

## **CHAPTER 3-COURTS, LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION**

### **TRUE/FALSE**

1. If Lorenzo is seeking an injunction against Brenda to prevent her from selling materials that infringe his copyright, he is entitled to a jury trial if the value of the materials is over \$100.

ANS: F                      PTS: 1                      MSC: AACSB Reflective Thinking

2. Disputants Martin and Daulton have hired Thurman to mediate their disagreement. Although Martin and Daulton must accept whatever decision Thurman makes, the mediation has the advantage of keeping Martin and Daulton out of court.

ANS: F                      PTS: 1                      MSC: AACSB Reflective Thinking

3. Hankrin Corp. is incorporated under Delaware law and has its principal place of business in Annapolis. For diversity purposes, it is considered a resident only of Maryland.

ANS: F                      PTS: 1                      MSC: AACSB Reflective Thinking

4. Primary methods of alternative dispute resolution include litigation and mediation.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

5. Generally, mandatory arbitration provisions in a contract are valid.

ANS: T                      PTS: 1                      MSC: AACSB Analytic

6. U.S. Supreme Court justices serve for a nine year period.

ANS: F                      PTS: 1

7. A prospective juror was excused from serving after being questioned by the plaintiff's attorney. No reason was given for the rejection. This would be accomplished by the use of a peremptory challenge.

ANS: T                      PTS: 1                      MSC: AACSB Analytic

8. Summary judgment is appropriate when there are no essential facts in dispute.

ANS: T                      PTS: 1                      MSC: AACSB Analytic

9. In order for a federal court to have jurisdiction, there must be a federal question involved and at least \$75,000 in dispute.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

10. After being served with a summons and a copy of the complaint, a defendant usually files a pleading known as an answer, briefly replying to each allegation in the complaint.

ANS: T                      PTS: 1                      MSC: AACSB Analytic

11. In a civil case, the plaintiff must prove the case beyond a reasonable doubt.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

12. A summons is a paper ordering a defendant to appear in court at a certain time.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

13. Appellate courts conduct trial de novo, rehearing all evidence

ANS: F                      PTS: 1

14. If interrogatories are being used as a form of discovery, the party being questioned must generally answer all the questions orally under oath.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

15. Emails and their attachments are not subject to pretrial discovery.

ANS: F                      PTS: 1                      MSC: AACSB Analytic

### **MULTIPLE CHOICE**

1. The most accurate statement regarding appellate courts is:
- appellate courts often hear new evidence and testimony.
  - appellate courts generally accept the factual findings of the trial court.
  - only the federal court system has appellate courts.
  - appellate courts hear only criminal cases.

ANS: B                      PTS: 1                      MSC: AACSB Analytic

2. Advantages of Alternative Dispute Resolution (ADR) include:
- ADR is faster than litigation.
  - ADR keeps the parties talking rather than fighting.
  - ADR is less expensive than litigation.
  - All of the above are advantages of ADR.

ANS: D                      PTS: 1                      MSC: AACSB Analytic

3. The fastest growing method of dispute resolution in the United States is:
- arbitration.
  - negotiation.
  - mediation.
  - litigation.

ANS: C                      PTS: 1                      MSC: AACSB Analytic

4. Jurisdiction is:
- the study of law.
  - the authority of a court to decide a particular type of case.
  - a federal court concept.
  - applicable only to appeals courts.

ANS: B                      PTS: 1                      MSC: AACSB Analytic

5. Tony fell and injured himself in a Mega Toy Store. Mega Toy Store is incorporated in Delaware. Tony is a resident of Nevada but was injured in a Mega Toy Store located in Arizona. Mega Toy does not do business in Nevada. Tony's damages exceed \$100,000. If Tony decides to sue Mega Toy Store:
- he may file the lawsuit in an Arizona state court.
  - he may file the lawsuit in a federal district court in Arizona.
  - he must file the lawsuit in a federal district court because the federal courts would have diversity jurisdiction in this case.
  - Either a or b.

ANS: D

PTS: 1

MSC: AACSB Reflective Thinking

6. Federal jurisdiction based upon a "federal question" includes cases based on:
- the United States Constitution.
  - a federal statute.
  - a federal treaty.
  - All of the above.

ANS: D

PTS: 1

MSC: AACSB Analytic

7. The biggest change in litigation in the last decade is:
- an explosive rise of electronic discovery.
  - a decrease in the use of discovery.
  - the replacement of interrogatories with depositions.
  - the use of juries in appellate courts.

ANS: A

PTS: 1

MSC: AACSB Analytic

8. Holt and Collins decide to have their dispute arbitrated by Corrales. Which of the following will NOT be a result of the arbitration?
- Corrales will render a binding decision.
  - Holt and Collins retain the right to a class action.
  - Holt and Collins give up the right to discovery.
  - Corrales need not give reasons for the decision.

