CHAPTER 2

THE COURT SYSTEM

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE

INSIGHT INTO ETHICS—CRITICAL THINKING—INSIGHT INTO THE LEGAL ENVIRONMENT (PAGE 29)
Now that the Supreme Court is allowing unpublished decisions to form persuasive precedent in federal courts, should state courts follow?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 Yes, because categorizing some decisions, unpublished or otherwise, as not establishing precedent is arguably unconstitutional.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 36)

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—QUESTION (PAGE 46)

THE ETHICAL DIMENSION

Collier contended that there was a "serious question" as to whether he would even need experts to prove his medical malpractice claim. Is it fair to Collier not to let the trial proceed, even though the lack of expert testimony might have made it difficult—if not impossible—for him to win the case? Explain. According to a dissenting justice in this case, it was improper for the majority on the court to have granted summary judgment to the defendants. Collier had stated that an expert witness was not essential in a medical malpractice case, and accordingly the failure to disclose one in advance of trial did not, in and of itself, justify dismissal of his claim by summary judgment. A dissenting justice largely agreed with Collier and questioned the majority's assumption that expert medical testimony was necessary in medical malpractice cases. If the case had gone to trial, Collier may have been able to obtain the required expert testimony from another source, such as the defendants' witnesses, the defendants' admissions, or medical records. According to

Collier, even if the lack of expert medical testimony would cause him to lose the case, he should have been given that chance.

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

1A. Contingency fee

If the Metzgars lose, the lawyer does not receive pay for work provided. If they win a verdict in court or receive a settlement, the lawyer takes a percentage of that, usually around 30 percent.

2A. Service of process

A copy would be handed to a company representative by a process server or possibly by mail.

3A. Request for summary judgment

No, because even if the facts of the accident are not in dispute, the question of liability is one to be determined at trial. The basic facts may not be in dispute, but there is no clear conclusion to be drawn from the facts. If the toy was properly made and generally safe, then there may be no liability. That is an issue to be determined at trial.

4A. Options after the verdict

The plaintiffs may make a motion for a judgment n.o.v. and, if that is unsuccessful, may appeal the decision reached at trial to the court of appeals.

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

Some consumer advocates argue that high attorney contingency fees—sometimes reaching 40 percent—unfairly deprive winning plaintiffs of too much of their awards. Should the government put a cap on contingency fees at, say 20 percent? Why or why not? In theory and in practice, poorer plaintiffs opt for contingency fee contracts with their attorneys because they cannot afford to pay straight hourly legal fees plus all of the related expenses that occur during discovery, before trial, during trial, and after trial. Therefore, empirically, poorer plaintiffs often end up paying the most in contingency fees. If the government capped such fees at a maximum percents, say 20 percent, then winning plaintiffs would keep the lion's share of their awards. This would be fairer.

There are many who do not believe that the contingency-fee arrangements between willing clients of litigation attorneys should be regulated. After all, those seemingly high contingency fees that winning plaintiff attorneys collect are used in part to compensate for the contingency-fee cases that plaintiff attorneys lose. In the latter, they receive nothing. If the government capped such fees, fewer cases would be brought because plaintiff

attorneys would only take on the ones that they were more certain they could win. Fewer would-be plaintiffs would be able to find legal representation.

ANSWERS TO QUESTIONS AND CASE PROBLEMS AT THE END OF THE CHAPTER

2-1A. Discovery
(Chapter 2—Pages 44 & 46)

Under the work-product rule, attorneys are allowed to protect information that they have gathered as a result of their own skill and diligence. For example, an attorney for a party involved in an auto accident can go out to the scene of the accident and observe the fact that there is a stop sign missing without being under any obligation to divulge such information to his opponent in the lawsuit. Similarly, an attorney who discovers a recently decided case decision supporting his or her theory is under no obligation to share this discovery with the opposing attorney. If attorneys had to share everything, they would be less inclined to expend efforts on behalf of their clients because, in essence, they would be working for both sides at once.

