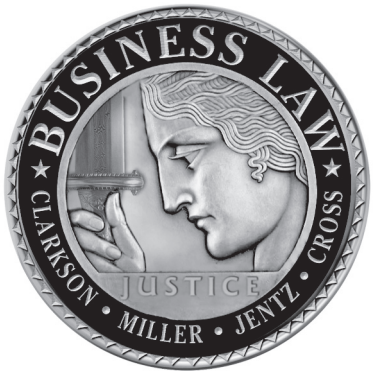
Chapter 2



Courts and Alternative Dispute Resolution

☞ **See Separate Lecture Outline System**

INTRODUCTION

Despite the substantial amount of litigation that occurs in the United States, the experience of many students with the American judicial system is limited to little more that some exposure to traffic court. In fact, most persons have more experience with and know more about the executive and legislative branches of government than they do about the judicial branch. This chapter provides an excellent opportunity to make many aware of the nature and purpose of this major branch of our government.

One goal of this text is to give students an understanding of which courts have power to hear what disputes and when. Thus, the first major concept introduced in this chapter is jurisdiction. Careful attention is given to the requirements for federal jurisdiction and to which cases reach the Supreme Court of the United States. It might be emphasized at this point that the federal courts are not necessarily superior to the state courts. The federal court system is simply an independent system authorized by the Constitution to handle matters of particular federal interest.

This chapter also covers alternatives to litigation that can be as binding to the parties involved as a court's decree. Alternative dispute resolution, including online dispute resolution, is the chapter's third major topic.

Among important points to remind students of during the discussion of this chapter are that most cases in the textbook are appellate cases (except for federal district court decisions, few trial court opinions are even published), and that most disputes brought to court are settled before trial. Of those that go through trial to a final verdict, less than 4 percent are reversed on appeal. Also, it might be emphasized

again that in a common law system, such as the United States', cases are the law. Most of the principles set out in the text of the chapters represent judgments in decided cases that involved real people in real controversies.

ADDITIONAL RESOURCES —

★☆★ **AUDIO & VIDEO SUPPLEMENTS** ★☆★

The following **audio and video supplements** are related to topics discussed in this chapter—

PowerPoint Slides

To highlight some of this chapter's key points, you might use the Lecture Review PowerPoint slides compiled for Chapter 2.

PBS Ethics in America Series

Video No. 8 of this series, entitled *Truth on Trial,* takes a critical look at the adversarial system of justice in the United States and the "courtroom truth" that results. Included on the panel discussing the issue is Supreme Court Justice Antonin Scalia.

Equal Justice Under Law Series

After you have covered the topic of judicial review, you might consider showing your students the video in "Equal Justice Under Law" series entitled ***Marbury v. Madison***—the landmark case that first enunciated the doctrine of judicial review.

CHAPTER OUTLINE

I. The Judiciary's Role in American Government

The essential role of the judiciary in the American governmental system is to interpret and apply the laws to specific situations. The judiciary can decide, among other things, whether the laws or actions of the other two branches are constitutional. The process for making such a determination is known as judicial review. The power of judicial review enables the judicial branch to act as a check on the other two branches of government, in line with the checks and balances system established by the U.S. Constitution.

ENHANCING YOUR LECTURE—

☆☆ " ***MARBURY V. MADISON* (1803)** " ☆☆

In the edifice of American law, the *Marbury v. Madison*[a] decision in 1803 can be viewed as the keystone of the constitutional arch. The facts of the case were as follows. John Adams, who had lost his bid for reelection to the presidency to Thomas Jefferson in 1800, feared the Jeffersonians' antipathy toward business and toward a strong central government. Adams thus worked feverishly to "pack" the judiciary with loyal Federalists (those who believed in a strong national government) by

appointing what came to be called "midnight judges" just before Jefferson took office. All of the fifty-nine judicial appointment letters had to be certified and delivered, but Adams's secretary of state (John Marshall) had succeeded in delivering only forty-two of them by the time Jefferson took over as president. Jefferson, of course, refused to order his secretary of state, James Madison, to deliver the remaining commissions.

MARSHALL'S DILEMMA

William Marbury and three others to whom the commissions had not been delivered sought a writ of *mandamus* (an order directing a government official to fulfill a duty) from the United States Supreme Court, as authorized by Section 13 of the Judiciary Act of 1789. As fate would have it, John Marshall had stepped down as Adams's secretary of state only to become chief justice of the Supreme Court. Marshall faced a dilemma: If he ordered the commissions delivered, the new secretary of state (Madison) could simply refuse to deliver them—and the Court had no way to compel action, because it had no police force. At the same time, if Marshall simply allowed the new administration to do as it wished, the Court's power would be severely eroded.

MARSHALL'S DECISION

Marshall masterfully fashioned his decision. On the one hand, he enlarged the power of the Supreme Court by affirming the Court's power of judicial review. He stated, "It is emphatically the province and duty of the Judicial Department to say what the law is. ... If two laws conflict with each other, the courts must decide on the operation of each. ... So if the law be in opposition to the Constitution ... [t]he Court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."

On the other hand, his decision did not require anyone to do anything. He stated that the highest court did not have the power to issue a writ of *mandamus* in this particular case. Marshall pointed out that although the Judiciary Act of 1789 specified that the Supreme Court could issue writs of *mandamus* as part of its original jurisdiction, Article III of the Constitution, which spelled out the Court's original jurisdiction, did not mention writs of *mandamus*. Because Congress did not have the right to expand the Supreme Court's jurisdiction, this section of the Judiciary Act of 1789 was unconstitutional—and thus void. The decision still stands today as a judicial and political masterpiece.

