

## **CHAPTER 3—RESOLVING INTERNATIONAL COMMERCIAL DISPUTES**

### **TRUE/FALSE**

1. Litigation is used more frequently as a means of settling business disputes in the U.S. than in virtually any other country.

ANS: T                      PTS: 1

2. Many societies view litigation as evidence of personal achievement by the parties.

ANS: F                      PTS: 1

3. Jurisdiction means the "power to hear" a case.

ANS: T                      PTS: 1

4. Venue means the appropriate set of laws applicable to a case.

ANS: F                      PTS: 1

5. In an international dispute, the courts of both nations may assert jurisdiction over the matter.

ANS: T                      PTS: 1

6. The Bhopal disaster taught American corporations that they could insulate themselves from legal liability by having foreign control of the plant.

ANS: F                      PTS: 1

7. A U.S. court might refuse to enforce a Libyan court judgment.

ANS: T                      PTS: 1

8. A foreign company's first line of defense in litigation in the U.S. is often that they are not subject to the jurisdiction of the courts.

ANS: T                      PTS: 1

9. A basis for the non-enforcement of a foreign judgment is that there was not proper notice.

ANS: T                      PTS: 1

10. Venue describes the appropriate geographical location of a court with jurisdiction.

ANS: T                      PTS: 1

11. Once parties have initiated litigation in the United States, they cannot agree to have the dispute arbitrated.

ANS: F                      PTS: 1

12. The results of a mediation are not binding on either party.

ANS: T                      PTS: 1

13. The Due Process clause of the U.S. Constitution requires that before a company can be brought before a court in the U.S. it must have had minimum contacts with the forum.

ANS: T                      PTS: 1

14. According to the *Asahi Metal* case merely placing your product into "the stream of commerce" is not sufficient to establish jurisdiction over a foreign company.

ANS: T                      PTS: 1

15. Choice of forum clauses fix in advance where the case will be heard by contract.

ANS: T                      PTS: 1

16. Choice of law clauses in contracts stipulate in advance what court the parties will use in case of a dispute.

ANS: F                      PTS: 1

17. In some instances the doctrine of *jus cogens* in international law and a country's court may deem something to be law that cannot be altered by contract.

ANS: T                      PTS: 1

18. In general, at common law and in civil law jurisdictions, the choice of law clauses is rarely upheld.

ANS: F                      PTS: 1

19. Most countries have broad discovery rules, just like the U.S., allowing the collection of evidence.

ANS: F                      PTS: 1

20. The Full Faith and Credit Clause of the U.S. Constitution applies to foreign court judgments.

ANS: F                      PTS: 1

21. Under the Full Faith and Credit Clause of the U.S. Constitution, a decision by a New York court will be enforced by a Georgia court.

ANS: T                      PTS: 1

22. Settlement of a dispute by arbitration never makes the decision binding.

ANS: F                      PTS: 1

23. One advantage of arbitration is that awards are recognized by the signers of the U.N. Convention on Recognition and Enforcement of Foreign Arbitral Awards (or, the New York Convention).

ANS: T                      PTS: 1

24. Many business persons believe that certain antitrust claims are unique and are not subject to arbitration.
- ANS: T                      PTS: 1
25. In an arbitration agreement, the parties may choose to restrict the arbitrator's powers or let the arbitrator decide what is equitable and good.
- ANS: T                      PTS: 1
26. With mediation as a form of dispute resolution, the parties have a very limited degree of control over the process.
- ANS: F                      PTS: 1
27. With mediation as a form of dispute resolution, the parties may at any point initiate litigation or agree to submit the dispute to arbitration.
- ANS: T                      PTS: 1
28. Two of the disadvantages of arbitration are the increase in time to hear a dispute and the expense of the hearing.
- ANS: F                      PTS: 1
29. The International Center for the Settlement of Investment Disputes was established to settle investment disputes between individuals and contracting states.
- ANS: T                      PTS: 1
30. A global economy cannot function unless business people know that there will be timely adjudication of disputes.
- ANS: T                      PTS: 1
31. If a party is dissatisfied with a decision reached at arbitration, it may appeal this decision to a court of law.
- ANS: F                      PTS: 1
32. In Japan, the authority and control over gathering the evidentiary facts are vested only in the lawyers.
- ANS: F                      PTS: 1

## **MULTIPLE CHOICE**

1. What are correct statements about the *Graduate Management Admission v. Raju* case?
- Companies who do business in foreign countries and expose host country nationals to hazardous substances can expect to be sued in any of the United States.
  - The Texas long-arm statute asserts personal jurisdiction over foreign nationals who come into contact with U.S.-manufactured pesticides.
  - The doctrine of *forum non conveniens* does not apply in Texas in cases brought under Section 71.031 (which provides jurisdiction for personal injury claims based on acts

- taking place in foreign countries).
- d. The defendant had minimum contacts with the United States.
  - e. All of the above.

