Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

SKU: 9780077733711-TEST-BANK

Chapter 02

The Resolution of Private Disputes

True / False Questions

1. Minor criminal cases and civil disputes are decided in the appellate courts.

   True False

2. The plaintiff can sue the defendant in whatever court, and in whatever locale that the plaintiff wishes.

   True False

3. For a state trial court to have the power to decide a civil case, it must have in personam jurisdiction or in rem jurisdiction.

   True False

4. The assertion of specific in personam jurisdiction satisfies federal or state due process guarantees so long as the defendant has sufficient "minimum contacts" with the forum state.

   True False

5. In rem jurisdiction is based only on the fact that property of the defendant is located within the state.

   True False

6. Generally, forum selection clauses in form agreements are unenforceable.

   True False

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

7. In general, a court has venue if it is territorially fair and convenient for both parties to litigate the case in that court.

   True False

8. For federal district court diversity jurisdiction to exist, the amount in controversy must exceed $500,000.

   True False

9. The doctrine of certiorari jurisdiction makes it mandatory for the U.S. Supreme Court to hear appeals from federal and state courts.

   True False

10. Brennan sues Melissa for breach of contract. In her reply, Melissa claims, among other things, that she should not be liable as she only entered the contract because Brennan defrauded her. This assertion is called an affirmative defense.

    True False

11. The defendant must wait until after the pleadings have been completed before making a motion to dismiss.

    True False

12. Interrogatories are a form of discovery requiring a party to file written answers to questions submitted to that party.

    True False

13. As in a criminal case, a defendant in a civil case may not be compelled by the plaintiff to testify.

    True False

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

14. Normally, a motion for summary judgment requires that a court decide there are genuine questions of fact and questions of law.

True False

15. The party successful in a civil lawsuit can seek to enforce a judgment by obtaining a writ of execution or by garnishment.

True False

Multiple Choice Questions

16. What is a court's power to hear a case and to issue a decision binding on the parties called?

A. Jurisdiction
B. Prerogative
C. Venue
D. Assignment

17. A "long-arm" statute allows:

A. criminal courts jurisdiction over civil cases.
B. state courts more power than federal ones.
C. court's jurisdiction over out-of-state defendants.
D. appellate courts to hear new cases.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

18. Calvin, a resident of South Park, Colorado, creates a website called "But Seriously" which acts as an electronic billboard for posting funny stories. Ted, a resident of Northridge, California, posts a story on the website. Stu, another California resident from San Diego, files a lawsuit against Calvin in a federal district court in California, claiming that Calvin had defamed him on his website. Based on these facts, does Calvin have sufficient "minimum contacts" to give the California federal district court in personam jurisdiction over him?

A. No, Ted's posting alone is not enough to create sufficient "minimum contacts."
B. Yes, Ted's posting creates sufficient "minimum contacts."
C. Yes, by creating a website that is accessible in California, Calvin has sufficient minimum contacts with that state.
D. Calvin has sufficient "minimum contacts" with California only if Stu's claim is in excess of $75,000.

19. Bubble Wrap Co. (BWC), an Atlanta corporation, has its principal place of business in New York. John, a resident of Florida, asserted on his website that BWC is engaged in ongoing criminal activity, scams, and phishing. BWC sued John in the U.S. District Court for the District of New York, alleging defamation and injury to BWC's business in New York. John filed a motion to dismiss the case alleging that neither subject-matter nor in personam jurisdiction existed. The court granted the defendant's motion and dismissed the case because:

A. BWC could not meet its burden of establishing sufficient minimum contacts.
B. BWC did not have subject-matter jurisdiction.
C. BWC neither had subject-matter jurisdiction nor in personam jurisdiction.
D. publishing of those statements did not amount to defamation and thus no injury was caused to BWC's business.

20. Jurisdiction based on the presence of property within the state is called _____ jurisdiction.

A. in rem
B. personam
C. *sui iuris*
D. subject-matter

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

21. Jack, a resident of Texas, sued Jill, a resident of Kentucky, alleging breach of contract. Jack may attach Jill's bank account in Kentucky to recover the amount of the judgment from the account, if his suit is successful. This is an example of:

A. in rem jurisdiction.
B. in personam jurisdiction.
C. quasi in rem jurisdiction.
D. venue.

22. In general, a court has _____ if it is a territorially fair and convenient forum in which to hear the case.

A. venue
B. original jurisdiction
C. limited jurisdiction
D. standing

23. Contracts sometimes contain a provision reciting that disputes between the parties regarding matters connected with the contract must be litigated in the courts of a particular state. What is such a provision called?

A. Choice of law clause
B. Forum selection clause
C. Substantive clause
D. Minimum contacts clause

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

24. Bob is a merchant in New York and Betty is a merchant in California. Bob wants to do business with Betty but he is concerned that if a lawsuit should result from their transaction, he might have to travel to California and hire a California litigation lawyer to litigate the dispute. What type of clause should Bob try to include in his contract with Betty that will probably assure him that if litigation ensues, it will take place in New York?

