

2. State courts are independent of federal courts.

ANSWER: T PAGE: 32 TYPE: =
NAT: AACSB Analytic AICPA Legal

3. The function of the courts is to interpret and apply the law.

ANSWER: T PAGE: 32 TYPE: N
NAT: AACSB Analytic AICPA Legal

4. A state court can exercise jurisdiction over anyone within the boundaries of the state.

ANSWER: T

PAGE: 33

TYPE: =

NAT: AACSB Analytic

AICPA Legal

5. A state court can exercise jurisdiction over all of the property located within the boundaries of the state.

ANSWER: T PAGE: 33 TYPE: +
 NAT: AACSB Analytic AICPA Legal

6. A long arm statute permits a court to exercise jurisdiction over an out-of-state defendant.

ANSWER: T PAGE: 34 TYPE: =
 NAT: AACSB Analytic AICPA Legal

7. A state court can exercise jurisdiction over a nonresident by showing that he or she had minimum contacts with the state.

ANSWER: T PAGE: 34 TYPE: =
 NAT: AACSB Analytic AICPA Legal

8. A lawsuit involving a federal question can originate in a federal court.

ANSWER: T PAGE: 35 TYPE: =
 NAT: AACSB Analytic AICPA Legal

9. For purposes of diversity of citizenship, a corporation is a citizen only of the state in which it is incorporated.

ANSWER: F PAGE: 35 TYPE: =
 NAT: AACSB Analytic AICPA Legal

10. Cyberspace is its own jurisdiction.

ANSWER: F PAGE: 37 TYPE: =
 NAT: AACSB Analytic AICPA Critical Thinking

11. The Internet has no effect on a court's assertion of personal jurisdiction.

ANSWER: F PAGE: 37 TYPE: =
 NAT: AACSB Reflective AICPA Critical Thinking

12. A court will not exercise jurisdiction over an out-of-state defendant who has only done business in the jurisdiction over the Internet.

ANSWER: F PAGE: 37 TYPE: N
NAT: AACSB Analytic AICPA Legal

13. To have standing to sue, a party must have been harmed or have been threatened with harm by the action about which he or she complains.

ANSWER: T PAGE: 38 TYPE: =
 NAT: AACSB Analytic AICPA Legal

14. A justiciable controversy is a case in which the court’s decision—the “justice” that will be served—will be controversial.

ANSWER: F PAGE: 38 TYPE: =
 NAT: AACSB Analytic AICPA Legal

15. The jurisdiction of a state court of appeal is substantially limited to hearing appeals.

ANSWER: T PAGE: 43 TYPE: =
 NAT: AACSB Analytic AICPA Legal

16. A federal case typically originates in a federal district court.

ANSWER: T PAGE: 44 TYPE: N
 NAT: AACSB Analytic AICPA Critical Thinking

17. The United States Supreme Court can review a decision by a state’s highest court only if a question of federal law is involved.