2-2A. QUESTION WITH SAMPLE ANSWER: Motions

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 30–32 & 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. CASE PROBLEM WITH SAMPLE ANSWER: Appellate review

The U.S. Court of Appeals for the Sixth Circuit affirmed the lower court's ruling. In reviewing a trial court's decisions, said the appellate court, "we will not set aside findings of fact * * * unless they are clearly erroneous. However, the district court's interpretation and construction of a contract is a matter of law, and such matters this Court reviews de novo." In this case, "[t]he district court's critical finding was the existence of a binding contract between Detroit Radiant and BSH: a reduced price per burner unit and an agreement to absorb tooling and research and development costs, in exchange for a purchase of at least 30,000 units. There was nothing clearly erroneous about this finding, especially because the district court was in the best position to gauge the credibility of the actors whose words and actions gave rise to the contract. And given this finding, BSH's * * * argument holds little water—that is, given the district court's finding that the parties had entered into a binding contract at the outset, it may be implied that * * * the 2003 purchase order did not replace the 2001 order, since the two purchase orders, only when added together, were consistent with the 30,000-unit figure." The court concluded that "Detroit Radiant was left with a warehouse of burners and component parts that it could not unload * * * . And Detroit Radiant was further left without its anticipated profits—i.e., the benefit of the bargain that it had entered into with BSH." The court added that "contract law, not to mention common sense, dictates that BSH should pay up."

2-5A. Discovery
(Chapter 2—Pages 44 & 46)

A trial court has broad discretion to grant or deny the requests of the parties that appear before it. In this case, the court should deny the plaintiff's request to lift the protective order. The court granted her first request for a four-month delay to complete discovery. The plaintiff made her second request on the morning of the rescheduled arbitration hearing. Because it would have been unfair to the defendant to postpone the hearing on such short notice for a second time, the court did not abuse its discretion in denying this request. The plaintiff's third request for a delay to conduct discovery was made five months later, and the court issued a protective order against it, because the time for discovery had run out. The plaintiff's request to lift this order was made on the day of the trial, when granting it would have meant another postponement, which would have been unfair to the defendant and the court. If Peatie's counsel had not been aware of the information sought from Wal-Mart, a request for additional time might have been reasonable, but the facts do not indicate that the information had suddenly come to light. There is also no indication that Peatie's counsel objected to the protective order when it was issued.

2-6A. Jury misconduct
(Chapter 2—Pages 47–48 & 51–52)

The Missouri high court reversed the trial court and remanded the case. The fact that the bias was not uncovered during voir dire does not matter. "When a juror makes statements evincing ethnic or religious bias or prejudice during deliberations, the juror

exposes his mental processes and innermost thoughts. What used to "rest alone in the juror's breast" has now been exposed to the other jurors. The juror has revealed that he is not fair and impartial. Whether the statements may have had a prejudicial effect on other jurors is not necessary to determine. Such statements evincing ethnic or religious bias or prejudice deny the parties their constitutional rights to a trial by twelve fair and impartial jurors and equal protection of the law."

2-7A. A QUESTION OF ETHICS: Service of process

(a) One reason for the strict construction and application of such procedural requirements as the details imposed on service of process is the seriousness and finality of legal proceedings. Unlike many other events that offer "second chances" or can otherwise be undone, the result of a legal proceeding such as a trial is almost always final.

On the appeal in Harvestons' case, the state intermediate appellate court held that there were "no presumptions in favor of valid issuance, service, and return." The court reasoned that this rule "must be strictly observed because presumptions can neither be confirmed nor rebutted by evidence in an appellate court. Thus, for example, if the [document of service] says an amended petition was attached (which named the defaulted party) and the return says the document served was the original petition (which did not name the defaulted party), an appellate court cannot tell from the record which is true. Similarly, if the petition says the registered agent for service is 'Henry Bunting, Jr.' but the [documents of service] and return reflect service on 'Henry Bunting,' an appellate court cannot tell whether the two names mean the same or different persons."

Thus, "[a] default judgment cannot withstand a direct attack by a defendant who shows that it was not served in strict compliance with the rules governing service of process. . . . In the absence of an appearance by the defendant in question, there must be an affirmative showing of due service of process, independent of the recitations in the default judgment."

(b) The state intermediate appellate court stated that "[i]t is the responsibility of the party requesting service, not the process server, to see that service is properly accomplished." The court also emphasized that the service's return "is not a trivial or merely formalistic document. If any of [its] requirements are not met, the return . . . is fatally defective and will not support a default judgment."

