
CHAPTER 2

TRADITIONAL AND ONLINE DISPUTE RESOLUTION

For your convenience, page references for both the Summarized and Excerpted case versions of Fundamentals of Business Law are included

SUMMARIZED PAGE: Fundamentals of Business Law:
Summarized Cases, Eighth Edition

EXCERPTED PAGE: Fundamentals of Business Law: Excerpted
Cases, Second Edition

ANSWERS TO LEARNING OBJECTIVES/ FOR REVIEW
QUESTIONS AT THE BEGINNING AND
THE END OF THE CHAPTER

Note that your students can read the answers to the even-numbered Review Questions on this text's Web site at www.cengage.com/blaw/fbl.

We repeat these answers here as a convenience to you.

1A. Judicial review

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

2A. Jurisdiction

To hear a case, a court must have jurisdiction over the person against whom the suit is brought or over the property involved in the suit. The court must also have jurisdiction over the subject matter. Generally, courts apply a "sliding-scale" standard to determine when it is proper to exercise jurisdiction over a defendant whose only connection with the jurisdiction is the Internet.

3A. Trial and appellate courts

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

4A. Pleadings, discovery, and electronic filing

The pleadings include a plaintiff's complaint and a defendant's answer (and the counterclaim and reply). The pleadings inform each party of the other's claims and specify the issues involved in a case. Discovery is the process of obtaining information and evidence about a case from the other party or third parties. Discovery entails gaining access to witnesses, documents, records, and other types of evidence. Electronic discovery differs in its subject (e-media rather than traditional sources of information). Electronic filing involves the filing of court documents in electronic media, typically over the Internet.

5A. Online forums

To resolve disputes, online forums are used in the same ways in which offline forums are used. Most online forums do not automatically apply the law of any specific jurisdiction, however, but apply general, universal legal principles. Any party may appeal from an online forum to a court at any time.

ANSWER TO CRITICAL ANALYSIS

QUESTION IN THE FEATURE

ADAPTING THE LAW TO THE ONLINE ENVIRONMENT—FOR CRITICAL ANALYSIS

SUMMARIZED PAGE 45

EXCERPTED PAGE 47

How might a large corporation protect itself from allegations that it intentionally failed to preserve electronic data? Given the significant and often burdensome costs associated with electronic discovery, should courts consider cost shifting in every case involving electronic discovery? Why or why not? A corporation might defend against charges of intentional destruction or loss of data by showing, for example, that the absence is due to the implementation of a policy to periodically purge electronic systems. Such charges might be avoided by not destroying the data but instead storing it. A court should consider cost shifting in every case in which the parties' abilities to afford the cost are unequal, because electronic discovery can be expensive. Typically, the cost is more easily borne by, for example, a large corporation rather than a private individual, who might otherwise not request discovery.

ANSWERS TO CRITICAL ANALYSIS

QUESTIONS IN THE CASES

CASE 2.1—WHAT IF THE FACTS WERE DIFFERENT?

SUMMARIZED PAGE 35

EXCERPTED PAGE 36

If Mastondrea had not seen Libgo and Allegro’s ad, but had bought a Royal Hideaway vacation package on the recommendation of a Liberty travel agent, is it likely that the result in this case would have been different? Why or why not? It is not likely that the court would have concluded there was no personal jurisdiction in this case on the basis of the facts stated in the question. It was the defendant hotel’s minimum contacts with the state, and its expectations flowing from those contacts, that served as the basis for the court’s assertion of jurisdiction. Those contacts included marketing activities, which were part of the arrangements with Libgo and Liberty. Whether Mastondrea acted in response to an ad placed by Libgo or a verbal suggestion made by a Liberty agent would not seem significant.

CASE 2.2—FOR CRITICAL ANALYSIS

SUMMARIZED PAGE 48

EXCERPTED PAGE 49

Ethical Consideration The appellate court noted that in this case the district court’s decision—which granted benefits to Evans—may arguably have been a better decision under the facts. If the court believed the district court’s conclusion was right, then why did it reverse the decision? What does this tell you about the standards for review that judges use? This ruling indicates, among other things, that standards of review, although they “cannot be imprisoned within any form of words,” are not arbitrary. There is a certain method in their interpretation and clear limits to their application.

CASE 2.3—FOR CRITICAL ANALYSIS

SUMMARIZED PAGE 51

EXCERPTED PAGE 53

Social Consideration Why do you think that NCR did not want its alleged claims decided by arbitration? A party is typically reluctant to enter into a proceeding that he or she (or it) believes will have an unfavorable result. NCR might have had a less complex claim that could have been resolved more favorably in a court, or its claim might have lent itself to a legal, adversarial

argument, which would have held less weight in arbitration. As stated elsewhere in this chapter, arbitration's disadvantages include the unpredictability of results, the lack of required written opinions, the difficulty of appeal, and the possible unfairness of the procedural rules. NCR might have wanted to avoid arbitration for any or all of these reasons. Also, arbitration can be nearly as expensive as litigation. NCR may have been simply trying to reduce the duration of the dispute and its cost.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE
AT THE END OF THE CHAPTER

