Chapter 2

**Courts and Alternative**

**Dispute Resolution**

Answers to Learning Objectives/ For Review Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered**

***For Review* questions in Appendix F at the end of the text.**

**We repeat these questions and answers here as a convenience to you.**

**1A** ***What is judicial review?*** The courts can decide whether the laws or actions of the legislative and executive branches of government are constitutional. The process for making this determination is judicial review. The doctrine of judicial review was established in 1803 when the United States Supreme Court decided *Marbury v. Madison*.

**2A** ***Before a court can hear a case, it must have jurisdiction. Over what must it have jurisdiction? How are the courts applying traditional jurisdictional con­cepts to cases involving Internet transactions?*** To hear a case, a court must have jurisdiction over the person against whom the suit is brought or over the property involved in the suit. The court must also have jurisdic­tion over the subject matter. Generally, courts apply a “sliding-scale” standard to determine when it is proper to exercise jurisdiction over a defendant whose only connection with the jurisdiction is the Internet.

**3A** ***What is the difference between a trial court and an appellate court?*** A trial court is a court in which a lawsuit begins, a trial takes place, and evidence is presented. An appellate court reviews the rulings of trial court, on appeal from a judgment or order of the lower court.

**4A** ***What is discovery, and how does electronic discovery differ from traditional discovery?*** Discovery is the process of obtaining information and evidence about a case from the other party or third parties. Discovery entails gaining access to witnesses, documents, records, and other types of evidence. Electronic discovery differs in its subject (e-media rather than traditional sources of information).

**5A** ***What are three alternative methods of resolving disputes?*** The traditional method of resolving a legal dispute is through litigation.Alternative methods include negotiation, mediation, and arbitration. In negotiation, the parties attempt to settle their dispute informally without the involvement of a third party acting as mediator. In mediation, the parties attempt to come to an agreement with the assistance of a neutral third party, a mediator, who does not, however, make a decision in the dispute. In arbitration, a neutral third party or a panel of experts hears a dispute andrenders a decision.

Answers to Critical Thinking Questions

at the Ends of the Cases

**Case 2.1—For Critical Analysis—Legal Environment Consideration**

***What impact will the court’s decision most likely have on the parties to the dispute?*** Granting a motion to dismiss in a case dismisses all or part of the suit without necessarily resolving the dispute. In this case, for example, the effect of the court’s granting the appellants’ motion to dismiss was a ruling that the venue for any action relating to a controversy under the parties’ agreement “shall be the State of Illinois.” This means that the appropriate forum for resolving the parties’ dispute is a court in Illinois (not in Florida, where this suit was filed). When a court grants a motion to dismiss, the party against whom it is entered is given time to file an amended complaint. Thus, here, the appellees may have an opportunity to amend their complaint. Ultimately, however, it is not likely that this suit will continue in a Florida court. And the appellees’ vigorous objection to the motion suggests that Illinois is not a convenient location for these parties. This suggests that they may seek to resolve the dispute through means other than litigation—negotiation, mediation, or some other form of alternative dispute resolution—or avoid resolving the dispute at all.

**Case 2.2—For Critical Analysis—Ethical Consideration**

***Does Winstead have an ethical duty to comply with the defendants’ discovery request? Discuss.*** Yes, Winstead has an ethical duty to comply with the defendants’ discovery request. At a minimum, there is a legal duty to comply with discovery requests. A court can sanction a party who does not comply. Compliance with the law is the least an ethical businessperson can do.

**Case 2.3—For Critical Analysis—Legal Consideration**

***How would business be affected if each state could pass a statute, like the one in Texas, allowing parties to void out-of-state arbitrations?*** If all states could pass statutes like the one in Texas, many parties would probably be less inclined to transact business. An arbitration provision allows a party to limit the burden and expense of settling any disputes. If another party could freely void such an agreement, there would be a greater risk of arbitration in an inconvenient forum, costly formal litigation, or both. That risk increases the perceived costs of doing business, making the business opportunity less attractive. Thus, many parties may decline to enter contracts without enforceable arbitration provisions.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Federal jurisdiction***

The federal district court can exercise jurisdiction in this case because the case involves diversity of citizenship. Diversity jurisdiction requires that the plaintiff and defendant be from different states and that the dollar amount of the controversy exceed $75,000. Here, Garner resides in Illinois, and Foreman and his manager live in Texas. Because the dispute involved the promotion of a series of boxing matches with George Foreman, the amount in controversy likely exceeded the required threshold amount.

**2A.** ***Original or appellate jurisdiction***

Original jurisdiction, because the case was initiated in that court and that is where the trial will take place. Courts having original jurisdiction are courts of the first instance, or trial courts—that is courts in which lawsuits begin, trials take place, and evidence is presented. In the federal court system, the district courts are the trial courts, so the federal district court has original jurisdiction.

**3A.** ***Jurisdiction in Illinois***

No, because the defendants lacked minimum contacts with the state of Illinois. Because the defendants were located out of the state, the court would have to determine whether they had sufficient contacts with the state for the Illinois to exercise jurisdiction based on a long arm statute. Here, the defendants never came to Illinois, and the contract that they are alleged to have breached was not formed in Illinois. Thus, it is unlikely that an Illinois state court would find that sufficient minimum contacts existed to exercise jurisdiction.

