

Chapter 02

The U.S. Legal System and Alternative Dispute Resolution

True / False Questions

1. A court must have several types of jurisdiction to decide any particular case.

True False

2. *In rem* jurisdiction references jurisdiction over a person subject to an order of guardianship.

True False

3. Under federal statutory law Internet transactions cannot be the basis for a finding of *in personam* jurisdiction.

True False

4. Subject-matter jurisdiction is a court's power to hear certain kinds of cases.

True False

5. State courts have the power to hear all cases not within the exclusive jurisdiction of the federal court system.

True False

6. Concurrent federal jurisdiction means that both state and federal courts have jurisdiction over a case.

True False

7. Once a case is in the proper court system, venue determines which trial court in the system will hear the case.

True False

8. A person who has the legal right to bring an action in court has standing.

True False

9. Under our system of justice, courts may issue advisory opinions.

True False

10. In some cases, the U.S. Supreme Court functions as a trial court.

True False

11. Intermediate courts of appeal exist in all states.

True False

12. The defendant responds to a complaint with an answer.

True False

13. A defendant who believes that he or she has a claim against the plaintiff would include a counterclaim with the answer.

True False

14. A reply is an answer to a counterclaim.

True False

15. A party only has a limited number of challenges for cause in jury selection.

True False

16. Peremptory challenges in jury selection may not be racially based.

True False

17. Only one party may appeal from a final judgment.

True False

18. If an appellate judge agrees with the majority's decision but for different reasons, the judge may write a "concurring" opinion.

True False

19. On average, the U.S. Supreme Court hears 300 cases a year.

True False

20. The term ADR refers to the resolution of legal disputes through methods other than litigation.

True False

21. Courts are generally critical and unsupportive of ADR methods.

True False

22. A person must be a lawyer in order to serve as an arbitrator.

True False

23. An arbitrator is more likely to issue a compromise decision than a judge.

True False

24. Med-arb is a type of ADR method.

True False

25. Early neutral case evaluation provides a binding ruling by a neutral.

True False

Multiple Choice Questions

26. Which of the following do appellate courts primarily handle?

- A. Questions of law
- B. Questions of fact
- C. Questions of law and fact
- D. Cases when they initially enter the legal system
- E. Questions of law and fact, and also cases when they initially enter the legal system

27. Which of the following is a question of fact?

- A. Whether a vehicle ran a traffic light
- B. Whether premeditation is necessary for a first degree murder conviction
- C. Whether speech is protected by the First Amendment
- D. What is necessary for service of process
- E. Whether a vehicle ran a traffic light and also what is necessary for service of process

28. A defendant in a lawsuit is to be provided by the plaintiff with a copy of the complaint. That process is called _____.

- A. Summons issuance
- B. Service of process
- C. Service delivery
- D. Subpoena delivery
- E. *In personam* service

29. Laws which enable a court to serve a defendant outside the state as long as the defendant has sufficient minimum contacts within the state and it seems fair to assert jurisdiction are called _____.

- A. Minimum contact statutes
- B. Significant contact statutes
- C. Long-arm statutes
- D. *In rem* statutes
- E. There are no such laws

30. Adult siblings, John, Sam, and Andy, are in disagreement over how to split the proceeds of a piece of land left to them by a rich uncle who recently died. The uncle was a resident of Georgia, and the land is in Georgia; but neither John, Sam, nor Andy live there. Which of the following is true regarding jurisdiction over the dispute?

- A. A court in Georgia would not have jurisdiction. The case would have to be brought in a state in which at least one of the brothers lives.
- B. A court in Georgia would have *in rem* jurisdiction over the dispute.
- C. A court in Georgia would have *in personam* jurisdiction over the dispute.
- D. A court in Georgia would have jurisdiction over the dispute only if all brothers signed a consent form agreeing to bring the case in Georgia.
- E. A court in Georgia would have original jurisdiction, but appellate jurisdiction would be in a state in which at least one of the brothers lives.

31. Susan, a resident of Illinois, ran a traffic light while traveling in Michigan and did significant damage to Paul's car. Paul obtains a judgment against her, but Susan has no insurance and no assets except for a farm in Alabama. Which of the following is true?

- A. A court in Michigan can exercise *in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- B. A court in Illinois can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go to Paul for his trouble.
- C. A court in Alabama can exercise *in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- D. A court in Alabama can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- E. A court in Alabama can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go to Paul for his trouble.

32. Which of the following is true regarding state and federal court jurisdiction?

- A. State courts begin with exclusive jurisdiction until a federal court intervenes.
- B. In all cases state courts have concurrent jurisdiction with the federal courts.
- C. Federal courts begin with exclusive jurisdiction until a state court intervenes.
- D. In all cases state courts have exclusive jurisdiction unless the state's supreme court grants jurisdiction to a federal court in the state.
- E. In some cases, state courts have exclusive jurisdiction; in some cases, state courts have concurrent jurisdiction with the federal courts; and state courts also have the power to hear all cases not within the exclusive jurisdiction of the federal court system.

33. Which of the following is true regarding federal jurisdiction?

- A. There is no exclusive federal jurisdiction in civil matters.
- B. If a case falls within federal jurisdiction, it may not also fall within state jurisdiction.
- C. Some cases fall within both federal jurisdiction and state jurisdiction, but there is no exclusive federal court jurisdiction.
- D. Some cases fall within both federal jurisdiction and state jurisdiction, but that only occurs in criminal matters.
- E. Some cases fall within both federal jurisdiction and state jurisdiction, but the federal court system has exclusive jurisdiction over some cases.

34. Over which of the following does the federal court system have exclusive jurisdiction?

- A. Admiralty cases and bankruptcy cases, but not federal criminal prosecutions
- B. Admiralty cases and federal criminal cases, but not bankruptcy cases.
- C. Federal criminal prosecutions and bankruptcy cases, but not admiralty cases.
- D. Diversity cases only
- E. Admiralty cases, bankruptcy cases, and federal criminal prosecutions

35. Which of the following is needed for diversity-of-citizenship?

- A. Only that the plaintiff not reside in the same state as the defendant.
- B. Only that the plaintiff reside in the same state as the defendant.
- C. Only that the controversy concern an amount in excess of \$75,000.
- D. Only that the controversy concern an amount in excess of \$100,000.
- E. Both that the plaintiff and the defendant reside in different states and that the controversy concerns an amount in excess of \$75,000.

36. For purposes of diversity-of-citizenship, where does a corporation reside?

- A. The state of incorporation only.
- B. The state in which the corporation has its principal place of business only.
- C. Both the state in which the corporation has its principal place of business and the state of incorporation.
- D. Any state in which the corporation does business.
- E. Any state in which the corporation has done business within the last five years.

37. Assume a plaintiff files a case in state court that could also have been filed in federal court. Does the defendant have any choice in the matter?

- A. The defendant has no choice, and the case will stay in state court.
- B. The defendant can have the case moved to federal court only if federal question jurisdiction is involved.
- C. The defendant can have the case moved to federal court only if the state trial court judge grants permission.
- D. The defendant can have the case moved to federal court only if the plaintiff's filing expenses in state court are paid by the defendant.
- E. The defendant has a right to remove the case to federal court.

38. Which of the following is typically an appropriate venue in a lawsuit?

- A. Only the trial court where the defendant resides.
- B. Only the trial court where the plaintiff resides.
- C. Only the location where the dispute occurred if the lawsuit focuses on a particular incident.
- D. Both the trial court where the defendant resides and the trial court where the plaintiff resides.
- E. The trial court where the defendant resides and also the location where the dispute occurred if the lawsuit focuses on a particular incident.

39. Billy knows that he can bring his case against Bob in a state court in Tennessee. He is unsure, however, of which county in which to proceed. Which of the following address the proper county?

- A. *In personam* jurisdiction
- B. Venue
- C. Subject-matter jurisdiction
- D. Diversity jurisdiction
- E. Long-arm jurisdiction

40. Assume you know that Robert has told a lie about a friend of yours, Yolanda. You tell Yolanda that she should sue for defamation, but she has no interest in that. Can you sue on behalf of Yolanda?

- A. Yes, so long as you give any money received to Yolanda.
- B. Yes, but only if Yolanda signs a permission slip at the court.
- C. Yes, but only if the dispute is for an amount under \$25,000.
- D. No, because there is no venue.
- E. No, because you have no standing.

41. Bob sued Jane over a motor vehicle accident. Bob and Jane settled the case prior to trial for \$1,000. The lawsuit is now _____.