ANSWER: T PAGE: 45 TYPE: N
 NAT: AACSB Analytic AICPA Legal

18. An answer can admit to the allegations made in a complaint.

ANSWER: T PAGE: 46 TYPE: =
 NAT: AACSB Analytic AICPA Legal

19. Only a plaintiff may file a motion for judgment on the pleadings.

ANSWER: T PAGE: 47 TYPE: N
 NAT: AACSB Analytic AICPA Critical Thinking

22 UNIT ONE: THE FOUNDATIONS

20. A summary judgment is granted only if there is no genuine question of law.

ANSWER: F PAGE: 47 TYPE: N
NAT: AACSB Analytic AICPA Critical Thinking

21. A deposition involves written questions for which written answers are prepared and signed under oath.

ANSWER: F PAGE: 48 TYPE: N
NAT: AACSB Analytic AICPA Legal

22. In most states, if neither party requests a jury, there will be no jury trial.

ANSWER: T PAGE: 49 TYPE: N
NAT: AACSB Analytic AICPA Legal

23. Voir dire is a process for presenting evidence in a case.

ANSWER: F PAGE: 49 TYPE: N
NAT: AACSB Analytic AICPA Legal

24. After a decision is rendered in a case, no party can file an appeal.

ANSWER: F PAGE: 51 TYPE: =
NAT: AACSB Analytic AICPA Legal

25. Any judgment is enforceable.

ANSWER: F PAGE: 54 TYPE: N
NAT: AACSB Analytic AICPA Critical Thinking

26. No court requires mediation before a case goes to trial.

ANSWER: F PAGE: 56 TYPE: =
NAT: AACSB Analytic AICPA Legal

27. In mediation, the mediator proposes a solution that includes what compromises are necessary to reach an agreement.

ANSWER: T PAGE: 56 TYPE: N
NAT: AACSB Reflective AICPA Critical Thinking

28. Negotiation is the most complex form of alternative dispute resolution.

ANSWER: F PAGE: 56 TYPE: N
NAT: AACSB Reflective AICPA Critical Thinking

29. An arbitrator can never render a legally binding decision.

ANSWER: F PAGE: 57 TYPE: =
NAT: AACSB Analytic AICPA Legal

30. An arbitrator's award is always the final word on a matter.

ANSWER: F PAGE: 57 TYPE: +
NAT: AACSB Analytic AICPA Legal

31. A court's review of an arbitrator's award may be restricted.

ANSWER: T PAGE: 57 TYPE: N
NAT: AACSB Analytic AICPA Legal

32. Mandatory arbitration clauses in employment contracts are not enforceable.

ANSWER: F PAGE: 59 TYPE: N
NAT: AACSB Analytic AICPA Legal

33. In early neutral case evaluation, a third party's evaluation of each party's strengths and weaknesses forms the basis for negotiating a settlement.

ANSWER: T PAGE: 60 TYPE: N
NAT: AACSB Reflective AICPA Critical Thinking

34. Most online dispute resolution (ODR) forums automatically apply the law of the state of California.

ANSWER: F PAGE: 61 TYPE: N
NAT: AACSB Analytic AICPA Legal

35. Unless otherwise agreed, the result of an online dispute resolution proceeding may not be appealed to a court.

ANSWER: F PAGE: 61 TYPE: N
NAT: AACSB Analytic AICPA Legal

MULTIPLE-CHOICE QUESTIONS

1. The Ohio state legislature passes a law to regulate local delivery services. The final authority regarding the constitutionality of this law is
- a. the courts.
 - b. the president of the United States.
 - c. the governor of Ohio.
 - d. the U.S. Congress.

ANSWER: A PAGE: 32 TYPE: =
NAT: AACSB Reflective AICPA Legal

2. Harry, a resident of Indiana, has an accident with Jane, a resident of Kentucky, while driving through that state. Jane files a suit against Harry in Kentucky. Regarding Harry, Kentucky has
- a. diversity jurisdiction.
 - b. in personam jurisdiction.
 - c. in rem jurisdiction.
 - d. no jurisdiction.

ANSWER: B PAGE: 33 TYPE: +
NAT: AACSB Reflective AICPA Legal

3. Leo, a resident of Missouri, owns a warehouse in Nebraska. A dispute arises over the ownership of the warehouse with Opal, a resident of Kansas. Opal files a suit against Leo in Nebraska. Regarding this suit, Nebraska has
- a. diversity jurisdiction.
 - b. in personam jurisdiction.
 - c. in rem jurisdiction.
 - d. no jurisdiction.

ANSWER: C PAGE: 33 TYPE: =
NAT: AACSB Reflective AICPA Legal

4. Sam, a citizen of New Mexico, wants to file a suit against Tanya, a citizen of Texas. Their diversity of citizenship may be a basis for
- any court to exercise in rem jurisdiction.
 - a federal district court to exercise original jurisdiction.
 - a U.S. court of appeals to exercise appellate jurisdiction.
 - the United States Supreme Court to issue a writ of certiorari.

ANSWER: B PAGE: 35 TYPE: =
 NAT: AACSB Reflective AICPA Legal

5. The case of Argyle Clothing Corporation v. Brummel is heard in a Connecticut court with original jurisdiction. The case of Chuck-a-Block v. Dunderhead, Inc. is heard in a Connecticut court with appellate jurisdiction. The difference between original and appellate jurisdiction is whether
- a case is being heard for the first time.
 - the court is exercising a new type of jurisdiction.
 - the parties' legal arguments are innovative.
 - the subject matter of a case involves new facts.

ANSWER: A PAGE: 35 TYPE: N
 NAT: AACSB Reflective AICPA Legal

6. Don files a suit against Eagle Sales, Inc., in a Florida state court based on a Web site through which Florida residents can do business with Eagle. The court will likely exercise jurisdiction over Eagle if the interactivity of the site is seen as
- a "neutral" connection with the state.
 - an "Internet" connection with the state.
 - a "passive" connection with the state.
 - a "substantial" connection with the state.

ANSWER: D PAGE: 37 TYPE: =
 NAT: AACSB Reflective AICPA Legal

7. Lora files a suit in Michigan against Ned over the ownership of a boat docked in a Michigan harbor. Lora and Ned are residents of Ohio. Ned could ask for a change of venue on the ground that Ohio
- a. has a sufficient stake in the matter.
 - b. has jurisdiction.
 - c. has sufficient minimum contacts with the parties.
 - d. is a more convenient location to hold the trial.