**4A.** ***Jurisdiction in Nevada***

Yes, because the defendants met with Garner and formed a contract in the state of Nevada. A state can exercise jurisdiction over out-of-state defendants under a long arm statute if the defendants had sufficient contacts with the state. Here, the parties met and negotiated their contract in Nevada, and a court would likely hold that these activities were sufficient to justify a Nevada court’s exercising personal jurisdiction.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***In this age of the Internet, when people communicate via e-mail, tweets, Facebook, and Skype, is the concept of jurisdiction losing its meaning?*** Many believe that yes, the idea of determining jurisdiction based on individuals’ and companies’ physical locations no longer has much meaning. Increasingly, contracts are formed via online communications. Does it matter where one of the parties has a physical presence? Does it matter where the e-mail server or Web page server is located? Probably not.

In contrast, in one sense, jurisdiction still has to be decided when conflicts arise. Slowly, but ever so surely, courts are developing rules to determine where jurisdiction lies when one or both parties used online systems to sell or buy goods or services. In the final analysis, a specific court in a specific physical location has to try each case.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***Sue contracts with Tom to deliver a quantity of computers to Sue’s Computer Store. They disagree over the amount, the delivery date, the price, and the quality. Sue files a suit against Tom in a state court. Their state requires that their dispute be submitted to mediation or nonbinding arbitration. If the dis­pute is not resolved, or if either party disagrees with the decision of the mediator or arbitrator, will a court hear the case? Explain.*** Yes. Submission of the dispute to mediation or nonbinding arbitration is mandatory, but compliance with the decision of the mediator or arbitrator is voluntary.

**2A.** ***At the trial, after Sue calls her witnesses, offers her evidence, and otherwise presents her side of the case, Tom has at least two choices between courses of actions. Tom can call his first witness. What else might he do?*** Tom could file a motion for a directed verdict. This motion asks the judge to direct a verdict for Tom on the ground that Sue presented no evidence that would justify granting Jan relief. The judge grants the motion if there is insufficient evidence to raise an issue of fact.

Answers to Business Scenarios and Case Problems

**at the End of the Chapter**

**2–1A *Standing to sue***

This problem concerns standing to sue. As you read in the chapter, to have standing to sue, a party must have a legally protected, tangible interest at stake. The party must show that he or she has been injured, or is likely to be injured, by the actions of the party that he or she seeks to sue. In this problem, the issue is whether the Turtons had been injured, or were likely to be injured, by the county’s landfill operations. Clearly, one could argue that the injuries that the Turtons complained of directly resulted from the county’s violations of environmental laws while operating the landfill. The Turtons lived directly across from the landfill, and they were experiencing the spe­cific types of harms (fires, scavenger problems, groundwater contamination) that those laws were enacted to address. Thus, the Turtons would have standing to bring their suit.

**2–2A** ***Jurisdiction***

Marya can bring suit in all three courts. The trucking firm did business in Florida, and the accident occurred there. Thus, the state of Florida would have jurisdiction over the defendant. Because the firm was headquartered in Georgia and had its principal place of business in that state, Marya could also sue in a Georgia court. Finally, because the amount in controversy exceeds $75,000, the suit could be brought in federal court on the basis of diversity of citizenship.

**2–3A** ***Discovery***

Under the work-product rule, attorneys are allowed to protect information that they have gathered as a result of their own skill and diligence. For example, an attorney for a party involved in an auto accident can go out to the scene of the accident and observe the fact that there is a stop sign missing without being under any obligation to divulge such information to his opponent in the lawsuit. Similarly, an attorney who discovers a recently decided case deci­sion supporting his or her theory is under no obligation to share this discovery with the opposing attorney. If attorneys had to share everything, they would be less inclined to expend efforts on behalf of their clients because, in essence, they would be working for both sides at once.

**2–4A *Venue***

The purpose behind most venue statutes is to ensure that a defendant is not “hailed into a remote district, having no real relationship to the dispute.” The events in dispute have no connection to Minnesota. The Court stated: “Looked at through the lens of practicality—which is, after all, what [the venue statute] is all about—Nestlé’s motion can really be distilled to a simple question: does it make sense to compel litigation in Minnesota when this state bears no relationship to the parties or the underlying events?” The court answered no to this simple question. The plaintiff resides in South Carolina, her daughter’s injuries occurred there, and all of her medical treatment was provided (and continues to be provided) in that state. South Carolina is the appropriate venue for this litigation against Nestlé to proceed.

**2–5A Spotlight on National Football—*Arbitration***

An arbitrator’s award generally is the final word on the matter. A court’s review of an arbitrator’s decision is extremely limited in scope, unlike an appellate court’s review of a lower court’s decision. A court will set aside an award only if the arbitrator’s conduct or “bad faith” substantially prejudiced the rights of one of the parties, if the award violates an established public policy, or if the arbitrator exceeded her or his powers.