APPLICATION TO TODAY'S WORLD

Since the *Marbury v. Madison* decision, the power of judicial review has remained unchallenged. Today, this power is exercised by both federal and state courts. For example, as your students will read in Chapter 4, several of the laws that Congress has passed in an attempt to protect minors from Internet pornography have been held unconstitutional by the courts. If the courts did not have the power of judicial review, the constitutionality of these acts of Congress could not be challenged in court—a congressional statute would remain law until changed by Congress. Because of the importance of *Marbury v. Madison* in our legal system, the courts of other countries that have adopted a constitutional democracy often cite this decision as a justification for judicial review.

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a. 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).

ENHANCING YOUR LECTURE—

☆☆ "JUDICIAL REVIEW IN OTHER NATIONS" ☆☆

The concept of judicial review was pioneered by the United States. Some maintain that one of the reasons the doctrine was readily accepted in this country was that it fit well with the checks and bal-

ances designed by the founders. Today, all established constitutional democracies have some form of judicial review—the power to rule on the constitutionality of laws—but its form varies from country to country.

For example, Canada's Supreme Court can exercise judicial review but is barred from doing so if a law includes a provision explicitly prohibiting such review. France has a Constitutional Council that rules on the constitutionality of laws *before* the laws take effect. Laws can be referred to the council for prior review by the president, the prime minister, and the heads of the two chambers of parliament. Prior review is also an option in Germany and Italy, if requested by the national or a regional government. In contrast, the United States Supreme Court does not give advisory opinions; be before the Supreme Court will render a decision only when there is an actual dispute concerning an issue.

FOR CRITICAL ANALYSIS

In any country in which a constitution sets forth the basic powers and structure of government, some governmental body has to decide whether laws enacted by the government are consistent with that constitution. ***Why might the courts be best suited to handle this task? Can you propose a better alternative?***

II. Basic Judicial Requirements

Before a lawsuit can be heard in a court, certain requirements must be met. These requirements relate to jurisdiction, venue, and standing to sue.

A. JURISDICTION

Jurisdiction is the power to hear and decide a case. Before a court can hear a case, it must have jurisdiction over both the person against whom the suit is brought or the property involved in the suit and the subject matter of the case.

1. Jurisdiction over Persons or Property

Power over the person is referred to as *in personam* jurisdiction; power over property is referred to as *in rem* jurisdiction. Generally, a court's power is limited to the territorial boundaries of the state in which it is located, but in some cases, a state's long arm statute gives a court jurisdiction over a nonresident. A corporation is subject to the jurisdiction of the courts in any state in which it is incorporated, in which it has its main office, or in which it does business.

CASE SYNOPSIS—

Case 2.1: *Mastondrea v. Occidental Hoteles Management S.A.*

Libgo Travel, Inc., in Ramsey, New Jersey, with Allegro Resorts Management Corp. (ARMC), a marketing agency in Miami, Florida, placed an ad in the *Newark Star Ledger*, a newspaper in Newark, New Jersey, to tout vacation packages for accommodations at the Royal Hideaway Playacar, an all-inclusive resort hotel in Quintana Roo, Mexico. ARMC is part of Occidental Hotels Management, B.V., a Netherlands corporation that owns the hotel with Occidental Hoteles Management S.A., a Spanish company. In response to the ad, Amanda Mastondrea, a New Jersey resident, bought one of the packages through Liberty Travel, a chain of travel agencies in the eastern United States that Libgo owns and operates. At the resort, Mastondrea slipped and fell on a wet staircase. She filed a suit in a New Jersey state court against the hotel, its owners, and others, alleging negligence. The defendants asked the court to dismiss the suit for lack of personal jurisdiction. The court refused. The hotel appealed.

A state intermediate appellate court affirmed, concluding that the hotel had contacts with New Jersey, consisting of a tour operator contract and marketing activities through ARMC and Libgo, and that in response to the marketing, Mastondrea booked a vacation at the hotel. "Courts have generally sustained the exercise of personal jurisdiction over a defendant who, as a party to a contract, has had some connection with the forum state or who should have anticipated that his conduct would have significant effects in that state. … [T]he Hotel should have reasonably anticipated that its conduct would have significant effects in New Jersey."

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Notes and Questions

How did the marketing agreement between ARMC and Libgo work? According to the court in the *Mastondrea* case, "[t]he cooperative marketing agreement between ARMC and Libgo, in effect at the time of plaintiff's injury, encompassed the three 'brands' of hotels, Allegro, Grand, and Royal Hideaway (the resort at issue), grouped under the trade name of Occidental Hotels & Resorts. These brands were sometimes advertised separately, and sometimes jointly under the Occidental designation. According to the testimony of ARMC employee [Kathy] Halpern, the agreement between ARMC and Libgo established a marketing budget, premised upon the level of sales of relevant vacation packages by Libgo entities in the prior year. ARMC then built marketing initiatives based on that specified dollar amount. In that connection, ARMC, through Halpern, worked with Libgo to develop and implement a marketing plan that specified the marketing initiatives for the calendar year, including media insertions, brochure contributions, trade shows, and outside events. Although the plan was jointly developed, it was ultimately subject to the approval of ARMC Marketing Vice-President, Marcelo Radice, or another senior ARMC employee. According to Halpern, a media insertion schedule would be incorporated as part of the media plan. Once approved, Libgo would be responsible for placing ads, sending tear sheets containing copies of the ads to ARMC, and for initial payments to the various newspapers. Halpern indicated that '[t]he way a marketing agreement is paid for in terms of the cost, it is exactly what it states: it is cooperative. So the tour operator puts in some, as [do] the various hotels.'"