- A. Ripe
- B. Moot
- C. Cased
- D. Standed
- E. Remanded

42. What are the trial courts in the federal court system called?

- A. U.S. district courts
- B. U.S. circuit courts
- C. Federal circuit courts
- D. Federal jurisdictional courts
- E. Preemptory courts

43. How many circuits does the U.C. Courts of Appeal have?

- A. 6
- B. 50
- C. 12
- D. 10
- E. 13

44. Assuming there are no vacancies, how many U.S. Supreme Court justices are there?

- A. 9
- B. 5
- C. 15
- D. 8
- E. 7

45. Which of the following is true of the Supreme Court in Japan?

- A. The Japanese system utilizes a well developed jury system.
- B. The Japanese discovery process is similar to that in the U.S.
- C. The Japanese legal system has a distinct pretrial stage.
- D. At the first meeting between the parties, discovery is conducted.
- E. None of these

46. Which of the following is true regarding state courts of appeal?

- A. States only have an intermediate court of appeals if there is no state supreme court.
- B. In states that do not have an intermediate court of appeal, appeals go to the federal court of appeals.
- C. In states that do not have an intermediate court of appeal, there is no right of appeal to any court.
- D. All states in this country have intermediate courts of appeal.
- E. Not all states have intermediate courts of appeal; and in those states, appeals go to the state court of last resort.

47. The _____ requirement ensures that courts do not render advisory opinions.

- A. Moistness
- B. Subject-matter jurisdiction
- C. Case or controversy
- D. *In rem*
- E. *In persona*

48. A _____ is a judgment in favor of the plaintiff that occurs when the defendant fails to answer the complaint and the plaintiff's complaint alleges facts that would support such a judgment.

- A. Default judgment
- B. Automatic judgment
- C. Delineated response judgment
- D. Dismissal
- E. Pleading judgment

49. A defendant uses a[n] _____ when her or his answer admits that the facts contained in the complaint are accurate but also includes additional facts that justify the defendant's actions and provide a legally sound reason to deny relief to the plaintiff.

- A. Secondary answer
- B. Pleading defense
- C. Affirmative defense
- D. Formal answer
- E. Personam answer

50. The court may properly grant a _____ if after reviewing the pleadings, the judge determines that the only reasonable decision is in favor of the moving party.

- A. Motion for judgment on the pleadings
- B. Motion for summary judgment
- C. Motion for sanctions
- D. Motion for discovery
- E. Motion for production

51. Which of the following are tools of discovery?

- A. Interrogatories
- B. Depositions
- C. Summary motions
- D. Both interrogatories and depositions, but not summary motions
- E. Interrogatories, depositions, and summary motions

52. Which of the following are written questions that one party sends to another to answer under oath?

- A. Interrogatories
- B. Depositions
- C. Inquiries
- D. Subpoenas
- E. Sworn assertions

53. At a[n] _____ attorneys examine a witness under oath with a court reporter present.

- A. Deposition
- B. Interrogatory
- C. Inquiry
- D. Pre-trial conference
- E. Pre-trial mediation

54. Billy, a witness to a motor vehicle accident, is gravely ill with cancer. Pat, who was injured in the accident, would like to preserve his testimony for trial in case he dies before the trial date. What should Pat do?

- A. Send interrogatories to Billy.
- B. Take Billy's deposition.
- C. Send a request to admit to Billy that the accident was the defendant's fault.
- D. Have a conference with the judge and Billy.
- E. There is nothing she can do.

55. Amber says at trial that Gwen told her that she saw Tom run the traffic light and hit Christy's car. On what basis is Amber's testimony objectionable?

- A. It is not objectionable.
- B. Hearsay
- C. Comprehension
- D. Preponderation
- E. Familiarity

56. Attorney Candy represents plaintiff Ann who is suing her neighbor for nuisance claiming that the neighbor plays music too late at night. Candy puts Ann on the stand and asks her questions. Candy is involved in which of the following?

- A. Direct examination
- B. Cross-examination
- C. Judicial examination
- D. Specific questioning
- E. Redirect questioning

57. Which of the following is a type of ADR?

- A. Consultation
- B. Mediation
- C. Case argument
- D. Case analysis
- E. Focus grouping

58. Which of the following is accurate regarding the speed and cost of ADR?

- A. It is usually faster and cheaper.
- B. It is usually faster but more expensive.
- C. It is usually slower and more expensive.
- D. It is usually slower but cheaper.
- E. No studies have known, so the answer is unknown.

59. Which of the following is an extension of negotiation?

- A. Arbitration
- B. Initials
- C. Neutral case evaluations
- D. Mediation
- E. Private trials

60. Which of the following is an advantage of mediation?

- A. Only that it helps disputing parties preserve their relationships.
- B. Only that parties to mediation have a high level of autonomy.
- C. Only that the mediator solves the dispute if the parties are unable to do so.
- D. It helps disputing parties preserve their relationships, and also parties to mediation have a high level of autonomy.
- E. It helps disputing parties preserve their relationships, parties to mediation have a high level of autonomy, and the mediator solves the dispute if the parties are unable to do so.

61. The arbitrator typically provides a decision within _____ days of an arbitration hearing.

- A. 10
- B. 25
- C. 30
- D. 90
- E. 120

62. When is an arbitrator's decision called an "award"?

- A. Always
- B. Only if one party completely wins and there is no split decision.
- C. Never
- D. Only if a money award is involved
- E. Only if both parties had lawyers. That terminology makes it easier for the lawyers to be paid.

63. Which of the following are reasons that an arbitration award may be set aside under the Federal Arbitration Act?

- A. The arbitrator failed to make a final and definite award.
- B. The award was the basis of fraud.
- C. The arbitrator displayed bias.
- D. The arbitrator failed to make a final and definite award, the award was the basis of fraud, or the arbitrator displayed bias.
- E. None of these. There is no Federal Arbitration Act.

64. Which of the following is[are] positive about arbitration?

- A. Arbitrators are assigned so parties do not have to pick them.
- B. Arbitration is less expensive generally than litigation.
- C. Arbitrators are bound by the same rules as judges in applying precedent.
- D. Arbitrators are assigned so parties do not have to pick them, and arbitration is generally less expensive than litigation.
- E. Arbitrators are assigned so parties do not have to pick them, arbitration is generally less expensive than litigation, and arbitrators are bound by the same rules as judges in applying precedent.

65. What is a provision in a contract mandating that all disputes arising under the contract be settled by arbitration called?

- A. A binding arbitration clause
- B. A submission agreement
- C. A suggested arbitration section
- D. A nonbinding ADR section
- E. A binding mediatory clause

66. What type of dispute resolution process is med-arb?

- A. A process in which the parties agree to start out in mediation and, if the mediation is unsuccessful on one or more points, to move on to arbitration.
- B. A process in which the parties agree to start out in arbitration and, if the arbitration is unsuccessful on one or more points, move on to court-annexed ADR.
- C. A process in which the parties agree to start in mediation and move to litigation if the mediation is unsuccessful.
- D. A process in which the parties agree to start in arbitration and move to litigation if the mediation is unsuccessful.
- E. None of these are contained within the umbrella of med-arb.

67. What is a summary jury trial?

- A. An abbreviated trial that leads to a nonbinding jury verdict.
- B. An unabbreviated trial that leads to a binding jury verdict.
- C. An unabbreviated trial that leads to a nonbinding jury verdict.
- D. An abbreviated trial in which only a few witnesses are called to the stand.
- E. Both an abbreviated trial that leads to a nonbinding jury verdict and an abbreviated trial in which only a few witnesses are called to the stand.

68. In which of the following do parties select a neutral third party and explain their respective positions to the neutral, who then evaluates the strengths and weaknesses of the case?

- A. Summary jury trial
- B. Minitrial
- C. Early neutral case evaluation
- D. Private trials
- E. Neutral submission

69. Which of the following is an ADR method in which a referee is selected and paid by the disputing parties to offer a legally binding judgment in a dispute?

- A. Summary jury trial
- B. Minitrial
- C. Early neutral case evaluation
- D. Private trials
- E. Neutral submission

70. Which of the following is the supreme court of appeal in England?

- A. The House of Lords
- B. The Crown Court
- C. The Supreme Court
- D. The High Court
- E. The Queen's Bench

71. Which of the following did the U.S. Supreme Court rule in *Hertz Corp. v. Friend* as the appropriate test for determining a corporation's principle place of business for purposes of diversity jurisdiction?

- A. The "predominance of business" activity test
- B. The "nerve center" test
- C. The "general business activities" test
- D. The "primary business" test
- E. The "profit maximization" test

72. Reference - Revenge. Jane, a first year law student, while walking to school in inclement weather, accidentally slipped on ice knocking down Greg, another first year law student, breaking his glasses. He was very angry with Jane and let the air out of one of her car tires. Greg also decided to sue Jane for negligence, claiming as damages \$300 for his broken glasses. He decided that he already knew all about the law and did not need a lawyer. Greg sued Jane in state court. Jane, in the same lawsuit, brought an action against Greg for letting the air out of her tire. At trial in state court, Jane told the judge that a friend, Susie, told her that she saw Greg let the air out of Jane's tire. The judge disallowed Jane's testimony on that issue. Susie, however, who was in the courtroom also came and testified to that effect. The state court judge ruled in favor of Susie. Greg said that he was not giving up and that he would seek double damages on appeal in federal court. Jane and Greg live in different states when not attending school. After trial, Jane reported Greg's actions in letting the air out of her tire to the police who said that they would proceed with a criminal action against Greg. Jane's action against Greg for the tire is called a[n] _____.