ANS: D                      PTS: 1

2. Zapata, a Texas Corporation, entered into a contract with Unterweser, a German corporation, to tow Zapata's drilling rig from Louisiana to Italy. A storm arose and Zapata told Unterweser to tow the rig into Tampa, Florida. Zapata immediately filed a lawsuit in Florida against Unterweser for damages to the rig. The original contract called for "Any dispute must be heard before the London Court of Justice." The U.S. Supreme Court held that:
- a. Florida has jurisdiction since that is where the oil rig is now located.
  - b. The case should be heard in Texas or Germany because that is where the parties are located.
  - c. The forum-selection clause is contrary to public policy and will not be enforced; either Florida, Texas, or Germany would be the correct place to hear it.
  - d. The parties must adhere to the forum-selection clause and have the case heard in London.

ANS: D                      PTS: 1

3. In *Iragorri v. United Technologies*, the court held:
- a. That defendant breached the repair contract.
  - b. That Connecticut was the proper forum.
  - c. That Connecticut was a *forum non conveniens*.
  - d. All of the above.

ANS: B                      PTS: 1

4. DownPillow, Inc., a U.S. company, and Eiderhoff, a German Company, negotiate a contract with forum and choice of law clauses for the U.S. A dispute arises, the case is heard in the U.S., and a judgment is given to DownPillow. DownPillow wants to enforce this judgment in Germany.
- a. Germany will not allow this judgment to be enforced in Germany because it does not recognize U.S. judgments.
  - b. Germany will allow one-half of the judgment to be enforced in Germany.
  - c. Germany will allow the entire judgment to be enforced if Eiderhoff received notice, it does not violate German law, and the U.S. reciprocates with German judgments.
  - d. None of the above.

ANS: C                      PTS: 1

5. In a California lawsuit between a U.S. resident and a manufacturer based in Taiwan, what might limit the jurisdiction of the California court?
- a. The Due Process Clause of the Fourteenth Amendment.
  - b. Sovereign immunity.
  - c. The Hague Convention on Taking Evidence Abroad.
  - d. Comity.
  - e. All of the above.

ANS: A                      PTS: 1

6. If mediation is chosen as a form of dispute resolution, it will be:
- a. A mandatory process.
  - b. Binding on all the parties.
  - c. A voluntary process.
  - d. Not available in international disputes.

ANS: C                      PTS: 1

7. In the Bhopal, India, disaster, the Union Carbide subsidiary involved was owned 50.9% by the parent company with headquarters in Connecticut while the other 49.1% was controlled by Indians. The case on behalf of the victims was started in the U.S. The judge dismissed the case saying it should be tried in India because of:
- Venue.
  - Rex Nonquam Moritur*.
  - Lack of jurisprudence.
  - Forum Non Conveniens*.

ANS: D                      PTS: 1

8. ADR refers to:
- Alternative (or Alternate) Dispute Resolution.
  - Alternative Disruption Requirement.
  - A Data Reference System.
  - Atlantic Development Relations.

ANS: A                      PTS: 1

9. One popular form of dispute settlement is arbitration. This is defined as:
- Rules in admissibility of evidence.
  - Submission for determination of the disputed matter to a private unofficial person selected by agreement.
  - Interlocutory determination by a judge.
  - None of the above.

ANS: B                      PTS: 1

10. If a U.S. company and an Austrian company end up in a dispute about a contract they entered into that contains an arbitration clause, a case brought before a U.S. court would:
- Be heard by the U.S. court since arbitration clauses are not popular with such courts.
  - Be heard by the U.S. court if the U.S. company can show it will be harmed by arbitration.
  - Not be heard by the U.S. court because U.S. courts accept arbitration as a form of dispute resolution.
  - None of the above.

ANS: C                      PTS: 1

11. There are several reasons that a court will not enforce an arbitration agreement. All of the following are reasons for not enforcing **except**:
- No notice was given.
  - Arbitration was obtained in the incorrect venue.
  - The judgment violates public policy.
  - The arbitration did not follow the agreement.