Was it fair in this case for the state of New Jersey to assert personal jurisdiction over a hotel in Mexico? The court concluded that it was. "[T]his suit does not offend traditional notions of fair play and substantial justice. The Hotel is demonstrably a part of a worldwide travel empire well-equipped to defend litigation within the United States. It chose to market itself, through Libgo, in New Jersey, and thus can be deemed to have foreseen, and indeed to have induced, the presence of New Jersey guests at its Mexican facility. Much more occurred here than national advertising, the acceptance of bookings from independent travel agencies and the payment of commissions to those agencies.

"That some harms would follow and would result in claims in New Jersey was not only to be anticipated, it was predictable. 'Fair warning' that the Hotel's activities might subject it to the jurisdiction of New Jersey's courts thus existed. Moreover, the Hotel's activities were of a sort that gave New Jersey an interest in holding it to account for plaintiff's alleged injuries.".

ANSWER TO "WHAT IF THE FACTS WERE DIFFERENT?" IN CASE 2.1

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.

ANSWER TO "THE GLOBAL DIMENSION" QUESTION IN CASE 2.1

What do the circumstances and the holding in this case suggest to a business firm that actively attempts to attract customers in a variety of jurisdictions? This situation and the ruling in this case indicate that a business firm actively attempting soliciting business in a jurisdiction should be prepared to appear in its courts. This principle likely covers any jurisdiction and reaches any business conducted in any manner.

ADDITIONAL BACKGROUND—

Long Arm Statutes

A court has personal jurisdiction over persons who consent to it—for example, persons who reside within a court's territorial boundaries impliedly consent to the court's personal jurisdiction. A state **long arm statute** gives a state court the authority to exercise jurisdiction over nonresident individuals under circumstances specified in the statute. Typically, these circumstances include going into or communicating with someone in the state for limited purposes, such as transacting business, to which the claim in which jurisdiction is sought must relate.

The following is New York's long arm statute, New York Civil Practice Laws and Rules Section 302 (NY CPLR § 302).

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED

CHAPTER EIGHT OF THE CONSOLIDATED LAWS
ARTICLE 3—JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

§ 302. Personal jurisdiction by acts of non-domiciliaries

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

2. Jurisdiction over Subject Matter

Subject-matter jurisdiction involves limitations on the types of cases a court can hear—a court of general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court of limited jurisdiction. Courts of original jurisdiction are trial courts; courts of appellate jurisdiction are reviewing courts.

ADDITIONAL BACKGROUND—

Diversity of Citizenship

Under Article III, Section 2 of the United States Constitution, diversity of citizenship is one of the bases for federal jurisdiction. Congress further limits the number of suits that federal courts might otherwise hear by setting a minimum to the amount of money that must be involved before a federal district court can exercise jurisdiction.

The following is the statute in which Congress sets out the requirements for diversity jurisdiction, including the amount in controversy.

UNITED STATES CODE

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV—JURISDICTION AND VENUE
CHAPTER 85—DISTRICT COURTS; JURISDICTION

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between--

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—
(1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

(June 25, 1948, c. 646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658; July 25, 1958, Pub.L. 85-554, § 2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 88-439, § 1, 78 Stat. 445; Oct. 21, 1976, Pub.L. 94-583, § 3, 90 Stat. 2891; Nov. 19, 1988, Pub.L. 100-702, Title II, §§ 201 to 203, 102 Stat. 4646 ; Oct. 19, 1996, Pub.L. 104-317, Title II, § 205(a), 110 Stat. 3850.)

3. Jurisdiction of the Federal Courts

A suit can be brought in a federal court whenever it involves (1) a question arising under the Constitution, a treaty, or a federal law, or (2) citizens of different states, a foreign country and an American citizen, or a foreign citizen and an American citizen. Congress has set an additional requirement—the amount in controversy must be more than $75,000. For diversity-of-citizenship purposes, a corporation is a citizen of the state in which it is incorporated and of the state in which it has its principal place of business.

4. Exclusive v. Concurrent Jurisdiction

When both state and federal courts have the power to hear a case, concurrent jurisdiction exists. When a case can be heard only in federal courts or only in state courts, exclusive jurisdiction exists. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, and copyrights; in suits against the United States; and in some areas of admiralty law. States have exclusive jurisdiction in certain subject matters also—for example, in divorce and in adoptions. Factors for choosing one forum over another are listed in the text.

B. JURISDICTION IN CYBERSPACE

The basic question in this context is whether there are sufficient minimum contacts in a jurisdiction if the only connection to it is an ad on the Web originating from a remote location. To date, the answer has generally been no.

1. The "Sliding-Scale" Standard

One approach is the sliding scale, according to which a passive ad is not enough on which to base jurisdiction while doing considerable business online is. Some of the controversy involves cases in which the contact is more than a passive ad but less than a lot of activity.

☆★☆ ANSWER TO VIDEO QUESTION LTR. A ☆★☆

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.

☆★☆ ANSWER TO VIDEO QUESTION LTR. B ☆★☆

What factors is a court likely to consider in assessing whether sufficient contracts 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.

☆★☆ ANSWER TO VIDEO QUESTION LTR. C ☆★☆

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.

2. International Jurisdictional Issues

The minimum-contact standard can apply in an international context. As in cyberspace, a firm should attempt to comply with the laws of any jurisdiction in which it targets customers.

C. VENUE

A court that has jurisdiction may not have venue. Venue refers to the most appropriate location for a trial. Essentially, the court that tries a case should be in the geographic area in which the incident occurred or the parties reside.

D. STANDING TO SUE

Before a person can bring a lawsuit before a court, the party must have standing. The party must have suffered a harm, or been threatened a harm, by the action about which he or she is complaining. The controversy at issue must also be justifiable (real and substantial, as opposed to hypothetical or academic).