ANSWER: D PAGE: 38 TYPE: =
NAT: AACSB Reflective AICPA Legal

8. Inferior Company sells products that are poorly made. Jack, who has never bought an Inferior product, files a suit against Inferior, alleging that its products are defective. The firm's best ground for dismissal of the suit is that Jack does not have
- a. certiorari.
 - b. jurisdiction.
 - c. standing.
 - d. sufficient minimum contacts.

ANSWER: C PAGE: 38 TYPE: +
NAT: AACSB Reflective AICPA Decision Modeling

9. Mary wins her suit against National Manufacturing Co. National's best ground for appeal is the trial court's interpretation of
- a. the conduct of the witnesses during the trial.
 - b. the credibility of the evidence that Mary presented.
 - c. the dealings between the parties before the suit.
 - d. the law that applied to the issues in the case.

ANSWER: D PAGE: 43 TYPE: =
NAT: AACSB Reflective AICPA Legal

10. Cassidy wants to appeal his case against Deli Snax Corporation to the United States Supreme Court. Cassidy must ask the Court to issue a writ of
- a. certiorari.
 - b. jurisdiction.
 - c. standing.
 - d. venue.

ANSWER: A PAGE: 45 TYPE: N
 NAT: AACSB Reflective AICPA Legal

11. Ilsa files a suit against Jack. The document that sets out the ground for the court's jurisdiction, the basis of Ilsa's case, and the relief that Ilsa seeks is
- a. the answer.
 - b. the complaint.
 - c. the service of process.
 - d. the summons.

ANSWER: B PAGE: 46 TYPE: N
 NAT: AACSB Reflective AICPA Legal

12. Lynn files a suit against Karl. Karl denies Lynn's charges and sets forth his own claim that Lynn breached their contract and owes Karl money for the breach. This is
- a. a counterclaim.
 - b. a crossclaim.
 - c. an affirmative defense.
 - d. an irrelevant response.

ANSWER: A PAGE: 46 TYPE: =
 NAT: AACSB Reflective AICPA Legal

Fact Pattern 2-1 (Questions 13-17 apply)

Mack and Nancy engage in a business transaction from which a dispute arises. Mack initiates a lawsuit against Nancy by filing a complaint.

13. Refer to Fact Pattern 2-1. The sheriff serves Nancy with a summons. If Nancy chooses to ignore it
- a. Mack must file an amended complaint.
 - b. Mack will have a judgment entered in his favor.
 - c. Nancy must be served with a second summons.
 - d. Nancy will have a judgment entered in her favor.

ANSWER: B PAGE: 46 TYPE: =
NAT: AACSB Reflective AICPA Critical Thinking

14. Refer to Fact Pattern 2-1. If Nancy responds to Mack's complaint by filing a counterclaim
- a. Mack will be given time to file an answer.
 - b. Mack will have a judgment entered in his favor.
 - c. Nancy will be given time to file an amended answer.
 - d. Nancy will have a judgment entered in her favor.

ANSWER: A PAGE: 46 TYPE: =
NAT: AACSB Reflective AICPA Legal

15. Refer to Fact Pattern 2-1. If Nancy files a motion to dismiss, she is asserting that
- a. Mack did not state a claim for which relief can be granted.
 - b. Mack's statement of the facts is not true.
 - c. Mack's statement of the law is not true.
 - d. Nancy suffered greater harm than Mack.

ANSWER: A PAGE: 47 TYPE: =
NAT: AACSB Reflective AICPA Legal

d. Fresco's replies to Eduardo's interrogatories.

ANSWER: A PAGE: 47 TYPE: N
NAT: AACSB Reflective AICPA Legal

20. Connelly files a suit against Droll Digression Corporation. Droll responds that it appears from the pleadings the parties do not dispute the facts and the only question is how the law applies to those facts. Droll supports this response with witnesses' sworn statements. This is
- a counterclaim.
 - a motion for judgment on the pleadings.
 - a motion for summary judgment.
 - a motion to dismiss.

ANSWER: C PAGE: 47 TYPE: =
 NAT: AACSB Reflective AICPA Legal

21. In Federated Corporation's suit against Giganta Discount Stores, Inc., the jury returns a verdict in Federated's favor. Giganta files a motion asking the judge to set aside the verdict and begin new proceedings. This is a motion for
- a judgment in accordance with the verdict.
 - a judgment on the pleadings.
 - a new trial.
 - judgment n.o.v.