A. Confession of judgment clause
B. Forum selection clause
C. Choice of law clause
D. Substantive clause

25. Defending against a federal district court suit by Paul, Dan claims that Paul has sued him in the wrong federal district court. Dan has raised a question of:

A. long-arm jurisdiction.
B. in personam jurisdiction.
C. venue.
D. standing.

26. Infobox Online, an Internet services provider, includes in its "clickwrap" contract a clause stating that California courts have "exclusive jurisdiction" over subscribers' disputes with Infobox Online. This clause will most likely be:

A. unenforceable because it was not the result of bargaining.
B. unenforceable against a subscriber in another state.
C. enforceable if the subscriber does not file a motion to dismiss.
D. enforceable if it is considered reasonable by a court.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

27. For federal "diversity" jurisdiction to exist:

A. the case must begin in a federal court of appeals.
B. the amount in controversy must exceed $75,000.
C. both the plaintiff and the defendant must be citizens of the same state.
D. the case must pertain to the Constitution, laws, or treaties of the United States.

28. In federal courts, a corporation is:

A. a citizen of only the place where is has been incorporated.
B. a citizen of only it principal place of business.
C. a citizen of both its place of incorporation and the state where it has its principal place of business.
D. a citizen of that state which has enacted a "long-arm" statute and thus has jurisdiction.

29. _____ jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States.

A. Original
B. Federal question
C. Diversity
D. Exclusive

30. Patent cases being litigated in the federal system are an example of:

A. concurrent jurisdiction.
B. original jurisdiction.
C. exclusive jurisdiction.
D. certiorari jurisdiction.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

31. In a case where concurrent jurisdiction exists, a state court may decide a case involving federal questions if:

A. it is a criminal case.
B. it is a civil case.
C. the plaintiff asserts so.
D. the defendant belongs to that state.

32. Today, most appealable decisions from the lower courts fall within the Supreme Court's _____ jurisdiction, under which the Court has discretion whether to hear the appeal.

A. appellate
B. certiorari
C. original
D. exclusive

33. In which of the following cases will the U.S. Supreme Court have original, but not exclusive, jurisdiction?

A. When the validity of any treaty has been questioned.
B. When the validity of a federal statute has been questioned.
C. When there is a controversy between two or more states.
D. When a state proceeds against citizens of another state.

34. Which of the following notifies the defendant that he, she, or it is being sued?

A. Summons
B. Motion to Dismiss
C. Deposition
D. Interrogatories

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

35. The _____ are the documents that the parties file with the court when they first state their respective claims and defenses.

A. summons
B. pleadings
C. appeals
D. clauses

36. A(n) _____ must state the remedy requested in the case.

A. summons
B. interrogatory
C. affirmative defense
D. complaint

37. Which of the following may contain an affirmative defense?

A. Summons
B. Interrogatory
C. Complaint
D. Answer

38. A counterclaim differs from an affirmative defense in that, a counterclaim:

A. is a new claim by the plaintiff.
B. does not permit a defendant to claim for damages caused by a fraud.
C. is merely an attack on the plaintiff's claims.
D. attempts legal relief for the defendant.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

39. Paul sues Dan for "aesthetic pollution." The basis for his suit is Dan's habit of wearing clothes Paul considers ugly. Paul's complaint offers details of Dan's "ugly" clothing in many separate, numbered paragraphs. However, no law requires one to pay damages for wearing clothes that another considers ugly and for causing aesthetic dissatisfaction to some other party. Thus, Dan wants to defeat Paul's claim as fast as possible. The best procedural device for doing so is the:

A. motion to dismiss.
B. motion for summary judgment.
C. motion for judgment notwithstanding the verdict.
D. motion for a directed verdict.

40. The motion to dismiss for failure to state a claim upon which relief can be granted is sometimes called the:

A. deposition.
B. demurrer.
C. interrogatory.
D. directed verdict.

41. The right of _____ is available for information that is not subject to a recognized legal privilege and is relevant to the case or likely to lead to other information that may be relevant.

A. demurrer
B. counterclaim
C. discovery
D. affirmative defense

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

42. Which of the following characterizes discovery?

A. It begins before the pleadings are completed.
B. Information may be subject to discovery only if it is ultimately be admissible at trial under the legal rules of evidence.
C. It is an efficient and time-saving remedy for litigants.
D. Interrogatories are a commonly utilized form of discovery.

43. What are depositions?

A. Written questions directed to a party, answered in writing, and signed under oath.
B. Documentary evidence introduced at a trial.
C. Oral examinations of a party by the opposing party's attorney.
D. Written statements made during arbitration.