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE—INSIGHT INTO ETHICS

If wealthier individuals increasingly use private judges, how will our justice system be affected in the long run? The government's judicial system may become more focused on other proceedings—criminal trials, for example, or civil appellate matters—rather than civil trials. The private justice system may exist largely to serve the interests of those who pay for it (because the arbitrators, for example, may attempt to rule in favor of those who pay for the arbitrators' efforts).

III. The State and Federal Court Systems

A. STATE COURT SYSTEMS

Many state court systems have a level of trial courts and two levels of appellate courts.

1. Trial Courts

Trial courts with limited jurisdiction include local municipal courts (which handle mainly traffic cases), small claims courts, and domestic relations courts. Trial courts with general jurisdiction include county, district, and superior courts. At trial, the parties may dispute the facts, what law applies, and how that law should be applied.

2. Appellate. or Reviewing, Courts

In most states, after a case is tried, there is a right to at least one appeal. Few cases are retried on appeal. An appellate court examines the record of a case, looking at questions of law and procedure for errors by the court below. In about half of the states, there is an intermediate level of appellate courts.

3. Highest State Courts

In all states, there is a higher court, usually called the state supreme court. The decisions of this highest court on all questions of state law are final. If a federal constitutional issue is involved in the state supreme court's decision, the decision may be appealed to the United States Supreme Court.

B. THE FEDERAL COURT SYSTEM

The federal court system is also three-tiered with a level of trial courts and two levels of appellate courts, including the United States Supreme Court.

1. U.S. District Courts

Federal trial courts of general jurisdiction are called district courts. (A district may consist of an entire state or part of a state. A district court has geographical jurisdiction corresponding to the territory of its district. Congress determines the number of districts.) Trial courts of limited jurisdiction include U.S. Tax Courts and U.S. Bankruptcy Courts.

2. U.S. Courts of Appeals

U.S. courts of appeal hear appeals from the decisions of the district courts located within their respective circuits. (The U.S. and its territories are divided into twelve judicial circuits. The jurisdiction of a thirteenth circuit—the federal circuit—is national but limited to

certain subject matter.) The decision of each court of appeals is binding on federal courts only in that circuit.

3. United States Supreme Court

The court at the top of the federal system is the United States Supreme Court to which further appeal is not mandatory but may be possible. A party may ask the Court to issue a writ of *certiorari*, but the Court may deny the petition. Denying a petition is not a decision on the merits of the case. Most petitions are denied. Typically, the Court grants petitions only in cases that at least four of the justices view as involving important constitutional questions.

IV. Alternative Dispute Resolution

The advantage of alternative dispute resolution (ADR) is its flexibility. Normally, the parties themselves can control how the dispute will be settled, what procedures will be used, and whether the decision reached (either by themselves or by a neutral third party) will be legally binding or nonbinding. Approximately 95 percent of cases are settled before trial through some form of ADR.

A. NEGOTIATION

In a negotiation, the parties attempt to settle their dispute informally, with or without attorneys. They try to reach a resolution without the involvement of a third party acting as mediator.

B. MEDIATION

In mediation, the parties attempt to come to an agreement with the assistance of a neutral third party, a mediator. Mediation is essentially a form of "assisted negotiation." The mediator does not make a decision on the matter being disputed. The result may be binding, or in "med-arb," if the dispute remains unresolved, the parties may be required to enter arbitration.

C. ARBITRATION

A more formal method of ADR is arbitration, in which a neutral third party or a panel of experts hears a dispute and renders a decision. The decision can be legally binding.

1. The Arbitration Process

Formal arbitration resembles a trial. The parties may appeal, but a court's review is more restricted than an appellate court's review of a trial court's decision. An arbitrator's decision, or award, will only be set aside 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 his or her powers.

CASE SYNOPSIS—

Case 2.2: *Buckeye Check Cashing, Inc. v. Cardegna*

Buckeye Check Cashing, Inc., cashes personal checks for consumers in Florida. For each transaction, a consumer signs a "Deferred Deposit and Disclosure Agreement," which states that in a dispute of any kind, "either you or we or third-parties involved can choose to have that dispute resolved by binding arbitration." John Cardegna and others filed a suit in a Florida state court against Buckeye, alleging that its "finance charge" represented an illegally high interest rate in violation of state law. Buckeye filed a motion to compel arbitration. The court denied the motion. On Buckeye's appeal, a state intermediate appellate court reversed, but on the plaintiffs' appeal, the Florida Supreme Court reversed again. Buckeye appealed.

The United States Supreme Court reversed and remanded. A challenge to the validity of a contract as a whole, and not specifically to an arbitration clause contained in the contract, must be re-

solved by an arbitrator. The Federal Arbitration Act "allows a challenge to an arbitration provision 'upon such grounds as exist at law or in equity for the revocation of any contract.' There can be no doubt that 'contract' ... must include contracts that later prove to be void. Otherwise, the grounds for revocation would be limited to those that rendered a contract voidable—which would mean (implausibly) that an arbitration agreement could be challenged as voidable but not as void."

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Notes and Questions

Does the holding in this case permit a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void? Yes. "But," in the words of the Court, "it is equally true that respondents' approach permits a court to deny effect to an arbitration provision in a contract that the court later finds to be perfectly enforceable." This is why the Court ruled that arbitration provisions are separately enforceable.

If the Court had ruled in favor of the respondents, how might its holding have affected the interpretation of other statutes? One answer to this question is best illustrated by the Court's example. "[T]he Sherman Act *** states that '[e]very contract *** in restraint of trade *** is hereby declared to be illegal.' Under respondents' reading of 'contract,' a bewildering circularity would result: A contract illegal because it was in restraint of trade would not be a 'contract' at all, and thus the statutory prohibition would not apply."

