
CHAPTER 2

COURTS AND ALTERNATIVE DISPUTE RESOLUTION

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

Note that your students can find the answers to the even-numbered *Learning Objectives Check Questions* in Appendix E at the end of the text. We repeat these answers here as a convenience to you.

1A. *What is judicial review? How and when was the power of judicial review established?* 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. *How are the courts applying traditional jurisdictional concepts to cases involving Internet transactions?* To hear a case, a court must have jurisdiction over the person against whom the suit is brought or over the property involved in the suit. Generally, courts apply a “sliding-scale” standard to determine when it is proper to exercise jurisdiction over a defendant whose only connection with the jurisdiction is the Internet.

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

appeal from a judgment or order of the lower court. Basically, trial courts focus on questions of fact, and appellate courts focus on questions of law.

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

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

ANSWERS TO CRITICAL THINKING QUESTIONS IN THE FEATURES

BEYOND OUR BORDERS—CRITICAL THINKING

One of the arguments against allowing sharia courts in the United States is that we would no longer have a common legal framework within our society. Do you agree or disagree? Why or why not? Arguments in favor of allowing *sharia* courts—or at least permitting the application of *sharia* principles in disputes in U.S. courts or in alternative methods of dispute resolution—include the legal and cultural principle of giving effect to agreements. If the parties to a dispute have agreed to a certain set of standards to govern their situation, those standards could be applied. This would not undercut our common legal framework, but reinforce it. Arguments against allowing *sharia* courts or principles in the United States would most likely center on the conflicts between *sharia* tribunals and standards and state or federal authority, governmental bodies, or law.

ADAPTING THE LAW TO THE ONLINE ENVIRONMENT—CRITICAL THINKING

The Sixth Amendment guarantees the accused a right of trial by an “impartial jury.” How does the use of wireless devices in the courtroom or research on the Internet threaten this right?

Jurors are not supposed to be influenced in reaching their decision by anything that is available *outside* of the courtroom. Judges and trial attorneys attempt to control the flow of information to the jurors. Witnesses are named in advance. Judges approve trial exhibits. When jurors are exposed to extrinsic information, such as prejudicial media coverage, they may not reach unbiased opinions about the guilt or innocence of a defendant. If jurors do Internet research about the attorneys on wireless devices, they may form an opinion about the attorneys rather than about just the defendant. If they do extensive Internet research about the defendant, they can also form a non-neutral opinion about him or her that has nothing to do with the case being decided.

ANSWERS TO CRITICAL THINKING QUESTIONS IN THE CASES

CASE 2.1—WHAT IF THE FACTS WERE DIFFERENT?

Suppose that Gucci had not presented evidence that Huoqing made one actual sale through his Web site to a resident (the private investigator) of the court’s district. Would the court still have found that it had personal jurisdiction over Huoqing? Why or why not?

The single sale to a resident of the district, Gucci’s private investigator, helped the plaintiff establish that the defendant’s Web site was interactive and that the defendant used the Web site to sell goods to residents in the court’s district. It is possible that without proof of such a sale, the court would not have found that it had personal jurisdiction over the foreign defendant. The reason is that courts cannot exercise jurisdiction over foreign defendants unless they can show the defendants had minimum contacts with the forum, such as by selling goods within the forum.

CASE 2.2—CRITICAL THINKING—ETHICAL CONSIDERATION

Does Winstead have an ethical duty to comply with the defendants’ discovery request? Discuss.

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

CASE 3.3—CRITICAL THINKING—LEGAL CONSIDERATION

In the circumstances of this case, what procedures should govern the arbitration? Discuss. State rules of arbitration should govern the procedures in this situation. In the case, the state intermediate appellate court reversed the lower court's denial of Kroger's motion to compel arbitration, concluding that the arbitration clause in the employment application established the parties agreed to arbitrate their "employment-related disputes." But Kroger was unable to prove that the undated four-page arbitration policy offered in evidence was in effect when Cruise signed the employment application. Thus, the employer could enforce the agreement to arbitrate but not the terms of its arbitration policy.

In the *Cruise* case, the court came to this conclusion based on the same reasoning.