44. Discovery generally takes place without a need for court orders or other judicial supervision. Which of the following is an EXCEPTION to this rule?

A. A request for written questions directed at the opponent.
B. Requests for admission directed at the opponent.
C. A request for a physical or mental examination of the opponent.
D. Requests for the production of documents in civil cases.

45. Malcolm has brought a lawsuit against Will. Malcolm feels that there is no genuine issue of material fact in dispute, and also that he is entitled to win this case as a matter of law. What legal procedure would allow Malcolm to win this case as quickly as possible?

A. Discovery
B. *Voir dire*
C. Jury trial
D. Summary judgment

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

46. At a _____, the judge meets informally with the attorneys for both litigants in an attempt to get the attorneys to stipulate, or agree to, a resolution of certain issues in order to simplify the trial.

A. demurrer
B. directed verdict
C. pretrial conference
D. minitrial

47. The American legal system gives considerable power to the jury; however, it also has devices for limiting that power. The _____ provides a judgment to one party before the jury gets a chance to decide the case.

A. motion to dismiss
B. motion for a new trial
C. motion for summary judgment
D. motion for a directed verdict

48. Abby gets a state court civil judgment against Casey, but Casey does not pay. Which of the following is one of the tools available to Abby to enforce the judgment against Casey?

A. Mediation
B. Long-arm jurisdiction
C. Writ of execution
D. In rem jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

49. Harvey is planning to file a case against a petrochemical giant which has a plant in his town. The petrochemical plant is dumping toxic wastes into its surrounding areas. Harvey is mobilizing the residents of the town, all of whom have suffered from various health problems due to the activities of the plant. Which of the following would be of most help to Harvey and the other residents?

A. Demurrer
B. Class action
C. Directed verdict
D. Affirmative defense

50. Which of the following helps a plaintiff to seize the property that belongs to the defendant but is in the hands of a third party?

A. Class action
B. Garnishment
C. *Non obstante veredicto*
D. Settlement

51. A party may win a judgment even after the jury has reached a verdict against it through the procedure of:

A. *mens rea*.
B. *non obstante veredicto*.
C. demurrer.
D. *habeas corpus*.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

52. Dillon's, a discount retailer with over 500 employees, includes a clause in its employment application stating that all future employment disputes will be resolved through binding arbitration. This clause most likely:

A. will be considered valid by federal courts.
B. will be considered unenforceable by all courts.
C. will result in employees having to mediate their employment-related claims against Dillon's.
D. will require an employee to mediate employment-related disputes.

53. A method of alternative dispute resolution in which a neutral third party helps the parties reach a resolution of the dispute by facilitating communication, clarifying areas of agreement, helping see each other's viewpoints, suggesting settlement options, but who cannot make decisions that bind the parties, is called:

A. conciliation.
B. mediation.
C. minitrial.
D. arbitration.

54. In the form of alternative dispute resolution (ADR) called court-annexed arbitration:

A. a neutral third party is called in to mediate.
B. courts decide on certain types of criminal lawsuits.
C. the losing party has the right to a regular trial.
D. civil lawsuits are sent to the Supreme Court for a hearing.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

55. Which of the following is an informal alternative method for promoting settlement of disputes from a formal court trial?

A. Minitrial
B. Summary judgment
C. Directed verdict
D. Peremptory challenges

Essay Questions

56. What two kinds of jurisdiction are necessary for a state court to have jurisdiction over a case? Describe each briefly.

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

57. Greg sues Ned in an effort to get title to some land claimed by Ned and located inside the state of Texas. Ned has never been to Texas in his life, has never had any contacts of any kind with the state, and refuses to appear in Texas to defend against Greg's suit. Later, after Greg wins a default judgment against Ned, Ned shows up in Texas to claim that the judgment was invalid because he was totally outside Texas, hence Texas courts had no jurisdiction over him, and for this reason they could not affect his rights to the land. Is Ned right? Why or why not? Assume that subject-matter jurisdiction exists.

58. Dee sues Gerry for defamation. Dee thinks that the facts clearly are not as stated in Gerry's complaint and that, given Dee's version of the facts, Gerry cannot recover for defamation. What motion gives Gerry the best chance of winning the case early? What does it involve?

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

59. What are the consequences of document alteration or destruction that interferes with legitimate discovery requests?

60. Does the Federal Arbitration Act (FAA) override a state law vesting initial decision making authority to a court or administrative agency?

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Chapter 02 The Resolution of Private Disputes Answer Key

True / False Questions

1. Minor criminal cases and civil disputes are decided in the appellate courts.

FALSE

Minor criminal cases and civil disputes involving small amounts of money or specialized matters frequently are decided in courts of limited jurisdiction. Appellate courts correct legal errors made by trial judges.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Topic: State Courts and Their Jurisdiction

2. The plaintiff can sue the defendant in whatever court, and in whatever locale that the plaintiff wishes.

FALSE

The plaintiff in a civil case must chose a court to litigate in that has jurisdiction over the case. Jurisdiction is the court's power to hear a case and issue a decision.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 Explain the difference between subject matter jurisdiction and in personam jurisdiction.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

3. For a state trial court to have the power to decide a civil case, it must have in personam jurisdiction or in rem jurisdiction.