ANS: B                      PTS: 1

12. The following are all possible organizations that the parties may use to control the arbitration process **except**:
- International Chamber of Commerce.
  - American Arbitration Association.
  - London Court of International Arbitration.
  - U.S. Arbitration Committee.

ANS: D                      PTS: 1

13. The term mediation when dealing with dispute resolution refers to the situation where:
- The two disputing parties settle the disagreement by themselves.
  - A third party tries to bring the parties in conflict to a mutually satisfactory solution.
  - The parties in conflict agree to have a court hear only limited evidence.
  - None of the above.

ANS: B                      PTS: 1

14. The disadvantages of arbitration include:
- Limited Discovery
  - Limited Rights to Appeal

- I only.
- II only.
- Neither I nor II.
- Both I and II.

ANS: D                      PTS: 1

15. In the U.S., jurisdiction is:
- Defined by the U.S. Constitution
  - Defined by various statutes

- Both I and II.
- Neither I nor II.
- I only.
- II only.

ANS: A                      PTS: 1

16. If one is trying to determine the correct geographical location of a court that has jurisdiction over a case, he is determining:
- Jurisprudence.
  - Venue.
  - Allocation.
  - ADR.

ANS: B                      PTS: 1

17. The realities of international marketplace and the recognition of the importance reducing uncertainty have persuaded many courts:
- To accept choice of law and forum clauses in international contracts
  - To require mandatory arbitration clauses in international contracts

- Both I and II.
- Neither I nor II.
- I only.
- II only.

ANS: C                      PTS: 1

18. Many factors must be considered in choosing binding arbitration. All of the following should be considered **except**:

- a. Cost.
- b. Speed.
- c. Enforceability.
- d. Complexity.

ANS: D                      PTS: 1

19. A forum selection clause is:
- a. Contrary to public policy because it ousts the court of jurisdiction.
  - b. Is upheld as long as it is reasonable, negotiated in an arm's length transaction, and absent a compelling reason not to honor it.
  - c. Will not be upheld in Japan or the United States.
  - d. Is upheld as long as it was voluntary.

ANS: B                      PTS: 1

20. When determining whether personal jurisdiction offends "traditional notions of fair play and substantial justice," the court evaluates several factors, including:
- a. Burden on the defendant.
  - b. The plaintiff's interest in having a convenient forum.
  - c. The forum's legitimate interests in the dispute.
  - d. Two of the above.
  - e. All of the above.

ANS: E                      PTS: 1

21. Private international law is the law of the forum state concerning:
- a. International businesses.
  - b. Choice of law.
  - c. Choice of forum.
  - d. Enforcement of Judgments.
  - e. B, C, and D only.

ANS: E                      PTS: 1

## SHORT ANSWER

1. In what ways do the requirements for jurisdiction differ from those of European nations? How are they similar?

ANS:  
Answer not provided.

PTS: 1                      OBJ: Comparative Analytical Questions

2. Compare and contrast the relative benefits of arbitration and court adjudication.

ANS:  
Answer not provided.

PTS: 1                      OBJ: Comparative Analytical Questions

3. Weigh the relative benefits of a foreign citizen bringing suit in the U.S. as compared with bringing suit in her home state.

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

4. Compare and contrast the evidentiary rules of the U.S. with those of other nations. Which are more favorable to the plaintiff? Less favorable?

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

5. Consider whether the spectrum analysis regarding jurisdiction based on Web site presence are more business friendly or more consumer friendly.

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

6. In what ways and for what reasons may the spectrum analysis favor U.S. interests to the detriment of EU interests? Favor EU interests to the detriment of U.S. interests?

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

7. Weigh the benefits and detriments of a business that establishes a global Internet presence.

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

8. Compare and contrast the breach day, judgment day, and pay day rules.

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

9. In what ways do forum selection and choice of law clauses serve similar interests? In what ways do they serve different or unrelated interests?

ANS:

Answer not provided.

PTS: 1

OBJ: Comparative Analytical Questions

10. Weigh the relative merits of using ADR and domestic courts in international disputes.



ANS:  
Answer not provided.

PTS: 1 OBJ: Comparative Analytical Questions

11. Consider the benefits and detriments of ADR in international disputes. (Consider the effect of the process on the parties.)

ANS:  
Answer not provided.

PTS: 1 OBJ: Comparative Analytical Questions

12. Many European countries refuse to enforce choice of law or jurisdiction clauses in consumer agreements, while U.S. courts typically enforce these. Consider the reasons and ramifications of these different approaches.