1A. Federal jurisdiction

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

2A. Original or appellate jurisdiction

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

3A. Jurisdiction in Illinois

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

4A. Jurisdiction in Nevada

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

ANSWERS TO QUESTIONS AND CASE PROBLEMS

AT THE END OF THE CHAPTER

HYPOTHETICAL SCENARIOS AND CASE PROBLEMS

2.1A. Arbitration

SUMMARIZED PAGES 50–51

EXCERPTED PAGES 51–53

An arbitrator's decision has the binding force of law only because the two parties in an arbitration proceeding agree (contract) to be legally bound by the arbitrator's decision. The success of arbitration, and its status as an alternative to court settlement of disputes, rests on this underlying agreement between the parties to be bound by the results. If a person feels that an arbitrator's opinion is unjust, that person may appeal the dispute to a court. Courts, however, are very reluctant to judge the validity of an arbitrator's decision, which is regarded as final in all cases except where serious misconduct or corruption can be proved.

2.2A. HYPOTHETICAL QUESTION WITH SAMPLE ANSWER

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

2.3A. Standing to sue

SUMMARIZED PAGE 38

EXCERPTED PAGES 38–39

The court ruled that Lamar did not have standing because it “had failed to show that its injuries were redressable through this litigation.” The court reasoned that the ordinance's sign-subject restrictions could be split from its sign-size limits. Thus, even if the subject restrictions were held to be invalid, Lamar would never be able to erect the signs for which it sought permits because its proposed signs were larger than the size limits in those areas. Lamar appealed the ruling to the U.S. Court of Appeals for the Second Circuit, which vacated this part of the lower court's judgment. The appellate court held that Lamar did have standing to challenge the ordinance. To have standing, “a plaintiff must allege an actual or threatened injury to himself that is fairly traceable to the allegedly unlawful con-

duct of the defendant,” and “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” The court pointed out that the signs Lamar sought permission to erect were smaller than the largest signs the ordinance allowed in other areas. “Were Lamar to succeed on the merits of its claims, it likely would be able to erect at least some of the signs it has asserted an intent to build, even if the size restrictions were held valid and severable. The district court, therefore, erred in concluding that Lamar had not established that its injuries were redressable.”

2.4A. Jurisdiction
SUMMARIZED PAGES 34–35
EXCERPTED PAGES 37–38

The court found that the defendants’ contacts with Illinois were sufficient to establish personal jurisdiction. The court set out the “sliding scale” standard for exercising jurisdiction over parties whose sole contact with a jurisdiction is over the Web. In this case, among other things, the “[d]efendants maintain websites that fall into the middle ground of the . . . ‘sliding scale’ [standard]. These Sites allow visitors to post messages (to which Defendants sometimes respond), purchase books, and make donations.” The court concluded that “[t]hese Sites are a far cry from passive websites.” Their “level of interactivity is enough . . . for the court to exercise jurisdiction over Defendants.” The court also pointed out that “[d]efendants’ Internet activities more than satisfy the minimum contacts standard By purposefully reaching out to the state of Illinois, and conducting business with Illinois citizens, Defendants are on notice that they may be subject to suit in this state.” In other words, “the exercise of personal jurisdiction over Defendants would be reasonable in this case.”

2.5A. Appellate review
SUMMARIZED PAGES 39–40
EXCERPTED PAGE 40

The U.S. Court of Appeals for the Sixth Circuit affirmed the lower court’s ruling. In reviewing a trial court’s decisions, said the appellate court, “we will not set aside findings of fact * * * unless they are clearly erroneous. However, the district court’s interpretation and construction of a contract is a matter of law, and such matters this Court reviews de novo.” In this case, “[t]he district court’s critical finding was the existence of a binding contract between Detroit Radiant and BSH: a reduced price per burner unit and an agreement to absorb tooling and research and development costs, in exchange for a purchase of at least 30,000 units. There was nothing clearly erroneous about this finding, especially because

the district court was in the best position to gauge the credibility of the actors whose words and actions gave rise to the contract. And given this finding, BSH's * * * argument holds little water—that is, given the district court's finding that the parties had entered into a binding contract at the outset, it may be implied that * * * the 2003 purchase order did not replace the 2001 order, since the two purchase orders, only when added together, were consistent with the 30,000-unit figure.” The court concluded that “Detroit Radiant was left with a warehouse of burners and component parts that it could not unload * * * . And Detroit Radiant was further left without its anticipated profits—i.e., the benefit of the bargain that it had entered into with BSH.” The court added that “contract law, not to mention common sense, dictates that BSH should pay up.”

