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## CHAPTER 2

# COURTS AND ALTERNATIVE DISPUTE RESOLUTION

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### ANSWERS TO CRITICAL THINKING QUESTIONS IN THE FEATURE

#### MANAGERIAL STRATEGY—BUSINESS QUESTIONS

**1A.** *If you were facing an especially complex legal dispute—one involving many facets and several different types of law—would you consent to allowing a U.S. magistrate judge to decide the case? Why or why not?* Yes. U.S. magistrate judges are selected by federal district court judges through a merit selection process. Applicants are interviewed by a screening committee of lawyers and others from the federal judicial district in which the position will be filled. The committee selects the five most qualified, who are voted on by the district court judges. Political party affiliation plays no part in the process.

No. Because of the selection process for a magistrate judge is not the same as for a district judge, some critics have expressed concerns about the quality of magistrate judges. Some groups, such as People for the American Way, are not in favor of allowing magistrate judges the power to decide cases. These critics believe that because of their limited terms, they are not completely immune from outside pressure.

**2A.** *If you had to decide whether to allow a U.S. magistrate judge to hear your case, what information might you ask your attorney to provide concerning that individual?* Applicants for the position of magistrate judge include attorneys, administrative law judges, state court judges, and others. Important information concerning a judge who hears a specific case might consist of the individual's background, including any area of expertise, and the details of his or her previous decisions—the facts, issues, outcomes, and reasoning—and how those factors might bear on the case at bar.

## ANSWERS TO QUESTIONS AT THE ENDS OF THE CASES

### CASE 2.1—LEGAL REASONING QUESTIONS

**1A. What is “diversity of citizenship?”** Diversity of citizenship exists when the plaintiff and defendant to a suit are residents of different states (or similar independent political subdivisions, such as territories). When a suit involves multiple parties, they must be completely diverse—no plaintiff may have the same state or territorial citizenship as any defendant. For purposes of diversity, a corporation is a citizen of both the state in which it is incorporated and the state in which its principal place of business is located.

**2A. How does the presence—or lack—of diversity of citizenship affect a lawsuit?** A federal district court can exercise original jurisdiction over a case involving diversity of citizenship. There is a second requirement to exercise diversity jurisdiction—the dollar amount in controversy must be more than \$75,000. In a case based on diversity, a federal court will apply the relevant state law, which is often the law of the state in which the court sits.

**3A. What did the court conclude with respect to the parties’ “diversity of citizenship” in this case?** In the *Mala* case, the court concluded that the parties did not have diversity of citizenship. A plaintiff who seeks to bring a suit in a federal district court based on diversity of citizenship has the burden to prove that diversity exists. Mala—the plaintiff in this case—was a citizen of the Virgin Islands. He alleged that Crown Bay admitted to being a citizen of Florida, which would have given the parties diversity. Crown Bay denied the allegation and asserted that it also was a citizen of the Virgin Islands. Mala offered only his allegation and did not provide any evidence that Crown Bay was anything other than a citizen of the Virgin Islands. There was thus no basis for the court to be “left with the definite and firm conviction that Crown Bay was in fact a citizen of Florida.”

### CASE 2.2—CRITICAL THINKING

#### WHAT IF THE FACTS WERE DIFFERENT?

**Suppose that Gucci had not presented evidence that Wang Huoqing had 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 Wang 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.

**LEGAL ENVIRONMENT**

***Is it relevant to the analysis of jurisdiction that Gucci America's principal place of business is in New York state rather than California? Explain.*** The fact that Gucci's headquarters is in New York state was not relevant to the court's analysis here because Gucci was the plaintiff. Courts look only at the defendant's location or contacts with the forum in determining whether to exercise personal jurisdiction. The plaintiff's location is irrelevant to this determination.