- A. Counterclaim
- B. Cross-Claim
- C. Third party claim
- D. Discovery claim
- E. Service claim

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- A. No, the judge was wrong and should have considered that testimony.
- B. Yes, the judge was correct to disallow the testimony because it involved a possible criminal action.
- C. Yes, the judge was correct to disallow the testimony because it was hearsay.
- D. Yes, the judge was correct to disallow the testimony because Susie's testimony was better evidence and she was in the courtroom.
- E. Yes, the judge was correct to disallow the testimony because it was offered by a defendant, not an independent witness.

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- A. He should tell Greg that a federal appeal looks promising and that he will be glad to represent Greg for an hourly rate of \$400.
- B. He should tell Greg that the federal appeal looks good only if Greg can get Jane to admit she was negligent.
- C. He should tell Greg that the federal appeal looks good only if Susie does not come to testify in person.
- D. He should tell Greg that the federal appeal is not possible unless Greg first gets the trial court judge to certify the case to federal court.
- E. He should tell Greg to forget about a federal court appeal because an appeal from a state trial court would not be transferred to federal court.

75. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. In choosing the jury, Linda and Sam were engaged in _____.

- A. *Voir dire*
- B. Jury analysis
- C. Jury review
- D. *Ven dere*
- E. Shadowing

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- A. Peremptory challenge
- B. Challenge for cause
- C. Stipulated challenge
- D. Fairness challenge
- E. Approved challenge

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- A. Direct statements
- B. Closing statements
- C. Jury statements
- D. Influential statements
- E. Opening statements

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- A. Counter-examination
- B. Analysis examination
- C. Trick examination
- D. Direct examination
- E. Cross-examination

80. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Regardless of what court is involved, can Jim act as plaintiff for the employees?

- A. Yes, so long as he gets permission slips from them.
- B. Yes, so long as they file no objection.
- C. Yes, so long as he gives any money he receives to them.
- D. No, because he lacks standing.
- E. No, because venue is lacking.

81. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Will an appellate court initially hear Jim's case deciding issues such as whether he has a claim and can act as a plaintiff?

- A. Yes, so long as a state trial court judge approves and certifies the case for the appellate court without holding a trial first.
- B. Yes, but only if Jim can prove that he would have had to wait at least a year for a trial at the trial court level.
- C. No, because Jim is required to first file the case in the appropriate trial court.
- D. No, but only because Jim is not employed at the defending company.
- E. No, but only because Jim did not have a lawyer.

82. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Will Jim get a jury at the appellate court level?

- A. Only if the opposing party agrees.
- B. In some states but not in others.
- C. Only if he is in federal court
- D. Only if he is in state court
- E. No

83. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. What is the effect of the arbitration agreement on Jenny's ability to file an action in court?

- A. The arbitration agreement would not affect Jenny's ability to file a court action in a sexual harassment case although it would bar her right to file a court action in other types of cases.
- B. The arbitration agreement would completely bar Jenny's ability to file a court action.
- C. By law the arbitration agreement may only delay for 60 days Jenny's ability to file a court action.
- D. By law the arbitration agreement may only delay for 6 months Jenny's ability to file a court action.
- E. More information is needed regarding the provisions of the arbitration agreement before it can be determined if it would bar an action in court.

84. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. Can Brice obtain information from the previous mediators regarding what occurred at the previous mediations?

- A. Yes, but only if a court reporter was present.
- B. He can get copies of any written documents reviewed but not accounts of statements.
- C. He can get accounts of statements but not copies of written documents.
- D. He can get the information only if the mediators in the other cases want to cooperate.
- E. He cannot get from the mediator copies of documents or accounts of what was said because of the confidential nature of mediation proceedings.

85. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. Did Brice correctly tell Jenny that mediation is nearly the same as arbitration?

- A. No, he was incorrect. There are major differences between mediation and arbitration.
- B. He was correct because the only difference between the two involves the length of the proceeding.
- C. He was correct because the only difference between the two involves cost.
- D. He was correct because the only difference between the two involves whether a court reporter is present.
- E. He was correct because the only difference between the two involves the type of evidence that may be considered.

Essay Questions

86. Define the term "*in personam*" jurisdiction, discuss where corporations are generally subject to that type of jurisdiction, and discuss long-arm jurisdiction.

87. Alice, a resident of Michigan, claims that Pet Food Company Inc. put out some dog food that made her dog, Champ, sick. Champ is a prize winning poodle. He survived the pet food fiasco but only after traveling to a veterinarian in Florida specializing in poodles and having two very expensive surgeries. Additionally, his ability to sire has been impaired, and Alice will have no more breeding fees from Champ. Her damages are \$80,000. Pet Food Company Inc., is incorporated in Delaware, with its principal place of business in Michigan. Alice asks you whether she can sue in federal court. What would you tell her and why?

88. Identify the items that should appear in a complaint.

89. Cindy ran over Hank in her company parking lot breaking his leg. That happened because, without warning, Cindy's brakes failed. Hank was out of work as a bookkeeper for one week, but otherwise recovered without incident. Hank sued Cindy for one million dollars for his injuries. Cindy decides to do nothing in response to the lawsuit because she sees no way that she can win. Is she right? Why or why not? What would you suggest that she do in the civil litigation? Why is it important that Cindy proceed immediately at this point in the litigation?

90. Cindy who was riding her new bicycle accidentally ran over jogger Bruce's foot. He sues. Cindy is suspicious that he is not hurt as badly as he claims. What would Cindy want to know for trial, and how could she and her lawyer find out? Fully discuss and explain the discovery process and methods to obtain information.

91. According to the text, what are four advantages of ADR over traditional litigation?

92. How are arbitrations similar and dissimilar to a court trial?

93. According to the text, what are three criticisms of arbitration when compared to traditional litigation?

94. Jackie is hiring Ron to do clean up and maintenance as an independent contractor for her building which has several tenants. She is aware that Ron has sued some previous building owners. He does a good job, however, and she would like to hire him. Ron has agreed to sign an arbitration agreement. How should Jackie structure the agreement so that it will be enforced?

95. Cindy and Clowie have a dispute regarding ownership of a dog, Rascal. Cindy removed Rascal's tags in order to give him a bath. Knowing what was coming, Rascal made a run for it and ended up at Clowie's home down the street. When Cindy saw Clowie walking Rascal, she demanded his return. Clowie refused. A lawyer in the neighborhood suggested either an early neutral case evaluation or a mediation in an attempt to resolve the feud. Describe mediation and neutral case evaluation. Which would you suggest and why?

Chapter 02 The U.S. Legal System and Alternative Dispute Resolution

Answer Key

True / False Questions

1. A court must have several types of jurisdiction to decide any particular case.
(p. 17)

TRUE

A court must have several types of jurisdiction to decide any particular case.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

2. *In rem* jurisdiction references jurisdiction over a person subject to an order of guardianship.
(p. 18)

FALSE

In rem jurisdiction involves the power of a court over the property or status of an out-of-state defendant located within the court's jurisdiction area.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

3. Under federal statutory law Internet transactions cannot be the basis for a finding of *in personam* jurisdiction.
(p. 20)

FALSE

A federal district court established a "sliding-scale" standard for determining whether a business with Internet connections satisfies the minimum-contacts standard.

AACSB: Technology
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

4. Subject-matter jurisdiction is a court's power to hear certain kinds of cases.
(p. 18)

TRUE

Subject-matter jurisdiction is a court's power to hear certain kinds of cases.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

5. State courts have the power to hear all cases not within the exclusive jurisdiction of the federal court system.
(p. 20)

TRUE

State courts have the power to hear all cases not within the exclusive jurisdiction of the federal court system.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

6. Concurrent federal jurisdiction means that both state and federal courts have jurisdiction over a case.
(p. 20)

TRUE

Concurrent federal jurisdiction means that both state and federal courts have jurisdiction over a case.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

7. Once a case is in the proper court system, venue determines which trial court in the system will hear the case.
(p. 22)

TRUE

Once a case is in the proper court system, venue determines which trial court in the system will hear the case.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 What is venue?
Topic: Venue

8. A person who has the legal right to bring an action in court has standing.
(p. 26)

TRUE

A person who has the legal right to bring an action in court has standing (or standing to sue); and for a person to have standing, the outcome of a case must personally affect him or her.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?
Topic: Threshold Requirements

9. Under our system of justice, courts may issue advisory opinions.
(p. 27)

FALSE

The case-or-controversy (or justifiable controversy) requirement ensures that courts do not render advisory opinions.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?
Topic: Threshold Requirements

10. In some cases, the U.S. Supreme Court functions as a trial court.
(p. 23)

TRUE

In an extremely limited number of cases, the U.S. Supreme Court functions as a trial court of limited jurisdiction.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-02 What is venue?
Topic: The Structure of the Court System

11. Intermediate courts of appeal exist in all states.
(p. 24)

FALSE

Intermediate courts of appeal, analogous to federal circuit courts of appeal, exist in approximately half the states.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-02 What is venue?
Topic: The Structure of the Court System

12. The defendant responds to a complaint with an answer.
(p. 29)

TRUE

The defendant responds to the complaint with an answer.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

13. A defendant who believes that he or she has a claim against the plaintiff would include a counterclaim with the answer.
(p. 29)

TRUE

If the defendant believes he has a claim against the plaintiff, he includes this counterclaim with the answer.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

14. A reply is an answer to a counterclaim.
(p. 29)

TRUE

A reply is an answer to a counterclaim; and in the reply, the plaintiff admits, denies, or claims a lack of knowledge as to the accuracy of the facts of the defendant's counterclaim.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

15. A party only has a limited number of challenges for cause in jury selection.
(p. 31)

FALSE

If a potential juror's response to a question indicates that she or he may be biased, either attorney may challenge, or ask the court to remove, that potential juror "for cause."