ANSWER: C PAGE: 51 TYPE: N
 NAT: AACSB Reflective AICPA Legal

Fact Pattern 2-2 (Questions 22-23 apply)

Kelly files a suit against Lewis in a state court. The case proceeds to trial, after which the court renders a verdict. The case is appealed to an appellate court.

22. Refer to Fact Pattern 2-2. After its review of Kelly v. Lewis, the appellate court can
- affirm, reverse, or remand all or part of the lower court's decision.
 - only affirm or reverse all or part of the lower court's decision.
 - only remand all or part of the lower court's decision.
 - only reverse or remand all or part of the lower court's decision.

ANSWER: A PAGE: 52 TYPE; N

NAT: AACSB Reflective

AICPA Legal

23. Refer to Fact Pattern 2-2. After the state's highest court's review of *Kelly v. Lewis*, a party can appeal the decision to a federal appellate court if
- a federal question is involved.
 - a question of state law remains unresolved.
 - the party is unsatisfied with the result.
 - the state trial and appellate court rulings are different.

ANSWER: A PAGE: 54 TYPE: N
 NAT: AACSB Reflective AICPA Legal

24. Edie files a suit against Franz. If this suit is like most cases, it will be
- dismissed during a trial.
 - dismissed or settled before a trial.
 - resolved only after a trial.
 - settled at a trial.

ANSWER: B PAGE: 56 TYPE: +
 NAT: AACSB Reflective AICPA Legal

25. Seth files a suit against Trent. Before going to trial, the parties, with their attorneys, meet to try to resolve their dispute. A third party helps them to reach an agreement. This is
- arbitration.
 - litigation.
 - mediation.
 - negotiation.

ANSWER: C PAGE: 56 TYPE: =
 NAT: AACSB Reflective AICPA Critical Thinking

26. Bethany files a suit against Cullen. Before going to trial, the parties meet, with their attorneys to represent them, to try to resolve their dispute without involving a third party. This is
- arbitration.
 - litigation.

- c. mediation.
- d. negotiation.

ANSWER: D PAGE: 56 TYPE: =
NAT: AACSB Reflective AICPA Critical Thinking

Fact Pattern 2-3 (Questions 27-29 apply)

Java Cafes, Inc., and Kaffe Import Corporation dispute a term in their contract.

27. Refer to Fact Pattern 2-3. The least expensive method to resolve the dispute between Java and Kaffe may be
- arbitration because the case will be heard by a mini-jury.
 - litigation because each party will pay its own legal fees.
 - mediation because the dispute will be resolved by a non-expert.
 - negotiation because no third parties are needed.

ANSWER: D PAGE: 56 TYPE: N
NAT: AACSB Reflective AICPA Risk Analysis

28. Refer to Fact Pattern 2-3. If Java and Kaffe have a long-standing business relationship that they would like to continue, a preferred method of settling their dispute may be mediation because
- the case will be heard by a mini-jury.
 - the dispute will eventually go to trial.
 - the process is not adversarial.
 - the resolution of the dispute will be decided an expert.

ANSWER: C PAGE: 56 TYPE: N
NAT: AACSB Reflective AICPA Risk Analysis

29. Refer to Fact Pattern 2-3. Resolving the dispute between Java and Kaffe by having a neutral third party render a binding decision is one of the advantages of
- arbitration.
 - conciliation.
 - intervention.
 - mediation.

ANSWER: A PAGE: 57 TYPE: N
NAT: AACSB Reflective AICPA Risk Analysis

30. Jim files a suit against Kary. Before going to trial, the parties meet, with their attorneys to represent them, to present their dispute to a third party who is not a judge but who renders a legally binding decision. This is
- a. arbitration.
 - b. litigation.
 - c. mediation.
 - d. negotiation.

ANSWER: A PAGE: 57 TYPE: =
NAT: AACSB Reflective AICPA Critical Thinking

31. Niche Boutique Corporation and Paulina agree to resolve their dispute in arbitration. The arbitrator's decision is called
- a. a conclusion of law.
 - b. a finding of fact.
 - c. an award.
 - d. a verdict.

ANSWER: C PAGE: 57 TYPE: =
NAT: AACSB Reflective AICPA Legal

32. Transnational Corporation and UniShipping, Inc., agree to a contract that includes an arbitration clause. If a dispute arises, a court having jurisdiction may
- a. monitor any arbitration until it concludes.
 - b. order an arbitrator to rule in a particular way.
 - c. order a party to bring the dispute to court.
 - d. order a party to submit to arbitration.