In this case, "[n]either the return nor any other portion of the record designates Jo Ann Kocerek as an authorized representative of the Commission or indicates that she has the authority to receive service on behalf of Harvestons or the Commissioner. Indeed, it is simply not possible to determine from the record who Jo Ann Kocerek is or whether she is an agent authorized to accept service on behalf of either the Commissioner or Harvestons. Without an indication on the face of the record of her capacity or authority, if any, to receive service, the granting of the default judgment was improper."

In other words, "Harvestons has established error on the face of the record. Service of process was defective. Therefore, the trial court erred in granting a default judgment

against Harvestons." The appellate court reversed the judgment of the lower court and remanded the case for further proceedings.

The dissent concluded, however, that "the sufficiency of the return of citation showing service on the Commissioner is immaterial" here. "[T]he default judgment record in this case contains a certified copy of a letter . . . from the Securities Commissioner to Harvestons." The letter "reflects that service of process was received by the Commissioner and forwarded to Harvestons." The dissent reasoned that "the default judgment record thereby reflects compliance with the rules for service of process . . . . Accordingly, I would not reverse the judgment of the trial court for a defective showing of service of process."

IHI ANSWER TO VIDEO QUESTION NO. 2–8 IHI

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.

2-9A. SPECIAL CASE ANALYSIS: Jurisdiction
Case No. 2.1
Southern Prestige Industries, Inc. v. Independence Plating Corp.
Court of Appeals of North Carolina, 2010.
690 S.E.2d 768.

(a) Issue: The issue in this case concerned jurisdictional requirements. Why did this issue arise, and how will its outcome affect the parties? Specifically, the issue was whether a North Carolina court could exercise personal jurisdiction over a defendant corporation located in New Jersey. The plaintiff brought suit in a North Carolina court, but the defendant argued that the North Carolina court could not exercise jurisdiction over the defendant company—to do so would violate due process. For the parties, the court's decision on the jurisdictional issue would determine whether the litigation would take place in North Carolina or in New Jersey.

(b) Rule of Law: What rule of law determined whether personal jurisdiction over the defendant existed in this case? The rule of law applicable in this case is that a court in one state may exercise personal jurisdiction over an out-of-state defendant only if there have been sufficient minimum contacts between the defendant and the forum state (the state in which the court is located).

(c) Applying the Rule of Law: What factors did the court evaluate in determining how the rule of law applied to this case? Basically, the court had to determine whether there existed sufficient minimum contacts between the defendant corporation and North Carolina, the forum state. These factors included the ongoing relationship between the parties, the nature of their contacts, and the interest of the forum state in providing its residents with a convenient forum for redressing juries inflicted by out-of-state actors.

(d) Conclusion: In which party's favor did the court rule? Why? The court ruled in the plaintiff's favor, holding that the defendant corporation in New Jersey was subject to the personal jurisdiction of the North Carolina court. The defendant had "purposely availed" itself of the benefits of doing business in North Carolina and "should reasonably anticipate being haled" into a North Carolina court.

UNIT 2

ETHICS AND THE PUBLIC AND INTERNATIONAL ENVIRONMENT

ANSWERS TO DISCUSSION QUESTIONS

1. Doing business on a global scale can involve serious ethical challenges. For example, different governments prohibit different information, censoring and shutting down Web sites that violate the ban. It is acceptable for a private company such as Google, Inc., to censor the information that it provides in other nations at the request of a foreign government. The United States prohibits the dissemination of certain types of materials, such as child pornography, over the Internet. The U.S. government monitors Web sites and e-mail communications to protect against terrorist threats. Google presumably follows these restrictions. In China, Web sites that offer pornography, criticism of the government, or information on sensitive topics, such as the Tiananmen Square massacre in 1989, are censored. When in China, Google followed these restrictions. Google profited from this action—good for the firm's stakeholders. Besides, its search engine informed users which sites were being censored. If it had not cooperated, Chinese residents would have had less user-friendly Internet access. And this was a step toward more open access in the future.