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

16. Peremptory challenges in jury selection may not be racially based.
(p. 31)

TRUE

The U.S. Supreme Court initially ruled that race-based peremptory challenges in criminal cases violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and later extended the ban on race-based challenges to civil cases.

AACSB: Diversity

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

17. Only one party may appeal from a final judgment.
(p. 34)

FALSE

Either party may appeal the judge's decision on posttrial motions or on her or his final judgment; and sometimes, both parties appeal the same decision.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

18. If an appellate judge agrees with the majority's decision but for different reasons, the judge may write a "concurring" opinion.
(p. 35)

TRUE

If a judge agrees with the majority's decision but for different reasons, she may write a concurring opinion, stating the reasons she used to reach the majority's conclusion.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

19. On average, the U.S. Supreme Court hears 300 cases a year.
(p. 35)

FALSE

Every year thousands of individuals file appeals with the U.S. Supreme Court, but the Court hears, on average, only 80 to 90 cases each year.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

20. The term ADR refers to the resolution of legal disputes through methods other than litigation.
(p. 35)

TRUE

The term ADR refers to the resolution of legal disputes through methods other than litigation, such as negotiation, mediation, arbitration, summary jury trials, minitrials, neutral case evaluations, and private trials.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Alternative Dispute Resolution

21. Courts are generally critical and unsupportive of ADR methods.
(p. 36)

FALSE

Courts also generally support the use of ADR, which alleviates some of the pressure on the overwhelming court dockets.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Alternative Dispute Resolution

22. A person must be a lawyer in order to serve as an arbitrator.
(p. 37)

FALSE

Lawyers, professors, and other professionals typically serve as arbitrators.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

23. An arbitrator is more likely to issue a compromise decision than a judge.
(p. 38)

TRUE

Because the arbitrator was hired to resolve a dispute between two parties, the arbitrator is more likely to make a compromise ruling instead of a win-lose ruling.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

24. Med-arb is a type of ADR method.
(p. 40)

TRUE

Med-arb is a dispute resolution process in which the parties agree to start out in mediation and, if the mediation is unsuccessful on one or more points, to move on to arbitration.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Other ADR Methods

25. Early neutral case evaluation provides a binding ruling by a neutral.
(p. 40)

FALSE

With early neutral case evaluation, the parties select a neutral third party and explain their respective positions to this neutral, who then evaluates the strengths and weaknesses of the case. The parties use this evaluation to reach a settlement.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Other ADR Methods

Multiple Choice Questions

26. Which of the following do appellate courts primarily handle?
(p. 17)

- A.** Questions of law
- B. Questions of fact
- C. Questions of law and fact
- D. Cases when they initially enter the legal system
- E. Questions of law and fact, and also cases when they initially enter the legal system

Appellate courts handle only questions of law, not questions of fact.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

27. Which of the following is a question of fact?
(p. 17)

- A.** Whether a vehicle ran a traffic light
- B. Whether premeditation is necessary for a first degree murder conviction
- C. Whether speech is protected by the First Amendment
- D. What is necessary for service of process
- E. Whether a vehicle ran a traffic light and also what is necessary for service of process

A question of fact is a question about an event or characteristic in the case.

AACSB: Analytic
Blooms: Evaluate
Difficulty: 3 Hard
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

28. A defendant in a lawsuit is to be provided by the plaintiff with a copy of the complaint. That process is called _____.

(p. 18)

- A. Summons issuance
- B. Service of process**
- C. Service delivery
- D. Subpoena delivery
- E. *In personam* service

Service of process is the procedure by which courts present these the summons and complaint to defendants.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Topic: Jurisdiction

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

29. Laws which enable a court to serve a defendant outside the state as long as the defendant has sufficient minimum contacts within the state and it seems fair to assert jurisdiction are called _____.

(p. 18)

- A. Minimum contact statutes
- B. Significant contact statutes
- C. Long-arm statutes**
- D. *In rem* statutes
- E. There are no such laws

Most states have enacted long-arm statutes that enable the court to serve defendants outside the state as long as the defendant has sufficient minimum contacts within the state.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Topic: Jurisdiction

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

30. Adult siblings, John, Sam, and Andy, are in disagreement over how to split the proceeds of a piece of land left to them by a rich uncle who recently died. The uncle was a resident of Georgia, and the land is in Georgia; but neither John, Sam, nor Andy live there. Which of the following is true regarding jurisdiction over the dispute?

(p. 19)

- A. A court in Georgia would not have jurisdiction. The case would have to be brought in a state in which at least one of the brothers lives.
- B.** A court in Georgia would have *in rem* jurisdiction over the dispute.
- C. A court in Georgia would have *in personam* jurisdiction over the dispute.
- D. A court in Georgia would have jurisdiction over the dispute only if all brothers signed a consent form agreeing to bring the case in Georgia.
- E. A court in Georgia would have original jurisdiction, but appellate jurisdiction would be in a state in which at least one of the brothers lives.

In rem jurisdiction is the power of a court over the property or status of an out-of-state defendant located within the court's jurisdiction area.

AACSB: Analytic

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: Jurisdiction

31. Susan, a resident of Illinois, ran a traffic light while traveling in Michigan and did significant damage to Paul's car. Paul obtains a judgment against her, but Susan has no insurance and no assets except for a farm in Alabama. Which of the following is true?

(p. 19)

- A. A court in Michigan can exercise *in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- B.** A court in Illinois can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go to Paul for his trouble.
- C. A court in Alabama can exercise *in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- D. A court in Alabama can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go Susan.
- E. A court in Alabama can exercise *quasi in rem* jurisdiction over the farm and authorize its sale. Any excess over Paul's amount of damages would go to Paul for his trouble.

Courts can gain *quasi in rem* jurisdiction, or attachment jurisdiction, over a defendant's property unrelated to the plaintiff's claim.

AACSB: Analytic

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: Jurisdiction

32. Which of the following is true regarding state and federal court jurisdiction?
(p. 20)

- A. State courts begin with exclusive jurisdiction until a federal court intervenes.
- B. In all cases state courts have concurrent jurisdiction with the federal courts.
- C. Federal courts begin with exclusive jurisdiction until a state court intervenes.
- D. In all cases state courts have exclusive jurisdiction unless the state's supreme court grants jurisdiction to a federal court in the state.
- E.** In some cases, state courts have exclusive jurisdiction; in some cases, state courts have concurrent jurisdiction with the federal courts; and state courts also have the power to hear all cases not within the exclusive jurisdiction of the federal court system.

Cases may fall under state jurisdiction, exclusive federal jurisdiction, or concurrent jurisdiction, and state courts have the power to hear all cases not within the exclusive jurisdiction of the federal court system

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?
Topic: Jurisdiction

33. Which of the following is true regarding federal jurisdiction?
(p. 20)

- A. There is no exclusive federal jurisdiction in civil matters.
- B. If a case falls within federal jurisdiction, it may not also fall within state jurisdiction.
- C. Some cases fall within both federal jurisdiction and state jurisdiction, but there is no exclusive federal court jurisdiction.
- D. Some cases fall within both federal jurisdiction and state jurisdiction, but that only occurs in criminal matters.
- E.** Some cases fall within both federal jurisdiction and state jurisdiction, but the federal court system has exclusive jurisdiction over some cases.

Federal courts may have concurrent jurisdiction with state courts, and federal courts have exclusive jurisdiction over a few cases.

AACSB: Analytic
Blooms: Understand

34. Over which of the following does the federal court system have exclusive jurisdiction?
(p. 20)

- A. Admiralty cases and bankruptcy cases, but not federal criminal prosecutions
- B. Admiralty cases and federal criminal cases, but not bankruptcy cases.
- C. Federal criminal prosecutions and bankruptcy cases, but not admiralty cases.
- D. Diversity cases only
- E. Admiralty cases, bankruptcy cases, and federal criminal prosecutions**

Federal courts have exclusive jurisdiction in admiralty cases, bankruptcy cases, cases involving federal criminal prosecutions, cases in which one state sues another state, claims against the United States, and other claims involving federal statutes that specify exclusive federal jurisdiction.