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

1A. *Federal jurisdiction*

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

2A. *Original or appellate jurisdiction*

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

3A. *Jurisdiction in Illinois*

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

Thus, it is unlikely that an Illinois state court would find that sufficient minimum contacts existed to exercise jurisdiction.

4A. *Jurisdiction in Nevada*

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

**ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE
AT THE END OF THE CHAPTER**

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

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

**ANSWERS TO ISSUE SPOTTERS
AT THE END OF THE CHAPTER**

1A. *At the trial, after Sue calls her witnesses, offers her evidence, and otherwise presents her side of the case, Tom has at least two choices between courses of actions. Tom can call his first witness. What else might he do?* Tom could file a motion for a directed verdict. This motion asks the judge to direct a verdict for Tom on the ground that Sue presented no evidence that would justify granting Jan relief. The judge grants the motion if there is insufficient evidence to raise an issue of fact.

2A. Sue contracts with Tom to deliver a quantity of computers to Sue's Computer Store. They disagree over the amount, the delivery date, the price, and the quality. Sue files a suit against Tom in a state court. Their state requires that their dispute be submitted to mediation or nonbinding arbitration. If the dispute is not resolved, or if either party disagrees with the decision of the mediator or arbitrator, will a court hear the case? Explain. Yes. Submission of the dispute to mediation or nonbinding arbitration is mandatory, but compliance with the decision of the mediator or arbitrator is voluntary.

ANSWERS TO QUESTIONS AND CASE PROBLEMS AT THE END OF THE CHAPTER

BUSINESS SCENARIOS AND CASE PROBLEMS

2-1A. *Standing to sue*

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

2-2A. *Discovery*

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

2–3A. SPOTLIGHT ON THE NATIONAL FOOTBALL LEAGUE—*Arbitration*

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

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

2–4A. *Minimum contacts*

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

2–5A. *Arbitration*

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

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

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

2–6A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—*Discovery*

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

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

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

2–7A. *Electronic filing*

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

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

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

2-8A. *Corporate contacts*

No, the defendants’ motion to dismiss the suit for lack of personal jurisdiction should not be granted. A corporation normally is subject to jurisdiction in a state in which it is doing business. A court applies the minimum-contacts test to determine whether it can

exercise jurisdiction over an out-of-state corporation. This requirement is met if the corporation sells its products within the state or places its goods in the “stream of commerce” with the intent that the goods be sold in the state.

In this problem, the state of Washington filed a suit in a Washington state court against LG Electronics, Inc., and nineteen other foreign companies that participated in the global market for cathode ray tube (CRT) products. The state alleged a conspiracy to raise prices and set production levels in the market for CRTs in violation of a state consumer protection statute. The defendants filed a motion to dismiss the suit for lack of personal jurisdiction. These goods were sold for many years in high volume in the United States, including the state of Washington. In other words, the corporations purposefully established minimum contacts in the state of Washington. This is a sufficient basis for a Washington state court to assert personal jurisdiction over the defendants.

In the actual case on which this problem is based, the court dismissed the suit for lack of personal jurisdiction. On appeal, a state intermediate appellate court reversed on the reasoning stated above.

2–9A. A QUESTION OF ETHICS—*Agreement to arbitrate*

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. BUSINESS LAW CRITICAL THINKING GROUP ASSIGNMENT

1. Rico's could file a motion claiming that a federal court lacked jurisdiction to hear the dispute, but the motion would likely be denied. Because there appears to be diversity of citizenship in the situation set out here, if the amount in controversy exceeds the jurisdictional amount, a suit can be filed in a federal district court.

2. Bento's first option might be to file a motion to set aside the verdict and hold a new trial. This motion will be granted if the judge is convinced, after examining the evidence, that the jury was in error (assuming the trial involved a jury) but does not think it appropriate to issue a judgment for Bento's side. Bento's second option would be to appeal the trial court's judgment, including a denial of the motion for a new trial, to the appropriate court of appeals. An appellate court is most likely to review the case for errors in law, not fact. In any case, the appellate court will not hear new evidence.