These points might be countered with the contention that companies such as Google that do business on a global level have an ethical duty to foreign citizens not to suppress free speech. In China, free-speech advocates can be imprisoned. In the United States—Google's home—free speech is an important political principle and it is protected as a fundamental human right. From its advocates' perspective, the principle and the right should not be compromised and it should certainly not be traded off in the pursuit of profit. Besides, the Internet is international and transformational—it should not be forced to stop at national borders.

2. A chemical may be banned for a variety of political and scientific reasons. It is therefore difficult to answer this question in a definitive manner. Moreover, as the question posits, the needs and circumstances in foreign countries may be such that the banned

chemical is the best alternative among the array of existing choices. Perhaps the most appropriate solution would be to require manufacturers to disclose the possible consequences of using the chemicals to their foreign buyers and then to allow the foreign buyers to make the decision.

3. Conducting business internationally presents unique challenges including, at times, ethical challenges. This is understandable, given that laws and cultures vary from one country to another. In the United States, for example, equal employment opportunity is a fundamental public policy. This policy is clearly expressed in Title VII of the Civil Rights Act of 1964, which prohibits discrimination against women in the employment context. Some other countries, however, largely reject any professional role for women. Consequently, U.S. women conducting business transactions in those countries may encounter difficulties.

But the existence of these difficulties does not mean that U.S. firms doing business internationally should necessarily reject the role of women in business themselves. Instead of expecting one culture to blindly accept the social and political norms of another, however, preliminary negotiations could include sensitive discussions of the issue. Explanations could be offered, and compromises could be reached. Even if it is not possible to accommodate all cultures in all instances, a broader understanding of the easy and means of business would benefit all of the parties.

ALTERNATE CASE PROBLEMS

CHAPTER 2

THE COURT SYSTEM

2-1. Jury Selection. Benjamin Omoruyi was convicted in a federal district court for the possession of counterfeit securities in violation of federal law. Omoruyi appealed his conviction to the U.S. Court of Appeals for the Ninth Circuit, arguing that the district court erred by permitting the government to peremptorily challenge female prospective jurors on the basis of gender. (In a previous case decided by the Ninth Circuit, that court had held that equal-protection principles prohibit striking potential jurors on the basis of gender.) The first government peremptory challenge was exercised against an unmarried white woman, and the second was exercised against an unmarried black woman. Omoruyi objected to the second challenge on the basis that it was racially discriminatory. In response to the district court's request to explain the challenge, the government counsel responded: "Because she was a single female and my concern, frankly, is that she, like the other juror I struck, is single and given defendant's good looks would be attracted to the defendant." The district court denied Omoruyi's motion for a new jury. In response to Omoruyi's allegations on appeal, the government argued that the peremptory strikes were based on marital status, not gender. How should the court decide? Discuss fully. [United States v. Omoruyi, 7 F.3d 880 (9th Cir. 1993)]

2-2. Discovery. Joseph Stout, while on the job as a construction worker, fell from a beam that he was attempting to secure to a steel column. As a result of the fall, Stout sustained injuries that rendered him a paraplegic. Stout brought suit against his employer, A. M. Sunrise Construction Co., and Central Rent-A-Crane, Inc., for damages. Prior to the trial, a number of discovery motions were filed by the defendants, who sought detailed information on the nature of the accident and the injuries incurred. Stout repeatedly failed to respond to these requests, even when the trial court ordered him to do so. Finally, the trial court dismissed the action because of Stout's failure to respond. Stout appealed the dismissal. On appeal, Stout claimed that the trial court had abused its discretion by dismissing his action against the defendants, thus depriving him of his right to be heard in

court. What will the appellate court decide? [Stout v. A. M. Sunrise Construction Co., 505 N.E.2d 500 (Ind.App. 1987)]

2-3. Motion for Summary Judgment. Mary Sabo suffered injuries in an automobile accident caused by Daniel Hoag, an intoxicated driver. Hoag had just left Peoples Restaurant after having consumed a large number of drinks. Sabo sued Peoples for damages, alleging that the restaurant had violated a state statute that provided that any person who "knowingly serves" an individual who is "habitually addicted" to alcohol may be held liable for any injuries or damages caused by the intoxication of that individual. In spite of evidence indicating that for the two years prior to the accident, Hoag had gone to Peoples twice a week and on each occasion had drunk liquor until he was intoxicated, the trial court granted Peoples' motion for summary judgment. The court held that Sabo had failed to show that Peoples had knowledge that Hoag was an alcoholic and the bar had therefore not "knowingly" served an alcohol addict. Sabo appealed. The appellate court reversed the trial court's ruling, and Peoples appealed the case to the Supreme Court of Florida. Was summary judgment for Peoples appropriate in this case? [Sabo v. Peoples Restaurant, 591 So.2d 907 (Fla. 1991)]