35. Which of the following is needed for diversity-of-citizenship?
(p. 20)

- A. Only that the plaintiff not reside in the same state as the defendant.
- B. Only that the plaintiff reside in the same state as the defendant.
- C. Only that the controversy concern an amount in excess of \$75,000.
- D. Only that the controversy concern an amount in excess of \$100,000.
- E. Both that the plaintiff and the defendant reside in different states and that the controversy concerns an amount in excess of \$75,000.**

A diversity-of-citizenship case must satisfy two conditions: (1) the plaintiff(s) does (do) not reside in the same state as the defendant(s), and (2) the controversy concerns an amount in excess of \$75,000.

36. For purposes of diversity-of-citizenship, where does a corporation reside?
(p. 20)

- A. The state of incorporation only.
- B. The state in which the corporation has its principal place of business only.
- C.** Both the state in which the corporation has its principal place of business and the state of incorporation.
- D. Any state in which the corporation does business.
- E. Any state in which the corporation has done business within the last five years.

A business may reside in two states: the state of its incorporation and the state of its principal place of business.

37. Assume a plaintiff files a case in state court that could also have been filed in federal court. Does the defendant have any choice in the matter?
(p. 22)

- A. The defendant has no choice, and the case will stay in state court.
- B. The defendant can have the case moved to federal court only if federal question jurisdiction is involved.
- C. The defendant can have the case moved to federal court only if the state trial court judge grants permission.
- D. The defendant can have the case moved to federal court only if the plaintiff's filing expenses in state court are paid by the defendant.
- E.** The defendant has a right to remove the case to federal court.

When a plaintiff files a case involving concurrent jurisdiction in state court, the defendant has a right of removal.

38. Which of the following is typically an appropriate venue in a lawsuit?
(p. 22)

- A. Only the trial court where the defendant resides.
- B. Only the trial court where the plaintiff resides.
- C. Only the location where the dispute occurred if the lawsuit focuses on a particular incident.
- D. Both the trial court where the defendant resides and the trial court where the plaintiff resides.
- E.** The trial court where the defendant resides and also the location where the dispute occurred if the lawsuit focuses on a particular incident.

Usually, the trial court for the county where the defendant resides is the appropriate venue. If a case involves property, the trial court where the property is located is also an appropriate venue. Finally, if the focus of the case is a particular incident, the trial court where the dispute occurred is an appropriate venue.

39. Billy knows that he can bring his case against Bob in a state court in
(p. 22) Tennessee. He is unsure, however, of which county in which to proceed. Which of the following address the proper county?

A. *In personam* jurisdiction
B. Venue
C. Subject-matter jurisdiction
D. Diversity jurisdiction
E. Long-arm jurisdiction

Once a case is in the proper court system, venue determines which trial court in the system will hear the case.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 What is venue?
Topic: Venue

40. Assume you know that Robert has told a lie about a friend of yours, Yolanda.
(p. 26) You tell Yolanda that she should sue for defamation, but she has no interest in that. Can you sue on behalf of Yolanda?

A. Yes, so long as you give any money received to Yolanda.
B. Yes, but only if Yolanda signs a permission slip at the court.
C. Yes, but only if the dispute is for an amount under \$25,000.
D. No, because there is no venue.
E. No, because you have no standing.

For a person to have standing, the outcome of a case must personally affect him or her.

AACSB: Analytic
Blooms: Evaluate
Difficulty: 3 Hard
Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?
Topic: Threshold Requirements

41. Bob sued Jane over a motor vehicle accident. Bob and Jane settled the case prior to trial for \$1,000. The lawsuit is now _____.

(p. 27)

- A. Ripe
- B. Moot**
- C. Cased
- D. Standed
- E. Remanded

Usually the issue of ripeness arises when one party claims that the case is moot—in other words, there is no point in the court's hearing the case because no judgment can affect the situation between the parties.

AACSB: Analytic

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?

Topic: Threshold Requirements

42. What are the trial courts in the federal court system called?

(p. 23)

- A. U.S. district courts**
- B. U.S. circuit courts
- C. Federal circuit courts
- D. Federal jurisdictional courts
- E. Preemptory courts

In the federal court system, the trial courts, or courts of original jurisdiction, are U.S. district courts.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-02 What is venue?

Topic: The Structure of the Court System

43. How many circuits does the U.C. Courts of Appeal have?
(p. 23)

- A. 6
- B. 50
- C. 12**
- D. 10
- E. 13

The United States has 12 circuits, including a circuit for the District of Columbia.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 What is venue?
Topic: The Structure of the Court System

44. Assuming there are no vacancies, how many U.S. Supreme Court justices are there?
(p. 23)

- A. 9**
- B. 5
- C. 15
- D. 8
- E. 7

Nine justices, who have lifetime appointments, make up the high court.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 What is venue?
Topic: The Structure of the Court System

45. Which of the following is true of the Supreme Court in Japan?
(p. 34)

- A. The Japanese system utilizes a well developed jury system.
- B. The Japanese discovery process is similar to that in the U.S.
- C. The Japanese legal system has a distinct pretrial stage.
- D. At the first meeting between the parties, discovery is conducted.
- E.** None of these

The Japanese legal system has no juries and no distinct pretrial stage; at the first meeting, the parties identify issues and the discovery process in the Japanese court system is not as simple as it is in the United States.

AACSB: Diversity

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

46. Which of the following is true regarding state courts of appeal?
(p. 24)

- A. States only have an intermediate court of appeals if there is no state supreme court.
- B. In states that do not have an intermediate court of appeal, appeals go to the federal court of appeals.
- C. In states that do not have an intermediate court of appeal, there is no right of appeal to any court.
- D. All states in this country have intermediate courts of appeal.
- E.** Not all states have intermediate courts of appeal; and in those states, appeals go to the state court of last resort.

Because approximately half of the states lack intermediate courts of appeal, appeals from trial courts in these states go directly to the state court of last resort.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: The Structure of the Court System

47. The _____ requirement ensures that courts do not render advisory opinions.
(p. 27)

- A. Moistness
- B. Subject-matter jurisdiction
- C. Case or controversy**
- D. *In rem*
- E. *In persona*

The case-or-controversy (or justifiable controversy) requirement ensures that courts do not render advisory opinions.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?

Topic: Threshold Requirements

48. A _____ is a judgment in favor of the plaintiff that occurs when the defendant fails to answer the complaint and the plaintiff's complaint alleges facts that would support such a judgment.
(p. 28)

- A. Default judgment**
- B. Automatic judgment
- C. Delineated response judgment
- D. Dismissal
- E. Pleading judgment

The summons tells the defendant that if he or she does not respond to the lawsuit within a certain period of time, the plaintiff will receive a default judgment.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

49. A defendant uses a[n] _____ when her or his answer admits that the facts contained in the complaint are accurate but also includes additional facts that justify the defendant's actions and provide a legally sound reason to deny relief to the plaintiff.

(p. 29)

- A. Secondary answer
- B. Pleading defense
- C. Affirmative defense**
- D. Formal answer
- E. Personam answer

A defendant uses an affirmative defense when his or her answer admits that the facts contained in the complaint are accurate but also includes additional facts that justify the defendant's actions and provide a legally sound reason to deny relief to the plaintiff.

AACSB: Analytic

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

50. The court may properly grant a _____ if after reviewing the pleadings, the judge determines that the only reasonable decision is in favor of the moving party.

(p. 29)

- A. Motion for judgment on the pleadings
- B. Motion for summary judgment**
- C. Motion for sanctions
- D. Motion for discovery
- E. Motion for production

A motion for summary judgment asserts that no factual disputes exist and that if the judge applied the law to the undisputed facts, her only reasonable decision would be in favor of the moving party.

AACSB: Analytic

Blooms: Apply

Difficulty: 3 Hard

51. Which of the following are tools of discovery?

(p. 30)

- A. Interrogatories
- B. Depositions
- C. Summary motions
- D. Both interrogatories and depositions, but not summary motions**
- E. Interrogatories, depositions, and summary motions

Three common discovery tools are interrogatories, requests to produce documents, and depositions.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

52. Which of the following are written questions that one party sends to another to answer under oath?

(p. 30)

- A. Interrogatories**
- B. Depositions
- C. Inquiries
- D. Subpoenas
- E. Sworn assertions

Interrogatories are written questions that one party sends to the other to answer under oath.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

53. At a[n] _____ attorneys examine a witness under oath with a court reporter present.
(p. 31)

- A.** Deposition
- B. Interrogatory
- C. Inquiry
- D. Pre-trial conference
- E. Pre-trial mediation

At a deposition, attorneys examine a witness under oath; and a court reporter (stenographer) records every word the witness and attorneys speak.

AACSB: Analytic

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

54. Billy, a witness to a motor vehicle accident, is gravely ill with cancer. Pat, who was injured in the accident, would like to preserve his testimony for trial in case he dies before the trial date. What should Pat do?
(p. 31)

- A. Send interrogatories to Billy.
- B.** Take Billy's deposition.
- C. Send a request to admit to Billy that the accident was the defendant's fault.
- D. Have a conference with the judge and Billy.
- E. There is nothing she can do.