ANSWER TO "THE ETHICAL DIMENSION" QUESTION IN CASE 2.2

Does the holding in this case permit a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void? Is this fair? Why or why not? The holding in the *Buckeye* case allows a court to enforce an arbitration agreement in a contract that the arbitrator later finds to be void. This may seem unfair at first but, in the words of the Court, "it is equally true that respondents' approach permits a court to deny effect to an arbitration provision in a contract that the court later finds to be perfectly enforceable." This is why the Court ruled that arbitration provisions are separately enforceable.

ANSWER TO "THE LEGAL ENVIRONMENT DIMENSION" QUESTION IN CASE 2.2

As indicated in the parties' arguments and the Court's reasoning in this case, into what categories can contracts be classified, with respect to their enforceability? Initially, the plaintiffs contend that the agreement with the defendant is "criminal on its face" because a certain provision violates a state statute, in which circumstance it would be unenforceable. On appeal, the plaintiffs claim that the contract is void (no contract at all) because of the provision's asserted illegality. The Court rules on the question of whom, under a particular federal statute, may determine whether the contract in this case is valid (enforceable because it meets all of the requirements of a contract). The Court points out that a contract may be also be voidable (valid but avoidable at the option of one or both of the parties).

2. Arbitration Clauses and Statutes

Virtually any commercial matter can be submitted to arbitration. Often, parties include an arbitration clause in a contract. Parties can also agree to arbitrate a dispute after it arises.

Most states have statutes (often based on the Uniform Arbitration Act of 1955) under which arbitration clauses are enforced, and some state statutes compel arbitration of certain types of disputes. At the federal level, the Federal Arbitration Act (FAA), enacted in 1925, enforces arbitration clauses in contracts involving maritime activity and interstate commerce.

3. Arbitrability
A court can consider whether the parties to an arbitration clause agreed to submit a particular dispute to arbitration. The court may also consider whether the rules and procedures that the parties agreed to are fair.

CASE SYNOPSIS—

Case 2.3: *Morrison v. Circuit City Stores, Inc.*

Lillian Morrison applied for a managerial position at a Circuit City store in Ohio. As part of the application, Morrison was required to sign a mandatory arbitration agreement for employment-related disputes, under which she agreed to pay half the costs unless the arbitrator decided otherwise. An employee's share might be limited to either $500 or 3 percent of her most recent annual salary, but all charges were to be paid within ninety days of an award. When Morrison was later terminated, she filed a suit in an Ohio state court against Circuit City, alleging in part race- and gender-based discrimination. The case was moved to a federal district court, which ordered the parties to arbitration. Morrison appealed to the U.S. Court of Appeals for the Sixth Circuit, arguing in part that the cost-splitting provision was unenforceable. Meanwhile, the arbitration proceeded, and as part of the award, the arbitrator did not require Morrison to pay any of the costs.

The U.S. Court of Appeals for the Sixth Circuit held that the cost-splitting provision was unenforceable. (The court affirmed the lower court's order on other grounds.) "Recently terminated, the potential litigant must continue to pay for ... the ... necessities of life ... despite losing her primary, and most likely only, source of income." The appellate court pointed out that the cost of arbitrating a dispute could "easily reach thousands, if not tens of thousands, of dollars, far exceeding the costs that a plaintiff would incur in court." As for the limiting provision, "a potential litigant considering arbitration would still have to arrange to pay three percent of her most recent salary, ... within a three-month period, or risk incurring her full half of the costs .... Faced with this choice—which really boils down to risking one's scarce resources in the hopes of an uncertain benefit—it appears to us that a substantial number of similarly situated persons would be deterred from seeking to vindicate their statutory rights under these circumstances."

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Notes and Questions

The Circuit City arbitration agreement also placed limits on the damages a claimant could recover in arbitration. ***Was this provision enforceable?*** No. The court explained that "the enforcement of the arbitration agreement would require Morrison to forego her substantive rights to the full panoply of remedies under [federal antidiscrimination laws] and would thereby contravene Congress's intent to utilize certain damages as a tool for compensating victims of discrimination and for deterring employment discrimination more broadly."

Does the court's ruling in this case mean that cost-splitting provisions in compulsory arbitration agreements are always unenforceable? No. The court adopted a case-by-case approach to this question. A cost-splitting provision may be enforceable unless it has "the chilling effect of deterring a substantial number of potential litigants from seeking to vindicate their statutory rights." A plaintiff should be allowed to argue this point before a case goes to arbitration.

ANSWERS TO QUESTIONS AT THE END OF CASE 2.3

1. ***On what argument did Morrison base her appeal of the court's order to arbitrate her employment discrimination claims?*** Morrison appealed to the U.S. Court of Appeals for the Sixth Circuit, arguing in part that the cost-splitting provision in Circuit City's arbitration agreement was unenforceable.

2. ***Why did the U.S. Court of Appeals for the Sixth Circuit hold in Morrison's case that the arbitration agreement's cost-splitting provision was unenforceable?*** The court held that the cost-splitting provision was unenforceable because, regardless of an individual employee's ability to pay the costs, the provision would deter "similarly situated individuals" from exercising their rights.

4. Mandatory Arbitration in the Employment Context
Generally, mandatory arbitration clauses in employment contracts are enforceable.

ADDITIONAL CASES ADDRESSING THIS ISSUE —

Recent cases examining **the validity of arbitration agreements** include the following.

- *Circuit City Stores, Inc. v. Ahmed*, 283 F.3d 1198 (9th Cir. 2002) (an arbitration clause is not unconscionable, and thus it is enforceable, when it contains a provision that grants an employee a meaningful opportunity to opt out of binding arbitration).