2-4. Motion for a New Trial. Ms. Hummel sued Dr. James Strittmatter and his professional corporation, the Gainesville Radiology Group, P.C. ("the Group"), for medical malpractice. Hummel alleged that the Group was negligent in failing to timely diagnose her breast cancer after a mammogram examination. During voir dire, jurors were asked if any of them had family members who had been diagnosed with breast cancer or other forms of cancer, how the cancer had been diagnosed, and whether there had been any recurrence. One juror made no response, but it was later discovered that the juror's wife had died of breast cancer some years before. When the trial court jury returned a verdict for the Group, Hummel moved for a new trial on the ground that the juror had violated his oath and failed to disclose pertinent information during voir dire. In opposing the motion, the Group submitted an affidavit signed by the juror in which the juror averred that he had not answered the question because he had not heard it and that the cause of his wife's death had not influenced his judgment in the case. Did the juror's failure to hear the question about cancer constitute juror misconduct to the extent that Hummel's motion for a new trial should be granted? [Hummel v. Gainesville Radiology Group, P.C., 205 Ga.App. 157, 421 S.E.2d 333 (1992)]

2-5. Jury Selection. Ms. Thompson filed a suit in a federal district court against her employer, Altheimer & Gray, seeking damages for alleged racial discrimination in violation of federal law. During voir dire, the judge asked the prospective jurors whether "there is something about this kind of lawsuit for monetary damages that would start any of you leaning for or against a particular party?" Ms. Leiter, one of the prospective jurors, raised her hand and explained that she had "been an owner of a couple of businesses and am currently an owner of a business, and I feel that as an employer and owner of a business

that will definitely sway my judgment in this case." She explained, "I am constantly faced with people that want various benefits or different positions in the company or better contacts or, you know, a myriad of issues that employers face on a regular basis, and I have to decide whether or not that person should get them." Asked by Thompson's lawyer whether "you believe that people file lawsuits just because they don't get something they want," Leiter answered, "I believe there are some people that do." In answer to another question, she said, "I think I bring a lot of background to this case, and I can't say that it's not going to cloud my judgment. I can try to be as fair as I can, as I do every day." Thompson filed a motion to strike Leiter for cause. Should the judge grant the motion? Explain. [Thompson v. Altheimer & Gray, 248 F.3d 621 (7th Cir. 2001)]

2-6. Motion for Judgment N.O.V. Gerald Adams worked as a cook for Uno Restaurants, Inc., at Warwick Pizzeria Uno Restaurant & Bar in Warwick, Rhode Island. One night, shortly after Adams's shift began, he noticed that the kitchen floor was saturated with a foul-smelling liquid coming from the drains and backing up water onto the floor. He complained of illness and went home, where he contacted the state health department. A department representative visited the restaurant and closed it for the night, leaving instructions to sanitize the kitchen and clear the drains. Two days later, in the restaurant, David Badot, the manager, shouted at Adams in the presence of other employees. When Adams shouted back, Badot fired Adams and had him arrested. Adams filed a suit in a Rhode Island state court against Uno, alleging that he had been unlawfully terminated for contacting the health department. A jury found in favor of Adams. Arguing that Adams had been fired for threatening Badot, Uno filed a motion for judgment as a matter of law (also known as a motion for judgment n.o.v.). What does a court weigh in considering whether to grant such a motion? Should the court grant the motion in this case? Why or why not? [Adams v. Uno Restaurants, Inc., 794 A.2d 489 (R.I. 2002)]