ANS:  
Answer not provided.

PTS: 1 OBJ: Comparative Analytical Questions

## ESSAY

1. The Blowout Company is a German corporation and manufacturer of the California Custom tire, a tire that is compatible with Harley Davidson motorcycles manufactured in the United States. Tofu Granola, a resident of Santa Cruz, California, purchased a pair of California Custom tires for his Harley. Granola purchased the tires from Goodstone Tires, Inc., a California corporation, at its store in Half Moon Bay, California. The Blowout Company and Goodstone provided assistance to their customers through maintenance of a toll-free hotline. Granola subsequently suffered severe injuries in an accident caused by the separation of the tread on the front tire of his Harley. If Granola files a lawsuit against Blowout in California state court, does such court have personal jurisdiction over Blowout? Why or why not?

ANS:  
Personal jurisdiction is the power of the court over the people summoned to appear before it. This case involves specific jurisdiction. Specific jurisdiction permits a court to adjudicate claims against a defendant arising from or relating to the defendant's activities in the forum state. The first requirement for specific jurisdiction is purposeful availment by the defendant of the protections of the forum. There is purposeful availment in this case as the defendant designed the product for the forum, maintained a distributor in the forum and provided advice to customers on a regular basis. The second requirement for specific jurisdiction is whether the forum is a reasonable location for the resolution of the dispute. California is a reasonable forum for the resolution of this dispute as it has a great interest in the resolution of the dispute, and the plaintiff has a considerable interest in obtaining relief in the forum. Thus specific jurisdiction exists, and the California court may proceed with the resolution of this case.

PTS: 1

2. Gertrude Clodfelter, an 80 year old resident of North Dakota, recently filed a lawsuit in Florida against Islander Cruise Company, a Florida corporation, seeking damages as a result of a fall she suffered in the shower during a cruise to the Bahamas. The language in Ms. Clodfelter's ticket provided that "Any and all claims arising from injuries occurring during a cruise shall be filed in and shall be determined pursuant to the laws of the registry of the ship upon which the injury occurred." This language was located in very fine print in Paragraph 66 of Ms. Clodfelter's cruise ticket. The ship upon which Ms. Clodfelter was injured is registered in Panama. Furthermore, at the time of Ms. Clodfelter's purchase of her ticket, a sales agent employed by the cruise line told her: "Don't worry - we're a reputable company, easy to find and located right here in the United States." Finally, Florida has several statutes protecting senior citizens from commercial exploitation. Please explain the provisions of Ms. Clodfelter's ticket. Is this language enforceable? Why or why not?

ANS:

Ms. Clodfelter's ticket contains a forum selection agreement. A forum selection agreement is a contractual clause selecting the geographic location for the resolution of disputes between the contracting parties. The forum selection agreement in this case may be invalid due to fraud in its procurement. It may also be invalid due to the lack of notice, specifically, the very fine print in the cruise ticket. An additional ground for holding the forum selection agreement invalid is that enforcement may violate Florida's public policy relating to the protection of senior citizens. Finally, the forum selection agreement may be invalid due to the serious inconvenience imposed upon Ms. Clodfelter in litigating in Panama, which is most certainly a remote alien forum. Ms. Clodfelter's ticket also contains a choice of law clause. A choice of law clause is a contractual provision wherein the parties select the law that is applicable to the resolution of disputes between them. The choice of law clause may be invalid in this case as there is no reasonable basis for the selection of Panamanian law. Specifically, there are insufficient contacts between the cruise and the selected law.

PTS: 1

## OTHER

1. Draft an international treaty pertaining to jurisdiction with respect to companies doing business utilizing the Internet.

ANS:

Answer not provided.

PTS: 1

OBJ: Essay/Writing Assignments

2. Write a position paper advocating that jurisdictional choice of law clauses should not be enforced in international transactions.

ANS:

Answer not provided.

PTS: 1

OBJ: Essay/Writing Assignments

3. Write a position paper advocating that jurisdictional choice of law clauses should be enforced in international transactions.

ANS:

Answer not provided.

PTS: 1

OBJ: Essay/Writing Assignments

4. Craft an argument advocating for or against the creation of an international tribunal to address international commercial disputes between individuals.

ANS:

Answer not provided.

PTS: 1                      OBJ: Essay/Writing Assignments

5. Outline an on-line Dispute Resolution procedure or body to handle international e-commerce disputes.

ANS:

Answer not provided.

PTS: 1                      OBJ: Essay/Writing Assignments