**CASE 2.3—CRITICAL THINKING****LEGAL ENVIRONMENT**

***Who can decide questions of fact? Who can rule on questions of Law? Why?*** Questions of fact can be decided by triers of fact. In a jury trial, the trier of fact is the jury. In a non-jury trial, it is the judge who decides questions of fact. Rulings on questions of law are made only by judges, not juries.

A question of fact deals with what really happened in regard to the dispute being tried—such as whether a certain act violated a contract. A question of law concerns the application or interpretation of the law—such as whether an act that violated a contract also violated the law. One of the reasons for the distinction between those who can decide questions of fact and those who can decide questions of law is that judges have special training and expertise to make decisions on questions of law that the typical lay member of a jury lacks.

**GLOBAL**

***In some cases, a court may be asked to determine and interpret the law of a foreign country. Some states consider the issue of what the law of a foreign country requires to be a question of fact. Federal rules of procedure provide that this issue is a question of law. Which position seems more appropriate? Why?*** Proof of what a foreign law states, and possibly its translation, may be appropriate for a jury to decide, based on a submission of such evidence as a foreign publication of statutes or case law, or the testimony of an expert witness. But the interpretation and application of the law would seem to be most appropriately within the province of a judge.

Under the federal rules of procedure, in a particular case, once the existence and phrasing of a foreign law has been proved, the court has the duty of construing it. The court's construction of the foreign law can be guided by the reasoning underlying similar rules of U.S. common law. Expert witnesses may be consulted, but their opinions are not binding

## **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, when people communicate via e-mail, texts, tweets, Facebook, 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.** *Sue uses her smartphone to purchase a video security system for her architectural firm from Tipton, Inc., a company that is located in a different state. The system arrives a month after the projected delivery date, is of poor quality, and does not function as advertised. Sue files a suit against Tipton in a state court. Does the court in Sue's state have jurisdiction over Tipton? What factors will the court consider in determining jurisdiction?* Yes, the court in Sue's state has jurisdiction over Tipton on the basis of the company's minimum contacts with the state.

Courts look at the following factors in determining whether minimum contacts exist: the quantity of the contacts, the nature and quality of the contacts, the source and connection of the cause of action to the contacts, the interest of the forum state, and the convenience of the parties. Attempting to exercise jurisdiction without sufficient minimum contacts would violate the due process clause. Generally, courts have found that jurisdiction is proper when there is substantial business conducted online (with contracts, sales, and so on). Even when there is only some interactivity through a Web site, courts have sometimes held that jurisdiction is proper. Jurisdiction is not proper when there is merely passive advertising.

Here, all of these factors suggest that the defendant had sufficient minimum contacts with the state to justify the exercise of jurisdiction over the defendant. Two especially important factors were that the plaintiff sold the security system to a resident of the state and that litigating in the defendant's state would be inconvenient for the plaintiff.

**2A.** *The state in which Sue resides requires that her dispute with Tipton 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, if the dispute is not resolved, or if either party disagrees with the decision of the mediator or arbitrator, a court will hear the case. It is required that the dispute be submitted to mediation or arbitration, but this outcome is not binding.

## ANSWERS TO BUSINESS SCENARIOS AT THE END OF THE CHAPTER

### **2-1A.** *Standing*

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 Turtens had been injured, or were likely to be injured, by the county's landfill operations. Clearly, one could argue that the injuries that the Turtens complained of directly resulted from the county's violations of environmental laws while operating the landfill. The Turtens lived directly across from the landfill, and they were experi-

encing the specific types of harms (fires, scavenger problems, groundwater contamination) that those laws were enacted to address. Thus, the Turtens would have standing to bring their suit.

### **2–2A. Venue**

The purpose behind most venue statutes is to ensure that a defendant is not “hailed into a remote district, having no real relationship to the dispute.” The events in dispute have no connection to Minnesota. The Court stated: “Looked at through the lens of practicality—which is, after all, what [the venue statute] is all about—Nestlé’s motion can really be distilled to a simple question: does it make sense to compel litigation in Minnesota when this state bears no relationship to the parties or the underlying events?” The court answered no to this simple question. The plaintiff resides in South Carolina, her daughter’s injuries occurred there, and all of her medical treatment was provided (and continues to be provided) in that state. South Carolina is the appropriate venue for this litigation against Nestlé to proceed.