ANS: B

PTS: 1

MSC: AACSB Reflective Thinking

9. Roberto sued Monica for injuries received in a traffic accident. If Monica does not respond to the complaint and summons served by Roberto within the prescribed time limits, Roberto may obtain a:
- judgment on the pleadings.
  - summary judgment.
  - pretrial conference.
  - default judgment.

ANS: D

PTS: 1

MSC: AACSB Reflective Thinking

10. Roxanne was injured when she fell in a hole while walking across her landlord's parking lot. She and her lawyer hope they can settle the claim. Which of the following statements about settlements is correct?
- A case can be settled provided it has not been filed with the court.
  - A case can be settled provided that discovery has not commenced.
  - A case can be settled provided the jury has not heard any testimony.
  - A case can be settled at any time.

ANS: D

PTS: 1

MSC: AACSB Reflective Thinking

11. In a civil case, the plaintiff must prove the case:
- by a preponderance of the evidence.
  - by clear and convincing evidence.
  - beyond a reasonable doubt.
  - None of the above; the burden of proof is on the defendant.

ANS: A                      PTS: 1                      MSC: AACSB Analytic

12. In *Jones v. Clinton*, the court held:
- Paula Jones did not demonstrate the essential elements for her claim.
  - Paula Jones was entitled to a summary judgment.
  - public policy required that the case be dismissed because of the President's governmental position.
  - President Clinton failed to comply with a discovery order.

ANS: A                      PTS: 1                      MSC: AACSB Analytic

13. A jury decision in a civil case:
- must be unanimous.
  - must be reached in the same day the case is heard.
  - depends on whether or not the parties have agreed to have their case decided by less than a unanimous verdict.
  - is achieved by informal deliberations.

ANS: D                      PTS: 1                      MSC: AACSB Analytic

14. When an appellate court hears a case, it may:
- affirm the decision.
  - reverse the decision.
  - modify the decision.
  - All the above are correct.

ANS: D                      PTS: 1                      MSC: AACSB Analytic

15. After the plaintiff has presented her case, the defendant may be granted a:
- directed verdict.
  - summary judgment.
  - judgment n.o.v.
  - judgment on the pleadings.

ANS: A                      PTS: 1                      MSC: AACSB Analytic

16. After answering a summons and complaint, Mike received a set of written questions from the plaintiff's attorney. He was directed to respond to the questions in writing under oath. This discovery technique is called:
- a request for admission.
  - a request for the production of documents.
  - a deposition.
  - interrogatories.

ANS: D                      PTS: 1                      MSC: AACSB Reflective Thinking

17. A civil case generally proceeds as follows:
- answer, complaint, discovery, trial, verdict.
  - complaint, answer, trial, discovery, verdict.
  - complaint, answer, discovery, trial, verdict.

d. discovery, complaint, answer, trial, verdict.

ANS: C

PTS: 1

MSC: AACSB Analytic

18. Denzil was one of 50,000 people defrauded of \$40 in an advertising scam. His best course of action to recover his money is to:
- mediate the claim with the advertiser.
  - bring an individual lawsuit against the advertiser in a state appellate court.
  - bring an individual lawsuit in a U.S. District Court.
  - become part of a class action lawsuit, which might include plaintiffs who are unaware of the lawsuit or are even unaware they were harmed.

ANS: D

PTS: 1

MSC: AACSB Reflective Thinking

19. When an appeal is filed with the U.S. Supreme Court, the Supreme Court:
- must hear the case if the validity of a federal statute is in question.
  - must hear the case if two or more U.S. courts of appeals have decided the legal issue differently.
  - has discretion as to which cases it hears.
  - must hear all cases.

ANS: C

PTS: 1

MSC: AACSB Analytic

20. Which of the following is not an example of a trial court of limited jurisdiction?
- A probate court.
  - A juvenile court.
  - A small claims court.
  - A general civil division court.

ANS: D

PTS: 1

MSC: AACSB Analytic

21. The United States has taken a position that legal issues are best resolved by lawsuits involving parties with conflicting interests presenting their strongest possible case to a neutral factfinder. Because of this, the legal system in the United States is considered:
- an adversary system.
  - a conflict system.
  - an alternative dispute resolution system.
  - a mediation system.

ANS: A

PTS: 1

MSC: AACSB Analytic

22. An inmate in a state prison claims his United States constitutional rights prohibiting cruel and unusual punishment are being violated by the state correctional facility. This case:
- may not be decided by a federal court since it involves a state facility.
  - must be decided by the state court where the inmate established residency before going to prison.
  - is a federal question case over which the federal courts have jurisdiction.
  - cannot be heard, as prisoners lose the right to sue.