The parties may use depositions when a witness is elderly, moving, or ill and thus may be unavailable at the time of the trial.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

55. Amber says at trial that Gwen told her that she saw Tom run the traffic light and hit Christy's car. On what basis is Amber's testimony objectionable?
(p. 33)

- A. It is not objectionable.
- B. Hearsay**
- C. Comprehension
- D. Preponderation
- E. Familiarity

Hearsay is testimony about what a witness heard another person say.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

56. Attorney Candy represents plaintiff Ann who is suing her neighbor for nuisance claiming that the neighbor plays music too late at night. Candy puts Ann on the stand and asks her questions. Candy is involved in which of the following?
(p. 33)

- A. Direct examination**
- B. Cross-examination
- C. Judicial examination
- D. Specific questioning
- E. Redirect questioning

First, the plaintiff's attorney questions the witness in direct examination and asks the witness questions to elicit facts that support the plaintiff's case-in-chief.

AACSB: Reflective Thinking

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

57. Which of the following is a type of ADR?
(p. 35)

- A. Consultation
- B. Mediation**
- C. Case argument
- D. Case analysis
- E. Focus grouping

The term ADR refers to the resolution of legal disputes through methods other than litigation, such as negotiation, mediation, arbitration, summary jury trials, initials, neutral case evaluations, and private trials.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Alternative Dispute Resolution

58. Which of the following is accurate regarding the speed and cost of ADR?
(p. 36)

- A. It is usually faster and cheaper.**
- B. It is usually faster but more expensive.
- C. It is usually slower and more expensive.
- D. It is usually slower but cheaper.
- E. No studies have known, so the answer is unknown.

ADR methods are generally faster and cheaper.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Alternative Dispute Resolution

59. Which of the following is an extension of negotiation?
(p. 36)

- A. Arbitration
- B. Initials
- C. Neutral case evaluations
- D.** Mediation
- E. Private trials

An extension of negotiation is mediation.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

60. Which of the following is an advantage of mediation?
(p. 37)

- A. Only that it helps disputing parties preserve their relationships.
- B. Only that parties to mediation have a high level of autonomy.
- C. Only that the mediator solves the dispute if the parties are unable to do so.
- D.** It helps disputing parties preserve their relationships, and also parties to mediation have a high level of autonomy.
- E. It helps disputing parties preserve their relationships, parties to mediation have a high level of autonomy, and the mediator solves the dispute if the parties are unable to do so.

The primary advantage of mediation is that it helps the disputing parties preserve their relationships; a second advantage is the possibility of finding creative solutions; and a third advantage is the high level of autonomy mediation gives the participants.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

61. The arbitrator typically provides a decision within _____ days of an arbitration hearing.
(p. 38)

- A. 10
- B. 25
- C. 30**
- D. 90
- E. 120

The arbitrator typically provides a decision within 30 days of the arbitration hearing.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

62. When is an arbitrator's decision called an "award"?
(p. 38)

- A. Always**
- B. Only if one party completely wins and there is no split decision.
- C. Never
- D. Only if a money award is involved
- E. Only if both parties had lawyers. That terminology makes it easier for the lawyers to be paid.

The arbitrator's decision is called an award, even if no monetary compensation is awarded.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

63. Which of the following are reasons that an arbitration award may be set aside under the Federal Arbitration Act?
(p. 38)

- A. The arbitrator failed to make a final and definite award.
- B. The award was the basis of fraud.
- C. The arbitrator displayed bias.
- D.** The arbitrator failed to make a final and definite award, the award was the basis of fraud, or the arbitrator displayed bias.
- E. None of these. There is no Federal Arbitration Act.

The Federal Arbitration Act (FAA), the federal law enacted to encourage the use of arbitration, explicitly lists four grounds on which an arbitrator's award may be set aside: (1) The award was the result of corruption, fraud, or other undue means; (2) the arbitrator displayed bias or corruption; (3) the arbitrator refused to postpone the hearing despite sufficient cause, refused to hear relevant evidence, or otherwise misbehaved to prejudice the rights of one of the parties; (4) the arbitrator exceeded his or her authority or failed to use that authority to make a mutual, final, and definite award.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

64. Which of the following is[are] positive about arbitration?
(p. 38)

- A. Arbitrators are assigned so parties do not have to pick them.
- B. Arbitration is less expensive generally than litigation.**
- C. Arbitrators are bound by the same rules as judges in applying precedent.
- D. Arbitrators are assigned so parties do not have to pick them, and arbitration is generally less expensive than litigation.
- E. Arbitrators are assigned so parties do not have to pick them, arbitration is generally less expensive than litigation, and arbitrators are bound by the same rules as judges in applying precedent.

Arbitration may be preferable to litigation for several reasons. First, arbitration is more efficient and less expensive. Second, parties have more control over the process of dispute resolution through arbitration. They choose the arbitrator and determine how formal the process will be. Third, the parties can choose someone to serve as the arbitrator who has expertise in the specific subject matter. Fourth, the arbitrator has greater flexibility in decision making than a judge has. Unlike judges, who are bound by precedent, arbitrators generally do not have to offer reasons for their decisions.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Primary Forms of ADR

65. What is a provision in a contract mandating that all disputes arising under the contract be settled by arbitration called?
(p. 38)

- A.** A binding arbitration clause
- B. A submission agreement
- C. A suggested arbitration section
- D. A nonbinding ADR section
- E. A binding mediatory clause

The primary method of securing arbitration is through a binding arbitration clause, a provision in a contract that mandates that all disputes arising under the contract must be settled by arbitration.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

66. What type of dispute resolution process is med-arb?
(p. 40)

- A.** A process in which the parties agree to start out in mediation and, if the mediation is unsuccessful on one or more points, to move on to arbitration.
- B. A process in which the parties agree to start out in arbitration and, if the arbitration is unsuccessful on one or more points, move on to court-annexed ADR.
- C. A process in which the parties agree to start in mediation and move to litigation if the mediation is unsuccessful.
- D. A process in which the parties agree to start in arbitration and move to litigation if the mediation is unsuccessful.
- E. None of these are contained within the umbrella of med-arb.

Med-arb is a dispute resolution process in which the parties agree to start out in mediation and, if the mediation is unsuccessful on one or more points, to move on to arbitration.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

67. What is a summary jury trial?

(p. 40)

- A.** An abbreviated trial that leads to a nonbinding jury verdict.
- B. An unabbreviated trial that leads to a binding jury verdict.
- C. An unabbreviated trial that leads to a nonbinding jury verdict.
- D. An abbreviated trial in which only a few witnesses are called to the stand.
- E. Both an abbreviated trial that leads to a nonbinding jury verdict and an abbreviated trial in which only a few witnesses are called to the stand.

A summary jury trial is an abbreviated trial that leads to a nonbinding jury verdict.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Other ADR Methods

68. In which of the following do parties select a neutral third party and explain their respective positions to the neutral, who then evaluates the strengths and weaknesses of the case?

(p. 40)

- A. Summary jury trial
- B. Minitrial
- C.** Early neutral case evaluation
- D. Private trials
- E. Neutral submission

With early neutral case evaluation, the parties select a neutral third party and explain their respective positions to this neutral, who then evaluates the strengths and weaknesses of the case.

AACSB: Analytic
Blooms: Analyze
Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Other ADR Methods

69. Which of the following is an ADR method in which a referee is selected and paid by the disputing parties to offer a legally binding judgment in a dispute?
(p. 40)

- A. Summary jury trial
- B. Minitrial
- C. Early neutral case evaluation
- D. Private trials**
- E. Neutral submission

Several states allow private trials, an ADR method in which a referee is selected and paid by the disputing parties to offer a legally binding judgment in a dispute.

AACSB: Analytic

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Other ADR Methods

70. Which of the following is the supreme court of appeal in England?
(p. 25)

- A. The House of Lords**
- B. The Crown Court
- C. The Supreme Court
- D. The High Court
- E. The Queen's Bench

In England the House of Lords is the supreme court of appeal.

AACSB: Diversity

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-02 What is venue?

Topic: The Structure of the Court System

71. Which of the following did the U.S. Supreme Court rule in *Hertz Corp. v. Friend* (p. 21) as the appropriate test for determining a corporation's principle place of business for purposes of diversity jurisdiction?