- *McCaskill v. SCI Management Corp.,* 285 F.3d 623 (7th Cir. 2002) (an arbitration clause invoked to compel the arbitration of claims of sexual harassment and other employment discrimination is invalid, and thus unenforceable, when it requires that the employee pay all fees).

- *Cash in a Flash Check Advance of Arkansas, L.L.C. v. Spencer,* 348 Ark. 459, 74 S.W.3d 600 (2002) (in a customer's suit against a check-cashing company, alleging that its fees were usurious, an agreement containing an arbitration clause was not legally enforceable due to a lack of mutuality).

D. OTHER TYPES OF ADR
These include early neutral case evaluation, mini-trials**,** and summary jury trials (in the federal system), each of which is defined in the text.

E. PROVIDERS OF ADR SERVICES
A major provider of ADR services is the American Arbitration Association (AAA). Most of the largest law firms in the nation are members of this nonprofit association, which settles nearly sixty thousand disputes a year. Hundreds of for-profit firms around the country also provide dispute-resolution services.

F. ONLINE DISPUTE RESOLUTION
When outside help is needed to resolve a dispute, there are a number of Web sites that offer online dispute resolution (ODR). ODR may be best for resolving small- to medium-sized business liability claims, which may not be worth the expense of litigation or traditional ADR.

ADDITIONAL BACKGROUND—

ADR and the Courts

States in which one or more local **state** court has—		States in which one or more **federal** court has—	
Arbitration	**Mediation**	**Arbitration**	**Mediation**
Alabama	Alabama	Alabama	California
Alaska	Alaska	Arizona	Delaware
Arizona	Arizona	California	Florida
California	California	Connecticut	Indiana
Delaware	Connecticut	Florida	Kansas
Florida	Delaware	Georgia	Kentucky
Georgia	Florida	Idaho	Louisiana
Hawaii	Georgia	Michigan	Minnesota
Illinois	Hawaii	Missouri	Missouri
Michigan	Indiana	New Jersey	Nebraska
Minnesota	Illinois	New York	New Jersey
Missouri	Iowa	Ohio	New York
Nevada	Kansas	Oklahoma	North Carolina
New Hampshire	Kentucky	Pennsylvania	Ohio
New Jersey	Louisiana	Rhode Island	Oklahoma
New Mexico	Maine	Texas	Oregon
New York	Michigan	Utah	Pennsylvania
North Carolina	Minnesota	Washington	Rhode Island
Ohio	Missouri		South Carolina
Oregon	Montana		Tennessee
Pennsylvania	Nebraska		Texas
Rhode Island	Nevada		Utah
Texas	New Hampshire		Virginia
Washington	New Jersey		West Virginia
	New Mexico		Washington
	New York		Wisconsin
	North Carolina		
	Ohio		
	Oklahoma		
	Oregon		
	Pennsylvania		
	Rhode Island		
	South Carolina		
	South Dakota		
	Tennessee		
	Texas		
	Utah		
	Vermont		
	Virginia		
	Washington		
	West Virginia		
	Wisconsin		

Source: Richard Reuben, "The Lawyer Turns Peacemaker," *ABA Journal* (August 1996), p. 56.

V. International Dispute Resolution

Parties to international contracts may include forum-selection, choice-of-law, and arbitration clauses to protect themselves if disputes arise. These clauses are defined in the text.

TEACHING SUGGESTIONS

1. Divide students into small groups and assign one of the text chapter's end-of- chapter problems to each group. Have each group determine whether or not the assigned problem is one that would lend itself to alternative dispute resolution. ***If not, why not? If so, which form of alternative dispute resolution would the group recommend?***

2. Obtain a standard arbitration agreement form from a national arbitration organization such as the American Arbitration Association. Ask students to discuss specific features of these agreements and the factors that might make them hesitant to submit a dispute to arbitration.

3. Some students may find it enlightening to be reminded that sometimes forgotten in a dry, tedious study of legal principles are the people behind the concepts. It may prove helpful in their studying to remember that most of the principles set out in the text represent judgments in decide cases that involved real people in real controversies. The law corresponds to the many ways in which people organize the world. That is, the law includes customs, traditions, rules, and objectives that people have held in different circumstances at different times. While it often seems that the law creates meaningless distinctions, it is in fact the real needs of real people that create them.

4. In the courtroom, changes are being wrought by television. There is an increasing reliance on video testimony. Children who allege physical or sexual abuse, for example, may give video testimony outside a courtroom to be shown during trial proceedings. Lawyers who represent accident victims often commission videos to visually show the court the impact of accident-related injuries on the daily lives of their clients. In criminal trials, judges have allowed juries to see filmed reenactments of crimes. To further blur the line between simulation and reality is the increasing number of cameras that videotape the commission of alleged crimes and other wrongs. ***What effect are these uses of television having on the judicial system? Could jurors watch trials on their televisions at home and reach a verdict by interactive cable? Through a familiarity with movies and TV shows, could jurors come to expect more excitement than is generated in the usual courtroom when at least some of the proceeding is on video? Will lawyers argue their cases to appeal to home audiences? And what effect might all of this have on the U.S. judicial system's impartiality and fairness?***

Cyberlaw Link

Ask your students to what extent those who send e-mail over the Internet should be liable for the content of their messages in states other than their own (or nations other than the United States). ***Is the existence of a Web site a sufficient basis to exercise jurisdiction?***

DISCUSSION QUESTIONS

1. ***If a corporation is incorporated in Delaware, has its main office in New York, and does business in California, but its president lives in Connecticut, in which state(s) can it be sued?*** Delaware, New York, and California—a corporation is subject to the jurisdiction of the courts in any state in which it is incorporated, in which it has its main office, or in which it does business.