In this problem, and in the actual case on which this problem is based, the NFLPA argued that the award was contrary to public policy because it required Matthews to forfeit the right to seek workers’ compensation under California law. The court rejected this argument, because under the arbitrator’s award Matthews could still seek workers’ compensation under Tennessee law. Thus, the arbitration award was not clearly contrary to public policy.

**2–6A *Minimum contacts***

No. This statement alone was insufficient to establish that Illinois did not have jurisdiction over the defendant. The court ruled that Med-Express failed to introduce factual evidence proving that the Illinois trial court lacked personal jurisdiction over Med-Express. Med-Express had merely recited that it was a North Carolina corporation and did not have minimum contacts with Illinois. Med-Express sent a letter to this effect to the clerk of Cook County, Illinois, and to the trial court judge. But that was not enough. When a judgment of a court from another state is challenged on the grounds of personal jurisdiction, there is a presumption that the court issuing the judgment had jurisdiction until the contrary is shown. It was not.

**2–7A *Arbitration***

Yes, a court can set aside this order. The parties to an arbitration proceeding can appeal an arbitrator’s decision, but court’s review of the decision may be more restricted in scope than an appellate court’s review of a trial court’s decision. In fact, the arbitrator’s decision is usually the final word on a matter. A court will set aside an award if the arbitrator exceeded her or his powers—that is, arbitrated issues that the parties did not agree to submit to arbitration.

In this problem, Horton discharged its employee de la Garza, whose union appealed the discharge to arbitration. Under the parties’ arbitration agreement, the arbitrator was limited to determining whether the rule was reasonable and whether the employee violated it. The arbitrator found that de la Garza had violated a reasonable safety rule, but “was not totally convinced” that the employer should have treated the violation more seriously than other rule violations and ordered de la Garza reinstated. This order exceeded the arbitrator’s authority under the parties’ agreement. This was a ground for setting aside the order.

In the actual case on which this problem is based, on the reasoning stated here, the U.S. Court of Appeals for the Fifth Circuit reached the same conclusion.

**2–8A Case Problem with Sample Answer—*Discovery***

Yes, the items that were deleted from a Facebook page can be recovered. Normally, a party must hire an expert to recover material in an electronic format, and this can be time consuming and expensive.

Electronic evidence, or e-evidence, consists of all computer-generated or electronically recorded information, such as posts on Facebook and other social media sites. The effect that e-evidence can have in a case depends on its relevance and what it reveals. In the facts presented in this problem, Isaiah should be sanctioned—he should be required to cover Allied’s cost to hire the recovery expert and attorney’s fees to confront the misconduct. In a jury trial, the court might also instruct the jury to presume that any missing items are harmful to Isaiah’s case. If all of the material is retrieved and presented at the trial, any prejudice to Allied’s case might thereby be mitigated. If not, of course, the court might go so far as to order a new trial.

In the actual case on which this problem is based, Allied hired an expert, who determined that Isaiah had in fact removed some photos and other items from his Facebook page. After the expert testified about the missing material, Isaiah provided Allied with all of it, including the photos that he had deleted. Allied sought a retrial, but the court instead reduced the amount of Isaiah’s damages by the amount that it cost Allied to address his “misconduct.”

**2–9A *Electronic filing***

No. Faden was not sufficiently diligent in ensuring a timely filing. Diligence in this context requires carefulness and persistence. Excusable delay might be evidenced by proof of circumstances beyond a party’s control that prevents a timely filing.

From the facts as stated, it appears that Faden attempted to file her appeal only at the end of the relevant period when the Board’s e-filing system was down. But there is no indication that anything prevented her from e-filing at a time when the Board’s system was not down, or from mailing or faxing her appeal at any time, before the deadline. Thus, Faden appears to have been neither timely nor diligent in filing her appeal before the deadline.

In the actual case on which this problem is based, the Merit Systems Protection Board dismissed Faden’s appeal. The board found that she was not reasonably diligent in ensuring timely filing. On her further appeal, the U.S. Court of Appeals for the Federal Circuit affirmed.

**2–10A A Question of Ethics—*Agreement to arbitrate***

**1.** This is very common, as many hospitals and other health-care provides have arbitration agreements in their contracts for services. There was a valid contract here. It is presumed in valid contracts that arbitration clauses will be upheld unless there is a violation of public policy. The provision of medical care is much like the provision of other services in this regard. There was not evi­dence of fraud or pressure in the inclusion of the arbitration agreement. Of course there is concern about mistreatment of patients, but there is no reason to believe that arbitration will not provide a professional review of the evidence of what transpired in this situation. Arbitration is a less of a lottery that litigation can be, as there are very few gigantic arbitration awards, but there is no evidence of systematic discrimination against plaintiffs in arbitration compared to litigation, so there may not be a major ethical issue.

**2.** McDaniel had the legal capacity to sign on behalf of her mother. Someone had to do that because she lacked mental capacity. So long as in such situations the contracts do not contain terms that place the patient at a greater disadvantage than would be the case if the patient had mental capacity, there is not particular reason to treat the matter any differently.