## **ANSWERS TO BUSINESS CASE PROBLEMS AT THE END OF THE CHAPTER**

### **2–3A. Arbitration**

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.

### **2–4A. SPOTLIGHT ON 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, be-



cause 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.

### **2-5A. 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.

### **2-6A. 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.

### **2-7A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—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.

### **2–8A. Appellate, or reviewing, courts**

Yes, the state intermediate appellate court is likely to uphold the agency's findings of fact. Appellate courts normally defer to lower tribunals' findings on questions of fact because those forums' decision makers are in a better position to evaluate testimony. A trial court judge or jury, for example, can directly observe witnesses' gestures, demeanor, and other nonverbal conduct during a trial. A judge or justice sitting on an appellate court cannot.

In this problem, Angelica Westbrook, an employee of Franklin Collection Service, Inc., allegedly made a statement during a call to a debtor that violated company policy. Westbrook was fired, and applied for unemployment benefits. Benefits were approved, but Franklin objected. Witnesses at an administrative hearing on the dispute included a Franklin supervisor who testified that she heard Westbrook make the false statement, although she admitted that Westbrook had not been involved in any similar incidents. Westbrook denied making the statement, but added that if she had said it, she did not remember it. The agency found that Franklin's reason for terminating Westbrook did not amount to the misconduct required to disqualify her for benefits and upheld the approval. Franklin appealed. Under the standard for appellate review of findings of fact, the appellate court will likely affirm the agency's findings.

In the actual case on which this problem is based, the state intermediate appellate court to which Franklin appealed the MDES's approval of Johnson's claim upheld the agency'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.



## ANSWERS TO LEGAL REASONING GROUP ACTIVITY QUESTIONS AT THE END OF THE CHAPTER

### 2–10A. *Access to courts*

(a) The statute violates litigants' rights of access to the courts and to a jury trial because the imposition of arbitration costs on those who improve their positions by less than 10 percent on an appeal is an unreasonable burden. And the statute forces parties to arbitrate before they litigate—an added step in the process of dispute resolution. The limits on the rights of the parties to appeal the results of their arbitration to a court further impede their rights of access. The arbitration procedures mandated by the statute are not reasonably related to the legitimate governmental interest of attaining less costly resolutions of disputes.

(b) The statute does not violate litigants' constitutional right of access to the courts because it provides the parties with an opportunity for a court trial in the event either party is dissatisfied with an arbitrator's decision. The burdens on a person's access to the courts are reasonable. The state judicial system can avoid the expense of a trial in many cases. And parties who cannot improve their positions by more than 10 percent on appeal are arguably wasting everyone's time. The assessment of the costs of the arbitration on such parties may discourage appeals in some cases, which allows the courts to further avoid the expense of a trial. The arbitration procedures mandated by the statute are reasonably related to the legitimate governmental interest of attaining speedier and less costly resolution of disputes.

(c) The determination on rights of access could be different if the statute was part of a pilot program and affected only a few judicial districts in the state because only parties who fell under the jurisdiction of those districts would be subject to the limits. Opponents might argue that the program violates the due process of the Fifth Amendment because it is not applied fairly throughout the state. Proponents might counter that parties who object to an arbitrator's decision have an opportunity to appeal it to a court. Opponents might argue that the program exceeds what the state legislature can impose because it does not reasonably relate to a legitimate governmental objective—it arbitrarily requires only litigants who reside in a few jurisdictions to submit to arbitration. Proponents might counter that this is aimed at the reduction of court costs—that the statute rationally relates to a legitimate governmental end. An equal protection challenge would most likely be subject to a similar rational basis test. Under these and other arguments, the reduction of court costs would be a difficult objective to successfully argue against.