2. ***What is the difference between a court of general jurisdiction and a court of limited jurisdiction?*** A court with general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court with limited jurisdiction. Trial courts with general jurisdiction include county, district, and superior courts. Trial courts with limited jurisdiction include local municipal courts (which handle mainly traffic cases), small claims courts, and domestic relations courts. Thus, for example, small claims disputes are typically assigned to courts that hear only small claims disputes.

3. ***What is the role of a court with appellate jurisdiction?*** Courts of appellate jurisdiction are reviewing courts—they review cases brought on appeal from trial courts, which are courts of original jurisdiction. In most states, after a case is tried, there is a right to at least one appeal. An appellate court examines the record of a case, looking at questions of law and procedure for errors by the court below.

4. ***When may a federal court hear a case?*** Federal courts have jurisdiction in cases in which federal questions arise, in cases in which there is diversity of citizenship, and in some other cases. When a suit involves a question arising under the Constitution, a treaty, or a federal law, a federal question arises. When a suit involves citizens of different states, a foreign country and an American citizen, or a foreign citizen and an American citizen, diversity of citizenship exists. In diversity suits, there is an additional requirement—the amount in controversy must be more than $50,000. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, and copyrights; in suits against the United States; and in some areas of admiralty law.

5. ***When may the United States Supreme Court hear a case?*** The United States Supreme Court has original in only a few situations. The Supreme Court can review any case decided by a federal court of appeals and any case decided by a state's highest court in which a federal constitutional issue is involved.

6. ***When may a court exercise jurisdiction over a party whose only connection to the jurisdiction is via the Internet?*** One way to phrase the issue is when, under a set of circumstances, there are *sufficient minimum contacts* to give a court jurisdiction over a remote party. If the only contact is an ad on the Web originating from a remote location, the outcome to date has generally been that a court cannot exercise jurisdiction. Doing considerable business online, however, generally supports jurisdiction. The "hard" cases are those in which the contact is more than an ad but less than a lot of activity.

7. ***How does the process of negotiation work?*** In the process of negotiation, the parties come together informally, with or without attorneys to represent them. Within this informal setting the parties air their differences and try to reach a settlement or resolution without the involvement of independent third parties. Because no third parties are involved and because of the informal setting, negotiation is the simplest form of alternative dispute resolution.

8. ***What is the principal difference between negotiation and mediation?*** The major difference between negotiation and mediation is that mediation involves the presence of a third party called a mediator. The mediator assists the parties in reaching a mutually acceptable agreement. The mediator talks face to face with the parties and allows them to discuss their disagreement in an informal environment. The mediator's role, however, is limited to assisting the parties. The mediator does not decide a controversy; he or she only aids the process by helping the parties more quickly find common ground on which they can begin to reach an agreement for themselves.

9. ***What is arbitration?*** The process of arbitration involves the settling of a dispute by an impartial third party (other than a court) who renders a *legally binding* decision. The third party who renders the decision is called an arbitrator. Arbitration combines the advantages of third-party decision making—as provided by judges and juries in formal litigation—with the speed and flexibility of rules of procedure and evidence less rigid than those governing courtroom litigation.

10. ***What kinds of disputes may be subject to arbitration?*** The FAA requires that courts give deference to all voluntary arbitration agreements in cases governed by federal law. Virtually any dispute can be

the subject of arbitration. A voluntary agreement to arbitrate a dispute normally will be enforced by the courts if the agreement does not compel an illegal act or contravene public policy.

ACTIVITY AND RESEARCH ASSIGNMENTS

1. Have students prepare a chart showing the relationships between the various courts having jurisdiction in your state. (There is a digest of each state's courts in *Martindale-Hubbell Law Directory*, which might be placed on reserve in the library.) Assign a few jurisdiction hypotheticals. ***For example—Through which of these courts could a divorce decree be appealed? Which court(s) would have original jurisdiction in a truck accident involving out-of-state residents (does the dollar amount of injuries and damage make a difference)? Which court(s) would have jurisdiction to render a judgment in a case arising from food poisoning at a local cheeseburger stand that is part of a nationwide corporate chain? In which court(s) could you file a suit alleging discrimination, and if you lost, to which court could you appeal the decision?***

2. Ask the class to research the reasons behind the earlier hostility of the courts towards arbitration procedures. ***Were they concerned solely with parties being divested of their rights or did they see arbitration as a challenge to their own authority?***

3. Have students investigate the dispute resolution services discussed in this chapter by going online and reading some the disputes submitted for resolution or the results in individual cases (on the ICANN Web site, for example).

EXPLANATION OF SELECTED FOOTNOTES IN THE TEXT

Footnote 5: In ***International Shoe Co. v. State of Washington,*** 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the state of Washington sought unemployment contributions from the International Shoe Company based on commissions paid to its sales representatives who lived in the state. International Shoe claimed that its activities within the state were not sufficient to manifest its "presence." It argued that (1) it had no office in Washington; (2) it employed sales representatives to market its product in Washington, but no sales or purchase contracts were made in the state; and (3) it maintained no inventory in Washington. The company claimed that it was a denial of due process for the state to subject it to suit. The Supreme Court of Washington ruled in favor of the state, and International Shoe appealed to the United States Supreme Court.

The United States Supreme Court affirmed the Washington Supreme Court's decision—International Shoe had sufficient contacts with the state to allow the state to exercise jurisdiction constitutionally over it. The Court found that the activities of the Washington sales representatives were "systematic and continuous," resulting in a large volume of business for International Shoe. By conducting its business within the state, the company received the benefits and protections of the state laws and was entitled to have its rights enforced in state courts. Thus, International Shoe's operations established "sufficient contacts or ties with the state … to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligation" that the company incurred there.