2-7. E-Jurisdiction. American Business Financial Services, Inc. (ABFI), a Pennsylvania firm, sells and services loans to businesses and consumers. First Union National Bank, with its principal place of business in North Carolina, provides banking services. Alan Boyer, an employee of First Union, lives in North Carolina and has never been to Pennsylvania. In the course of his employment, Boyer learned that the bank was going to extend a $150 million line of credit to ABFI. Boyer then attempted to manipulate the stock price of ABFI for personal gain by sending disparaging e-mails to ABFI's independent auditors in Pennsylvania. Boyer also posted negative statements about ABFI and its management on a Yahoo bulletin board. ABFI filed a suit in a Pennsylvania state court against Boyer, First Union, and others, alleging wrongful interference with a contractual relationship, among other things. Boyer filed a motion to dismiss the complaint for lack of personal jurisdiction. Could the court exercise jurisdiction over Boyer? Explain. [American Business Financial Services, Inc. v. First Union National Bank, __ A.2d __(Pa.Comm.Pl. 2002)]

2-8. Jurisdiction. KaZaA BV was a company formed under the laws of the Netherlands. KaZaA distributed KaZaA Media Desktop (KMD) software, which enabled users to exchange, via a peer-to-peer transfer network, digital media, including movies and music. KaZaA also operated the KaZaA.com Web site, through which it distributed the KMD software to millions of California residents and other users. Metro-Goldwyn-Mayer Studios, Inc., and other parties in the entertainment industries based in California filed a suit in a federal district court against KaZaA and others, alleging copyright infringement. KaZaA filed a counterclaim, but while legal action was pending, the firm passed its assets and its Web site to Sharman Networks, Ltd., a company organized under the laws of Vanuatu (an island republic east of Australia) and doing business principally in Australia. Sharman explicitly disclaimed the assumption of any of KaZaA's liabilities. When the plaintiffs added Sharman as a defendant, Sharman filed a motion to dismiss on the ground that the court did not have jurisdiction. Would it be fair to subject Sharman to suit in this case? Explain. [Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 243 F.Supp.2d.1073 (C.D.Cal. 2003)]

2-9. Standing to Sue. Michael and Karla Covington live in Jefferson County, Idaho. When they bought their home, a gravel pit was across the street. In 1995, the county converted the pit to a landfill. Under the county's operation, the landfill accepted major appliances, household garbage, spilled grain, grass clippings, straw, manure, animal carcasses, containers with hazardous content warnings, leaking car batteries, and waste oil, among other things. The deposits were often left uncovered, attracting insects and other scavengers and contaminating the groundwater. Fires broke out, including at least one started by an intruder who entered the property through an unlocked gate. The Covingtons complained to the state, which inspected the landfill, but no changes were made to address their concerns. Finally, the Covingtons filed a suit in a federal district court against the county and the state, charging violations of federal environmental laws. Those laws were designed to minimize the risks of injuries from fires, scavengers, groundwater contamination, and other pollution dangers. Did the Covingtons have standing to sue? What principles apply? Explain. [Covington v. Jefferson County, 358 F.3d 626 (9th Cir. 2004)]

2-10. A Question of Ethics

The state of Alabama, on behalf of a mother (T.B.), brought a paternity suit against the alleged father (J.E.B.) of T.B.'s child. During jury selection, the state, through peremptory challenges, removed nine of the ten prospective male jurors. J.E.B.'s attorney struck the final male from the jury pool. As a result of these peremptory strikes, the final jury consisted of twelve women. When the jury returned a verdict in favor of the mother, the father appealed, asserting that the trial court erred in overruling his objection to the state's removal of potential male jurors through the use of its peremptory challenges. The father argued that the use of peremptory challenges to eliminate men from the jury constituted

gender discrimination and violated his rights to equal protection and due process of law. The father requested the court to extend the principle enunciated in a United States Supreme Court case that prohibited peremptory strikes based solely on race, to include gender-based strikes. The appellate court, following a precedent established by the state's supreme court, refused to do so and affirmed the lower court's decision that J.E.B. was the child's father and had to pay child support. [J.E.B. v. State, 606 So.2d 156 (Ala.App. 1992)]

1. Do you agree with J.E.B. that the state's exercise of its peremptory challenges violated his right to equal protection and due process? Why or why not?
2. If you were the judge, how would you rule on this issue?
3. The late United States Supreme Court Justice Thurgood Marshall urged that peremptory challenges be banned entirely. Do you agree with this proposal? Discuss fully.