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## CHAPTER 2

### COURTS AND ALTERNATIVE DISPUTE RESOLUTION

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#### ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE

INSIGHT INTO ETHICS—CRITICAL THINKING—INSIGHT INTO THE ETHICAL ENVIRONMENT (PAGE 29)

Now that the United States Supreme Court is allowing unpublished decisions to form persuasive precedent in federal courts, should state courts follow? Why or why not? Yes, because categorizing some decisions, unpublished or otherwise, as not establishing precedent is arguably unconstitutional. No, because such decisions are often less significant or may set “bad” precedents and have not traditionally been regarded as establishing precedent.

#### ANSWERS TO QUESTIONS AT THE ENDS OF THE CASES

CASE 2.1—QUESTIONS (PAGE 32)

1A. What are the factors that the court looked at in determining whether minimum contacts existed between the defendant and the state of North Carolina? The Court of Appeals of North Carolina stated that North Carolina courts “look at the following factors in determining whether minimum contacts exist: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) the convenience of the parties. After examining all of these factors, the court concluded that the defendant had “sufficient minimum contacts with North Carolina to justify the exercise of personal jurisdiction over [the] defendant without violating the due process clause.”

2A. Why did the court state that the convenience of the parties was not “determinative” in this case? The Court of Appeals of North Carolina pointed out that litigation between parties to interstate transactions “inevitably involves inconvenience to one of the parties.” Here, said the court, it would be just as inconvenient for the plaintiff to litigate in the defendant’s state as it would be for the defendant to litigate in North Carolina. Because the inconvenience to the parties was not weighted in favor of one party or the other, the inconvenience to the parties could not be determining factor in deciding the due process issue.

## CASE 2.2—QUESTIONS (PAGE 37)

### THE LEGAL ENVIRONMENT DIMENSION

Under what circumstances might a state suffer an injury that would give it the standing to sue to block the enforcement of restrictions on the use of federal funds? If the state were the direct recipient of the federal funds and the direct subject of the federal restrictions, it might have standing to sue to block the enforcement of those restrictions. But the government’s financial inducement would have to be “so coercive as to pass the point at which pressure turns into compulsion,” in the words of the United States Supreme Court.

### THE ETHICAL DIMENSION

Would it be ethical for a state to change its policies to follow LCS’s restrictions and continue the funding? As to whether it would be ethical for a state to alter its policies to align with LSC’s restrictions to continue the funding of local legal services programs, a state could ethically—and legally—alter its own policies to align with LSC’s restrictions. In fact, this is likely what the proponents of the restrictions had in mind.

## CASE 2.3—QUESTIONS (PAGE 44)

### THE LEGAL ENVIRONMENT DIMENSION

Why did NCR not want its 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.

## THE ETHICAL DIMENSION

Could NCR have a claim that KAL engaged in unfair competition because KAL had engaged in unethical business practices? (Hint: Unfair competition may occur when one party deceives the public into believing that his or her goods are the goods of another.) Why or why not? Of course, “unethical business practices” is not an element of a claim for unfair competition, and thus NCR could not base a legal action on that allegation alone. Also, the statement of facts in this case does not indicate whether “the public” was “deceived” with the respect to these parties’ goods. But NCR could have a claim if it could successfully plead the requirements of the cause as stated in this question—KAL’s deceiving the public into believing that its goods are the goods of NCR.

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

## 1A. Federal jurisdiction

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.

## 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 and trials take place. 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 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.

## 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

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.

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

In this age of the Internet with which people communicate via e-mail, instant text messaging, tweeting, Facebook, and MySpace, is the concept of jurisdiction losing its meaning? Explain your answer. 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 QUESTIONS AND CASE PROBLEMS AT THE END OF THE CHAPTER

### 2-1A.                      Standing (Chapter 2—Pages 35-37)

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.                      QUESTION WITH SAMPLE ANSWER{ Appellate review

Trial courts, as explained in the text, are responsible for settling "questions of fact." Often, when parties bring a case to court there is a dispute as to what actually happened. Different witnesses have different versions of what they saw or heard, and there may be

only indirect evidence of certain issues in dispute. During the trial, the judge and the jury (if it is a jury trial) listen to the witnesses and view the evidence firsthand. Thus, the trial court is in the best position to assess the credibility (truthfulness) of the witnesses and determine the weight that should be given to various items of evidence. At the end of the trial, the judge and the jury (if it is a jury trial) decide what will be considered facts for the purposes of the case. Trial courts are best suited to this job, as they have the opportunity to observe the witnesses and evidence, and they regularly determine the reliability of certain evidence. Appellate courts, in contrast, see only the written record of the trial court proceedings and cannot evaluate the credibility of witnesses and the persuasiveness of evidence. For these reasons, appellate courts nearly always defer to trial courts' findings of fact. An appellate court can reverse a lower court's findings of fact, however, when so little evidence was presented at trial that no reasonable person could have reached the conclusion that the judge or jury reached.

2-3A.                    Jurisdiction  
                              (Chapter 2—Pages 32-33)

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.

2-4A.                    Jurisdiction  
                              (Chapter 2— Pages 33-34)

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.                    Jurisdiction  
                              (Chapter 2— Pages 30-32)

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."

2-6A. CASE PROBLEM WITH SAMPLE ANSWER: Arbitration clause

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. Arbitration  
(Chapter 2- Pages 43-44)

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.

2-8A. Arbitration  
(Chapter 2—Pages 43–44)

In many circumstances, a party that has not signed an arbitration agreement (Kobe in this case) cannot compel arbitration. There are exceptions, however. According to the court, “The first relies on agency and related principles to allow a nonsignatory (Kobe) to compel arbitration when, as a result of the nonsignatory’s close relationship with a signatory (Primenergy), a failure to do so would eviscerate [gut] the arbitration agreement.” That applies here. Kobe and Primenergy claimed to have entered into a licensing agreement under the terms of the agreement between PRM and Primenergy. The license agreement is central to the resolution of the dispute, so Kobe can compel arbitration. Similarly, all claims PRM has against Primenergy go to arbitration because the arbitration clause covers “all disputes.” That would include allegations of fraud and theft. Such matters can be resolved by arbitration. “Arbitration may be compelled under ‘a broad arbitration clause ... as long as the underlying factual allegations simply “touch matters covered by” the arbitration provision.’ It generally does not matter that claims sound in tort, rather than in contract.” The reviewing court affirmed the trial court’s decision.

2-9A. A QUESTION OF ETHICS: Agreement to arbitrate

(a) 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 than 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.

(b) 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.

IHI

ANSWER TO VIDEO QUESTION NO. 2-10

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Jurisdiction in Cyberspace

(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.

(b) 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.

(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.