Footnote 8: In ***Zippo Manufacturing Co. v. Zippo Dot.Com, Inc.,*** 952 F.Supp. 1119 (W.D.Pa. 1997), a federal district court proposed three categories for classifying the types of Internet business contact: (1) substantial business conducted online, (2) some interactivity through a Web site, and (3) passive advertising. Jurisdiction is proper for the first category, improper for the third, and may or may not be appropriate for the second. Zippo Manufacturing Co. (ZMC) makes, among other things, "Zippo" lighters. ZMC is based in Pennsylvania. Zippo Dot Com, Inc. (ZDC), operates a Web page and an Internet subscription news service. ZDC has the exclusive right the domain names "zippo.com," "zippo.net," and "zipponews.com." ZDC is based in California, and its contacts with Pennsylvania have occurred almost exclusively over the

Internet. Two per cent of its subscribers (3,000 of 140,000) are Pennsylvania residents who contracted over the Internet to receive its service. ZDC has agreements with seven ISPs in Pennsylvania to permit their subscribers to access the service. ZMC filed a suit in against ZDC, alleging trademark infringement and other claims, based on ZDC's use of the word "Zippo." ZDC filed a motion to dismiss for lack of personal jurisdiction. Holding that ZDC's connections to the state fell into the first category, the court denied the motion.

ANSWERS TO ESSAY QUESTIONS IN *STUDY GUIDE TO ACCOMPANY BUSINESS LAW*, ELEVENTH EDITION BY HOLLOWELL & MILLER

1. ***What is jurisdiction? How does jurisdiction over a person or property differ from subject matter jurisdiction?*** To consider a case, a court must have power over the person or the property involved in the action. Power over the person is often referred to as *in personam* jurisdiction. *In personam* jurisdiction is required before a court can enter a personal judgment against a party to the action. Power over property is often referred to as *in rem* jurisdiction. An *in rem* proceeding is taken directly against property. Subject matter jurisdiction involves limitations on the types of cases a court can hear—a court of general jurisdiction can hear virtually any type of case, except a case that is appropriate for a court of limited jurisdiction.

2. ***What permits a court to exercise jurisdiction based on contacts over the Internet?*** For a court to exercise jurisdiction based on contacts over the Internet, generally the contacts must be with the court's geographic jurisdiction. For a court to compel any defendant to come before the court, there must be at least minimum contacts (an office within the jurisdiction, for example, or a salesperson in the state, and so on). The issue in the context of cyberspace is whether there are sufficient minimum contacts if the only connection to a jurisdiction is an ad on the Web originating from a remote location. Some courts have upheld exercises of jurisdiction on the basis of the accessibility of a Web page. Other courts have concluded that without more, a presence on the Web is not enough to support jurisdiction over nonresident defendants. The most reasonable standard is probably a "sliding scale," according to which a court's exercise of personal jurisdiction depends on the amount of business that an individual or firm transacts over the Internet. Substantial business or a lot of interactivity would support an exercise of jurisdiction. A passive ad would not.

REVIEWING—

★☆★ COURTS AND ALTERNATIVE DISPUTE RESOLUTION ★☆★

Stan Garner resides in Illinois and promotes boxing matches for SuperSports, Inc., an Illinois corporation. Garner created the concept of "Ages" promotion—a three-fight series of boxing matches pitting an older fighter (George Foreman) against a younger fighter, such as John Ruiz or Riddick Bowe. The concept included titles for each of the three fights ("Challenge of the Ages," "Battle of the Ages," and "Fight of the Ages"), as well as promotional epithets to characterize the two fighters ("the Foreman Factor"). Garner contacted George Foreman and his manager, who both reside in Texas, to sell the idea, and they arranged a meeting at Caesar's Palace in Las Vegas, Nevada. At some point in the negotiations, Foreman's manager signed a nondisclosure agreement prohibiting him from disclosing Garner's promotional concepts unless the parties signed a contract. Nevertheless, after negotiations between Garner and Foreman fell through, Foreman used Garner's "Battle of the Ages" concept to promote a subsequent fight. Garner filed suit against Foreman and his manager in a federal district court located in Illinois, alleging breach of contract. Ask your students to answer the following questions, using the information presented in the chapter.

1. ***On what basis might the federal district court in Illinois exercise jurisdiction in this case?*** The federal district court exercises jurisdiction because the case involves diversity of citizenship. Diversity jurisdiction requires that the plaintiff and defendant be from different jurisdictions 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 boxing matches with George Foreman, the amount in controversy exceeded $75,000.

2. ***Does the federal district court have 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 and trials take place. In the federal court system, the district courts are the trial courts, so the federal district court has original jurisdiction.

3. ***Suppose that Garner had filed his action in an Illinois state court. Could an Illinois state court exercise personal jurisdiction over Foreman or his manager? Why or why not?*** No, because the defendants lacked minimum contacts with the state of Illinois. Because the defendants were from another state, the court would have to determine if they had sufficient contacts with the state for the Illinois court to exercise jurisdiction based on a long arm statute. Here, the defendants never went to Illinois, and the contract was not formed in Illinois. Thus, it is unlikely that an Illinois state court would find sufficient minimum contacts to exercise jurisdiction.

4. ***Assume that Garner had filed his action in a Nevada state court. Would that court have personal jurisdiction over Foreman or his manager? Why or why not?*** 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 defendants had sufficient contacts with the state. Because the parties met Garner and negotiated the contract in Nevada, a court would likely hold these activities were sufficient to justify a Nevada court's exercising personal jurisdiction.