ANS: C

PTS: 1

MSC: AACSB Reflective Thinking

23. A United States district court is:
- the primary federal trial court.
  - an appellate court.
  - a small claims court only.
  - none of the above.

ANS: A

PTS: 1

MSC: AACSB Analytic

24. Randi, a resident of Oregon, was involved in a auto accident while in Idaho. The other party lives in Wyoming. Randi wishes to recover the \$28,000 cost to repair her car. The most appropriate court for her to file her lawsuit is in a:
- federal court in Idaho.
  - state court in Idaho.
  - federal court in Wyoming.
  - federal court in Oregon.

ANS: B

PTS: 1

MSC: AACSB Reflective Thinking

25. Which of the following does a defendant have to do in person?
- Interrogatories
  - Subpoena
  - Production
  - Deposition

ANS: D

PTS: 1

## ESSAY

1. Briefly describe the process of jury selection.

ANS:

The process of jury selection is called *voir dire*. The court's goal is to select an impartial jury. Through a series of questions, attorneys for each side attempt to get the most favorable jury for their position. As potential jurors are questioned, either side may exclude a juror for cause (some reason to think the person may not be impartial) or via a limited number peremptory challenges, in which no reason must be stated for excluding a juror.

PTS: 1

MSC: AACSB Communication

2. Define discovery, and identify and explain five of the most important forms of discovery.

ANS:

Discovery is the pre-trial opportunity for both parties to learn the strengths and weaknesses of the opponent's case. Discovery is aimed at aiding the parties in reaching a negotiated settlement of the case prior to trial or, if the case proceeds to trial, to make the trial more efficient and fair. The five most important forms of discovery are interrogatories, depositions, production of documents and things, physical and mental examinations, and electronic discovery. Interrogatories are written questions that an opposing party must answer in writing, under oath. Depositions are sessions of live questioning of opposing parties or potential witnesses under oath with lawyers for both parties present. Each side may ask the other for relevant documents for inspection or copying, for physical objects, or for permission to enter on land to inspect. A party may request that the court order a physical or mental examination of the other party if that is relevant to the case. Electronic discovery involves requests for furnishing relevant, nonconfidential emails and their attachments, as well as other electronically stored information.

PTS: 1

MSC: AACSB Communication

3. Pablo, a resident of New Mexico, while driving through Arizona was struck by a SUV driven by Dick, a resident of California. Dick was speeding when the accident happened and Pablo suffered severe injuries that ruined a potential acting career. Pablo's damages are estimated at \$200,000. Discuss the court system(s) in which Pablo may bring a lawsuit.

ANS:

Pablo could bring this case in the federal court system because he and Dick are residents of different states and there is more than \$75,000 in dispute. This is a diversity case. Filing in federal court is optional, however, so Pablo could alternatively bring this action in a state system.

PTS: 1

MSC: AACSB Communication | AACSB Reflective Thinking

4. What are the advantages and disadvantages of using arbitration rather than litigation?

ANS:

The advantages of arbitration include using an impartial third party who often has expertise in the field to settle the dispute. The parties may have selected the arbitrator in advance or may have set forth a procedure to select a mutually agreeable arbitrator. Arbitration allows both sides to keep secret information that would have to be divulged in a court case. In most cases, use of an arbitrator will allow the case to be resolved much more quickly than utilizing traditional litigation techniques and it will probably be less expensive.

A disadvantage to arbitration is that the parties may be barred from using the court system. After the arbitrator's ruling, the court cannot correct a mistake of law made by the arbitrator. An arbitrator may issue a binding decision without giving reasons for the decision. Parties in arbitration give up many rights litigants retain, such as discovery and class action.

PTS: 1

MSC: AACSB Communication

5. Lance sued Mega Corp. for negligence, and a jury awarded him \$1.2 million. Mega Corp. filed a motion for judgment NOV, and that motion was denied by the trial court. Mega Corp. then appealed the case. Discuss a judgment NOV and when it is appropriate for a judge to grant such a judgment.

ANS:

A judgment NOV (*non obstante veredicto* or not withstanding the jury's verdict) can be entered by the court when the judge is convinced that the evidence presented does not equate to the verdict reached by the jury. The judge, being a trier of fact as well as of law, shares the fact-finding process with the jury -- the jury cannot award damages in a civil trial inconsistent with the evidence. Generally, the judge will defer to the decision of the jury but in some cases where extreme findings are reached by the jury totally inconsistent with the evidence, the judge will nullify the jury's verdict.

PTS: 1

MSC: AACSB Communication | AACSB Reflective Thinking