2.6A. CASE PROBLEM WITH SAMPLE ANSWER

Based on a recent holding by the Washington state supreme court, the federal appeals court held that the arbitration provision was invalid as unconscionable. Because it was invalid, the restriction on class action suits was also invalid. The state court held that for consumers to be offered a contract that class action restrictions placed in arbitrations agreements improperly stripped consumers of rights they would normally have to attack certain industry practices. Such suits are often brought in cases of deceptive or unfair industry practices when the losses suffered by the individual consumer are too small to warrant a consumer bringing suit. That is, the supposed added cell phone fees are small, so no one consumer would be likely to litigate or arbitrate the matter due to the expenses involved. Eliminating that cause of action by the arbitration agreement violates public policy and is void and unenforceable.

2.7A. Jurisdiction

SUMMARIZED PAGES 34–35

EXCERPTED PAGES 37–38

A court can exercise personal jurisdiction over a non-resident defendant under the authority of a long arm statute. First, however, it must be shown that the defendant had sufficient minimum contacts with the jurisdiction in which the court is attempting to assert its authority. Generally, this means that the defendant's connection to the jurisdiction must be enough for the assertion of authority to be fair. In this case, Texas's long arm statute applied. The court concluded that Poverty Point had sufficient minimum contacts with Texas based on the workers' "recruitment in Texas for work in Louisiana" and "their transportation from Texas to Louisiana." The workers signed their contracts and other employment documents in Texas. The terms of the work were revealed in Texas. Although the Leals had handled the "recruitment" and transportation of the workers in Texas, the Leals had acted on Poverty Point's behalf. They had been told "how many workers to hire, when to hire them for, where to send them, . . . what information to include in their employment agreements," what documents to have them sign, and what to have them do in the field at the job site. As for the fairness of requiring Poverty Point to appear in a Texas court, "litigation of this case in Texas would not pose a substantial burden on Defendants. Plaintiffs, however, would be severely hampered in their ability to pursue their claims if they are required to litigate them in Louisiana." Also, "Texas has an interest in protecting its citizens from exploitation by nonresident employers, particularly when its citizens are the targets of recruitment for out-of-state employment."

2.8A. Arbitration

SUMMARIZED PAGES 50–51

EXCERPTED PAGES 51–53

The arbitration agreement was not binding on the homeowners, so they could sue the builder, Osborne, in court. Osborne signed the contract with HBW; that did not bind the homeowners to the agreement because they were not parties to the agreement. The appeals court held the arbitration agreement to be "oppression" against the homeowners. As such, the agreements were one-sided and unconscionable. The homeowners were handed the warranty agreement at the time of closing (final sale) on their houses, but they did not know the terms of the warranty and had no chance to bargain over it. They did not give up their right to sue Osborne for breach of contract and other claims.

2.9A. A QUESTION OF ETHICS

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

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

CRITICAL THINKING AND WRITING ASSIGNMENTS

2.10A. CRITICAL LEGAL THINKING

No, the statute would not violate litigants' constitutional right of access to the courts because it provides the parties with an opportunity for a court trial in the event either party is dissatisfied with an arbitrator's decision. The burdens on a person's access to the courts would likely be upheld as long as they were reasonable. The statute would not violate a constitutional right to a jury trial if the required payment of arbitration costs were not an unreasonable burden. A court would also most likely interpret the arbitration procedures mandated by the statute as reasonably related to the legitimate government interest of attaining speedier and less costly resolution of disputes.

IHI

ANSWER TO VIDEO QUESTION No. 2.11

IHI

Jurisdiction in Cyberspace

1. What standard would a court apply to determine whether it has jurisdiction over the out-of-state computer firm in the video?

A court would apply a “sliding-scale” standard to determine if the defendants (Wizard Internet) had sufficient minimum contacts with the state for the court to assert jurisdiction. Generally, the courts have found that jurisdiction is proper when there is substantial business conducted over the Internet (with contracts, sales, and so on). When there is some interactivity through a Web site, courts have also sometimes held that jurisdiction is proper. Jurisdiction is not proper, however, when there is merely passive advertising.

2. What factors is a court likely to consider in assessing whether sufficient contacts existed when the only connection to the jurisdiction is through a Web site? The facts in the video indicate that there might be some interactivity through Wizard Internet’s Web site. The court will likely focus on Wizard’s Web site and determine what kinds of business it conducts over the Web site. The court will consider whether a person could order Wizard’s products or services via the Web site, whether the defendant entered into contracts over the Web, and if the defendant did business with other Montana residents.

3. How do you think the court would resolve the issue in this case? Wizard Internet could argue that the site is not “interactive” because software cannot be downloaded from the site (according to Caleb). That would be the defendant’s strongest argument against jurisdiction. The court, however, would also consider any other interactivity. The facts state that Wizard has done projects in other states and might have clients in Montana (although Anna and Caleb cannot remember). If Wizard does have clients in Montana who purchased software via the Web site, the court will likely find jurisdiction is proper because the defendant purposefully availed itself of the privilege of acting in the forum state. Also, if Wizard Internet regularly enters contracts to sell its software or consulting services over the Web—which seems likely, given the type of business in which Wizard engages—the court may hold jurisdiction is proper. If, however, Wizard simply advertises its services over the Internet and persons cannot place orders via the Web, the court will likely hold that this passive advertising does not justify asserting jurisdiction.