- A. The "predominance of business" activity test
- B. The "nerve center" test**
- C. The "general business activities" test
- D. The "primary business" test
- E. The "profit maximization" test

For purposes of federal-court diversity jurisdiction, a corporation's "principal place of business" refers to the place, often called "nerve center," from which the corporation's high level officers directed, controlled and coordinated corporation's activities.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Topic: Jurisdiction

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

72. Reference - Revenge. Jane, a first year law student, while walking to school in inclement weather, accidentally slipped on ice knocking down Greg, another first year law student, breaking his glasses. He was very angry with Jane and let the air out of one of her car tires. Greg also decided to sue Jane for negligence, claiming as damages \$300 for his broken glasses. He decided that he already knew all about the law and did not need a lawyer. Greg sued Jane in state court. Jane, in the same lawsuit, brought an action against Greg for letting the air out of her tire. At trial in state court, Jane told the judge that a friend, Susie, told her that she saw Greg let the air out of Jane's tire. The judge disallowed Jane's testimony on that issue. Susie, however, who was in the courtroom also came and testified to that effect. The state court judge ruled in favor of Susie. Greg said that he was not giving up and that he would seek double damages on appeal in federal court. Jane and Greg live in different states when not attending school. After trial, Jane reported Greg's actions in letting the air out of her tire to the police who said that they would proceed with a criminal action against Greg. Jane's action against Greg for the tire is called a[n] _____.

- A.** Counterclaim
- B. Cross-Claim
- C. Third party claim
- D. Discovery claim
- E. Service claim

If the defendant believes he has a claim against the plaintiff, he includes this counterclaim with the answer.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

73. Reference - Revenge. Jane, a first year law student, while walking to school in inclement weather, accidentally slipped on ice knocking down Greg, another first year law student, breaking his glasses. He was very angry with Jane and let the air out of one of her car tires. Greg also decided to sue Jane for negligence, claiming as damages \$300 for his broken glasses. He decided that he already knew all about the law and did not need a lawyer. Greg sued Jane in state court. Jane, in the same lawsuit, brought an action against Greg for letting the air out of her tire. At trial in state court, Jane told the judge that a friend, Susie, told her that she saw Greg let the air out of Jane's tire. The judge disallowed Jane's testimony on that issue. Susie, however, who was in the courtroom also came and testified to that effect. The state court judge ruled in favor of Susie. Greg said that he was not giving up and that he would seek double damages on appeal in federal court. Jane and Greg live in different states when not attending school. After trial, Jane reported Greg's actions in letting the air out of her tire to the police who said that they would proceed with a criminal action against Greg. Was the judge correct in disallowing Jane's testimony regarding what Susie told her about the tire?

- A. No, the judge was wrong and should have considered that testimony.
- B. Yes, the judge was correct to disallow the testimony because it involved a possible criminal action.
- C.** Yes, the judge was correct to disallow the testimony because it was hearsay.
- D. Yes, the judge was correct to disallow the testimony because Susie's testimony was better evidence and she was in the courtroom.
- E. Yes, the judge was correct to disallow the testimony because it was offered by a defendant, not an independent witness.

Hearsay is testimony about what a witness heard another person say and is impermissible because the opposing attorney cannot question the person who made the original statement to determine the statement's veracity.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

74. Reference - Revenge. Jane, a first year law student, while walking to school in inclement weather, accidentally slipped on ice knocking down Greg, another first year law student, breaking his glasses. He was very angry with Jane and let the air out of one of her car tires. Greg also decided to sue Jane for negligence, claiming as damages \$300 for his broken glasses. He decided that he already knew all about the law and did not need a lawyer. Greg sued Jane in state court. Jane, in the same lawsuit, brought an action against Greg for letting the air out of her tire. At trial in state court, Jane told the judge that a friend, Susie, told her that she saw Greg let the air out of Jane's tire. The judge disallowed Jane's testimony on that issue. Susie, however, who was in the courtroom also came and testified to that effect. The state court judge ruled in favor of Susie. Greg said that he was not giving up and that he would seek double damages on appeal in federal court. Jane and Greg live in different states when not attending school. After trial, Jane reported Greg's actions in letting the air out of her tire to the police who said that they would proceed with a criminal action against Greg. Greg goes to see Alex, a recent graduate who had just passed the bar, and asked Alex to represent him in a federal court appeal. What advice should Alex give to Greg regarding an appeal filed in federal court?

- A. He should tell Greg that a federal appeal looks promising and that he will be glad to represent Greg for an hourly rate of \$400.
- B. He should tell Greg that the federal appeal looks good only if Greg can get Jane to admit she was negligent.
- C. He should tell Greg that the federal appeal looks good only if Susie does not come to testify in person.
- D. He should tell Greg that the federal appeal is not possible unless Greg first gets the trial court judge to certify the case to federal court.
- E. He should tell Greg to forget about a federal court appeal because an appeal from a state trial court would not be transferred to federal court.

The U.S. legal system has two parallel court structures: a federal system and a state system. Once a plaintiff files a case in one of the systems, the case remains in that system throughout the appeals process.

75. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. In choosing the jury, Linda and Sam were engaged in _____.

- A.** *Voir dire*
- B. Jury analysis
- C. Jury review
- D. *Ven dere*
- E. Shadowing

Once the potential jurors have reported for jury duty, the voir dire, or jury selection, process begins.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

76. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. The challenge to the juror who said that they could not be fair is referred to as a[n]

- A. Peremptory challenge
- B. Challenge for cause**
- C. Stipulated challenge
- D. Fairness challenge
- E. Approved challenge

If a potential juror's response to a question indicates that she or he may be biased, either attorney may challenge, or ask the court to remove, that potential juror "for cause."

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

77. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. The challenge to the juror who seemed grumpy is referred to as a[n]

- A.** Peremptory challenge
- B. Challenge for cause
- C. Stipulated challenge
- D. Fairness challenge
- E. Approved challenge

Peremptory challenges allow a party to challenge a certain number of potential jurors without giving a reason.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

78. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. The statements made to the jury by Linda and Sam immediately after the jury was chosen were _____.

- A. Direct statements
- B. Closing statements
- C. Jury statements
- D. Influential statements
- E.** Opening statements

Once the attorneys have impaneled, or selected, a jury, the case begins with opening statements.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

79. Reference - Puppy Woes. Sam promised to sell Linda a Welsh Corgi puppy for \$300 but backed out of the deal. Linda sued Sam in state court for breach of contract. Linda asked for a jury in her complaint. During jury selection, one juror, Ann, said that they did not think they could be fair to Linda because Linda did not appear to be a dog lover. Linda asked that Ann not hear the case, and the judge excused Ann. Linda also decided that another juror, Sandy, looked at her in a grumpy manner so she asked the judge to excuse that juror from serving. The judge did so. After the jury was chosen, Linda made a statement to the jury as did Sam. Linda then called to the witness stand a friend of hers, Brenda, who heard the discussion held between Linda and Sam regarding the purchase of the puppy. Brenda testified under questioning by Linda that she heard Linda say that she would pay \$300 for the puppy and that she also heard Sam say that he would sell the dog for that amount. Unfortunately for Linda, Brenda also testified in response to questioning by Sam that Sam distinctly told Linda that he would only sell the puppy to her if Linda came with cash for the puppy within seven days. Linda did not show up with the money for ten days and Sam had already sold the dog to someone else. The judge ruled in favor of Sam. The questioning of Brenda by Sam is called _____.

- A. Counter-examination
- B. Analysis examination
- C. Trick examination
- D. Direct examination
- E.** Cross-examination

After direct examination, opposing counsel may cross-examine the witness.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

80. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Regardless of what court is involved, can Jim act as plaintiff for the employees?

- A. Yes, so long as he gets permission slips from them.
- B. Yes, so long as they file no objection.
- C. Yes, so long as he gives any money he receives to them.
- D.** No, because he lacks standing.
- E. No, because venue is lacking.

A person who has the legal right to bring an action in court has standing (or standing to sue), and for a person to have standing, the outcome of a case must personally affect him or her.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-03 What are the threshold requirements that must be met before a court will hear a case?

Topic: Threshold Requirements

81. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Will an appellate court initially hear Jim's case deciding issues such as whether he has a claim and can act as a plaintiff?

- A. Yes, so long as a state trial court judge approves and certifies the case for the appellate court without holding a trial first.
- B. Yes, but only if Jim can prove that he would have had to wait at least a year for a trial at the trial court level.
- C.** No, because Jim is required to first file the case in the appropriate trial court.
- D. No, but only because Jim is not employed at the defending company.
- E. No, but only because Jim did not have a lawyer.

Trial courts, or courts of original jurisdiction, have the power to hear and decide cases when they first enter the legal system.

AACSB: Reflective Thinking
Blooms: Understand
Difficulty: 2 Medium
Topic: Jurisdiction

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

82. Reference - Supreme Court. Jim, who is a bit eccentric, says that he is fed up with the way a certain employer in his town treats employees and that he is going to sue that employer in an effort to improve matters. Jim also says that he is going to start his case at the appellate court level, skipping over all those "lesser" judges. Jim says that those justices will surely hear him out and that he will also seek a jury. Although he is not a lawyer, Jim believes that the offenses of the employer are so severe that the justices will appreciate his attempt to make things better for the employees involved. Will Jim get a jury at the appellate court level?

- A. Only if the opposing party agrees.
- B. In some states but not in others.
- C. Only if he is in federal court
- D. Only if he is in state court
- E.** No

Trial courts determine questions of fact.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: Jurisdiction

83. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. What is the effect of the arbitration agreement on Jenny's ability to file an action in court?