ANSWER: D PAGE: 58 TYPE: N
NAT: AACSB Reflective AICPA Legal

33. In Harry's suit against Irma, the parties meet before going to trial, and each party's attorney argues the party's case before the other party. A third party renders an opinion as to how a court would likely decide the dispute. This is
- a mini-trial.
 - arbitration.
 - a summary jury trial.
 - early neutral case evaluation.

ANSWER: A PAGE: 60 TYPE: =
 NAT: AACSB Reflective AICPA Legal

34. Molly files a suit against Nick. They meet, and each party's attorney argues the party's case before a judge and jury. The jury presents an advisory verdict, after which the judge meets with the parties to encourage them to settle their dispute. This is
- court-ordered arbitration.
 - early neutral case evaluation.
 - a mini-trial.
 - a summary jury trial.

ANSWER: D PAGE: 60 TYPE: =
 NAT: AACSB Reflective AICPA Legal

35. Dick submits his claim against EZ Bid Corporation to FairSettle.com, a private, online dispute resolution forum. At any time, an appeal of the dispute to a court may be made by
- Dick only.
 - Dick or EZ Bid.
 - EZ Bid only.
 - neither Dick nor EZ Bid.

ANSWER: B PAGE: 61 TYPE: +
 NAT: AACSB Reflective AICPA Legal

ESSAY QUESTIONS

1. Ultra Trucking Corporation files a suit in a state court against Vic's Service Company (VSC), and wins. VSC appeals the court's decision, asserting that the evidence presented at trial to support Ace's claim was so scanty that no reasonable jury could have found for the plaintiff. Therefore, argues VSC, the appellate court should reverse the trial court's decision. Is the appellate court likely to reverse the trial court's findings with respect to the facts? If not, why not? What are an appellate court's options after reviewing a case?

ANSWER: An appellate court will reverse a lower court's decision on the basis of the facts if the evidence does not support the findings or if it contradicts them. Appellate courts normally defer to a judge's decision with regard to the facts of a case, however, for a number of reasons. First, trial judges routinely sit as fact finders. As a result, they develop a particular expertise in determining what kind of evidence and testimony is reliable and what kind is not. Second, trial judges and juries have the opportunity to observe witnesses and tangible evidence first hand. The appellate court sees only a cold record of the trial court proceedings and therefore cannot make the kind of judgments about the credibility of witnesses and the persuasiveness of evidence that can be gleaned only from first-hand experience. (There are also constitutional reasons for an appellate court to defer to a jury verdict. If, based on the evidence presented to a jury, a reasonable person could have come to the same decision that the jury came to, an appellate court cannot reverse the jury's decision with regard to the facts because this would, in essence, take away a person's right to a jury trial.) An appellate court's options after reviewing a case are to affirm the trial court's judgment, to reverse it in whole, to reverse it in part, to modify the decision, or to remand the case for further proceedings.

PAGES: 43 & 52–54
 NAT: AACSB Reflective

TYPE: N
 AICPA Decision Modeling

2. Delta Stores, Inc., files a suit in a state court against Eagle Computer Corporation, alleging that Eagle breached a contract to sell 500 notebook computers to Delta. During the course of the suit, Delta files a motion for judgment on the pleadings, Eagle files a motion for a directed verdict, and both parties file motions for summary judgment. When and for what purpose are each of these motions made?

ANSWER: After the pleadings have been filed, either party can file a motion for judgment on the pleadings. This motion may be used when no facts are disputed and, thus, only questions of law are at issue. The difference between this motion and a motion for summary judgment is that the party requesting the motion may support a motion for summary judgment with sworn statements and other materials; on a motion for a judgment on the pleadings, a court may consider only those facts pleaded. At the conclusion of the plaintiff's case, the defendant can file a motion for a directed verdict (federal courts use the term motion for a judgment as a matter of law), asking the court to direct a verdict for the defendant on the ground that the plaintiff has presented no evidence to justify the granting of the plaintiff's remedy. In considering the motion, the judge looks at the evidence in the light most favorable to the plaintiff and grants the motion only if there is insufficient evidence to raise an issue of fact. At the end of the defendant's case, either party can move for a directed verdict. If the only question is which laws apply to the facts in a case, either party can move for summary judgment before or during a trial. When a court considers a motion for summary judgment, it can take into account evidence outside the pleadings. The evidence may consist of sworn statements by parties or witnesses, as well as documents. A motion for summary judgment will be granted only when there are no genuine questions of fact, and the only question is a question of law.

PAGES: 47 & 50–51
NAT: AACSB Reflective

TYPE: N
AICPA Decision Modeling