- A. The arbitration agreement would not affect Jenny's ability to file a court action in a sexual harassment case although it would bar her right to file a court action in other types of cases.
- B. The arbitration agreement would completely bar Jenny's ability to file a court action.
- C. By law the arbitration agreement may only delay for 60 days Jenny's ability to file a court action.
- D. By law the arbitration agreement may only delay for 6 months Jenny's ability to file a court action.
- E.** More information is needed regarding the provisions of the arbitration agreement before it can be determined if it would bar an action in court.

A constraint on binding arbitration clauses is that they must be drafted in such a way as to ensure that the courts do not see them as being unconscionable.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Primary Forms of ADR

84. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. Can Brice obtain information from the previous mediators regarding what occurred at the previous mediations?

- A. Yes, but only if a court reporter was present.
- B. He can get copies of any written documents reviewed but not accounts of statements.
- C. He can get accounts of statements but not copies of written documents.
- D. He can get the information only if the mediators in the other cases want to cooperate.
- E. He cannot get from the mediator copies of documents or accounts of what was said because of the confidential nature of mediation proceedings.

A business may prefer ADR because it is confidential.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Alternative Dispute Resolution

85. Reference - Sexual Harassment ADR. Jenny is very angry with her supervisor, Sleaze, at the Mexican fast-food restaurant at which she works which is owned by an international company located in Mexico. He has been making inappropriate sexual comments to her and other employees. Jenny decides to sue and retains a lawyer, Brice. Brice talks with the owners of the restaurant and is informed that Jenny signed an agreement to arbitrate any claims. Brice tells Jenny that it is completely up to her and that if she wishes, she can disregard the arbitration agreement and proceed to court. Jenny informed Brice about other employees who had complained about sexual harassment and entered into mediation agreements. Brice promises her that he will get copies of all documents and everything that was taken down by the court reporter at those mediations. He also tells Jenny in response to her question about the possibility of mediation in her case to forget it because mediation is pretty much the same thing as arbitration. Did Brice correctly tell Jenny that mediation is nearly the same as arbitration?

- A. No, he was incorrect. There are major differences between mediation and arbitration.
- B. He was correct because the only difference between the two involves the length of the proceeding.
- C. He was correct because the only difference between the two involves cost.
- D. He was correct because the only difference between the two involves whether a court reporter is present.
- E. He was correct because the only difference between the two involves the type of evidence that may be considered.

The distinguishing feature of mediation is that the parties voluntarily select a neutral third party to help them work together to resolve the dispute whereas arbitration involves the resolution of a dispute by a neutral third party outside the judicial setting.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Primary Forms of ADR

Essay Questions

86. Define the term "*in personam*" jurisdiction, discuss where corporations are generally subject to that type of jurisdiction, and discuss long-arm jurisdiction.
(p. 18)

In personam jurisdiction references a court's power to render a decision affecting the rights of the persons or businesses before the court. Corporations are subject to *in personam* jurisdiction in three locations: the state of their incorporation, the location of their main offices, and the geographic areas in which they conduct business. Most states have enacted long-arm statutes which enable the court to serve defendants outside the state as long as the defendant has sufficient minimum contacts within the state.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: Jurisdiction

87. Alice, a resident of Michigan, claims that Pet Food Company Inc. put out some dog food that made her dog, Champ, sick. Champ is a prize winning poodle. He survived the pet food fiasco but only after traveling to a veterinarian in Florida specializing in poodles and having two very expensive surgeries. Additionally, his ability to sire has been impaired, and Alice will have no more breeding fees from Champ. Her damages are \$80,000. Pet Food Company Inc., is incorporated in Delaware, with its principal place of business in Michigan. Alice asks you whether she can sue in federal court. What would you tell her and why?
(p. 20)

Alice cannot sue in federal court because Pet Food Company Inc.'s principal place of business is in Michigan, the same state in which she lives.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-01 What types of jurisdiction must a court have to render a binding decision in a case?

Topic: Jurisdiction

88. Identify the items that should appear in a complaint.
(p. 27)

The complaint states the names of the parties to the action, the basis for the court's subject-matter jurisdiction, the facts on which the plaintiff bases the claim, and the relief sought.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

89. Cindy ran over Hank in her company parking lot breaking his leg. That
(p. 29) happened because, without warning, Cindy's brakes failed. Hank was out of work as a bookkeeper for one week, but otherwise recovered without incident. Hank sued Cindy for one million dollars for his injuries. Cindy decides to do nothing in response to the lawsuit because she sees no way that she can win. Is she right? Why or why not? What would you suggest that she do in the civil litigation? Why is it important that Cindy proceed immediately at this point in the litigation?

She is not correct. She should file an answer raising the brake failure as an affirmative defense. If she does not raise that affirmative defense in the answer, the judge may refuse to allow her to raise it later. Additionally, she would likely want to defend against the amount of damages sought. If she does nothing, a default judgment will be entered against her.

AACSB: Reflective Thinking
Blooms: Evaluate
Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?
Topic: Steps in Civil Litigation

90. Cindy who was riding her new bicycle accidentally ran over jogger Bruce's foot. He sues. Cindy is suspicious that he is not hurt as badly as he claims. What would Cindy want to know for trial, and how could she and her lawyer find out? Fully discuss and explain the discovery process and methods to obtain information.
- (p. 30-31)

The parties gather information from each other through the discovery process. Cindy would want to know Bruce's condition, his medical bills, any permanent injury, lost wages, etc. She could find out through the discovery process. That would include interrogatories, a request for production for medical records and other information, and depositions.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-04 What are the steps in civil litigation?

Topic: Steps in Civil Litigation

91. According to the text, what are four advantages of ADR over traditional litigation?
- (p. 36)

Students should choose from the following reasons:

- (1) It is usually faster and cheaper.
- (2) Some forms of ADR can be structured so that a business may avoid the uncertainty associated with a jury decision.
- (3) A business may want to avoid setting a precedent through a court decision.
- (4) Because many forms of ADR are less adversarial than litigation, the parties are able to preserve a business relationship.
- (5) A business may prefer ADR because it is confidential.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Alternative Dispute Resolution

92. How are arbitrations similar and dissimilar to a court trial?
(p. 37-38)

Arbitrations are similar to a court trial in that both parties present their case to a neutral third party; they may represent themselves or use legal counsel; they may also introduce witnesses and documentation, cross-examine witnesses, and offer closing statements. Additionally, the arbitrator offers a legally binding decision. Arbitrations are dissimilar to court trials in that the arbitrator often takes a more active role and is more likely than a judge to question a witness; no official record of the hearing is kept; and the rules of evidence are typically relaxed.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

93. According to the text, what are three criticisms of arbitration when compared to traditional litigation?
(p. 38)

Students should choose from the following criticisms:

- (1) Arbitration panels are being used more frequently resulting in less efficiency and increased expense.
- (2) Because appealing an arbitration award is so difficult, injustice may occur.
- (3) By giving up the right to litigate, parties may be losing important civil rights or giving up important remedies without really understanding what is being given up.
- (4) As it becomes more popular, it will become more like litigation.
- (5) Because of the privacy involved, companies are able to hide their disputes.

AACSB: Reflective Thinking
Blooms: Understand
Difficulty: 2 Medium

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today
Topic: Primary Forms of ADR

94. Jackie is hiring Ron to do clean up and maintenance as an independent contractor for her building which has several tenants. She is aware that Ron has sued some previous building owners. He does a good job, however, and she would like to hire him. Ron has agreed to sign an arbitration agreement. How should Jackie structure the agreement so that it will be enforced?
- (p. 39)

Student responses will vary. Following are suggested answers:

- (1) Be clear and unmistakable in what is covered within the arbitration agreement.
- (2) Provide for a bilateral arbitration clause.
- (3) State explicitly which party will pay arbitration fees and make sure that it will not cost the employee more to arbitrate than it would cost to litigate.
- (4) Specify how the arbitrator will be selected.
- (5) Spell out the costs associated with the arbitration.
- (6) Avoid limitations on remedies.
- (7) Consider other potential parties when determining where to hold the arbitration.

AACSB: Reflective Thinking

Blooms: Create

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Primary Forms of ADR

95. Cindy and Clowie have a dispute regarding ownership of a dog, Rascal. Cindy removed Rascal's tags in order to give him a bath. Knowing what was coming, Rascal made a run for it and ended up at Clowie's home down the street. When Cindy saw Clowie walking Rascal, she demanded his return. Clowie refused. A lawyer in the neighborhood suggested either an early neutral case evaluation or a mediation in an attempt to resolve the feud. Describe mediation and neutral case evaluation. Which would you suggest and why?
- (p. 36-37, 40)

Mediation occurs when the parties hire a mediator to help them voluntarily settle a dispute. In early neutral case evaluation, the parties hire a neutral third party and explain their situations to the neutral who evaluates the strengths and weaknesses of the case. The parties use the evaluation in an attempt to settle. Students will vary on which they would recommend.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 How are the various forms of alternative dispute resolution used by businesses today

Topic: Other ADR Methods

Topic: Primary Forms of ADR