FALSE

In order to decide a civil case, a state trial needs to have either in personam or in rem jurisdiction.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

4. The assertion of specific in personam jurisdiction satisfies federal or state due process guarantees so long as the defendant has sufficient "minimum contacts" with the forum state.

TRUE

The assertion of specific in personam jurisdiction satisfies federal or state due process guarantees so long as the defendant has sufficient "minimum contacts" with the forum state, such that maintaining an action there comports with "traditional notions of fair play and substantial justice."

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

5. In rem jurisdiction is based only on the fact that property of the defendant is located within the state.

TRUE

In rem jurisdiction is based on the presence of property within the state and it empowers state courts to determine rights in that property even if the persons whose rights are affected are outside the state's in personam jurisdiction.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

6. Generally, forum selection clauses in form agreements are unenforceable.

FALSE

Forum selection clauses are generally enforced by courts unless they are shown to be unreasonable in a given set of circumstances.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

7. In general, a court has venue if it is territorially fair and convenient for both parties to litigate the case in that court.

TRUE

A court has venue if it is a territorially fair and convenient forum to hear a case. Venue for state courts is set by state statutes.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

8. For federal district court diversity jurisdiction to exist, the amount in controversy must exceed $500,000.

FALSE

Diversity jurisdiction exists when (1) the case is between citizens of different states (2) the amount in controversy exceeds $75,000.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

9. The doctrine of certiorari jurisdiction makes it mandatory for the U.S. Supreme Court to hear appeals from federal and state courts.

FALSE

The doctrine of certiorari jurisdiction grants the U.S. Supreme Court the discretion to decide whether it wants to hear a case or not. The court hears only a small percentage of the many appeals that come to it.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

10. Brennan sues Melissa for breach of contract. In her reply, Melissa claims, among other things, that she should not be liable as she only entered the contract because Brennan defrauded her. This assertion is called an affirmative defense.

TRUE

A successful affirmative defense enables the defendant to win the case even if all the allegations in the complaint are true and, by themselves, would have entitled the plaintiff to recover.

AACSB: Analytical Thinking
AACSB: Ethics
AACSB: Knowledge Application
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

11. The defendant must wait until after the pleadings have been completed before making a motion to dismiss.

FALSE

The motion to dismiss is often made after the filing of a complaint and before the defendant's answer. The pleadings phase of a trial include the complaint and answer and in some jurisdictions the reply.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

12. Interrogatories are a form of discovery requiring a party to file written answers to questions submitted to that party.

TRUE

Interrogatories are written questions directed by the plaintiff to the defendant, or vice versa. The litigant on whom interrogatories are served must provide written answers, under oath, within a time period prescribed by applicable law.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

13. As in a criminal case, a defendant in a civil case may not be compelled by the plaintiff to testify.

FALSE

The 5th Amendment of the Constitution allows protections that prevent a defendant in a criminal case from being compelled to testify but in a civil case a defendant can be compelled to testify.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

14. Normally, a motion for summary judgment requires that a court decide there are genuine questions of fact and questions of law.

TRUE

A summary judgment involves factual determinations. Summary judgment is a device of disposing of cases without trial and involves the judge making a determination on the issue in controversy prior to trial.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

15. The party successful in a civil lawsuit can seek to enforce a judgment by obtaining a writ of execution or by garnishment.

TRUE

A writ of execution and a garnishment are methods by which a party can collect a judgment. A writ of execution allows the sheriff to seize a property and have a judicial sell. Garnishments allow a party to obtain funds associated with the losing party but are in possession of a third party.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Multiple Choice Questions

16. What is a court's power to hear a case and to issue a decision binding on the parties called?

A. Jurisdiction
B. Prerogative
C. Venue
D. Assignment

Jurisdiction is a court's power to hear a case and to issue a decision binding on the parties.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 Explain the difference between subject matter jurisdiction and in personam jurisdiction.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

17. A "long-arm" statute allows:

A. criminal courts jurisdiction over civil cases.
B. state courts more power than federal ones.
C. court's jurisdiction over out-of-state defendants.
D. appellate courts to hear new cases.

Most states have enacted "long-arm" statutes that give their courts in personam jurisdiction over certain out-of-state defendants. Under these statutes, nonresident individuals and businesses become subject to the jurisdiction of the state's courts by doing business within the state, contracting to supply goods or services within the state, or committing a tort within the state.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

18. Calvin, a resident of South Park, Colorado, creates a website called "But Seriously" which acts as an electronic billboard for posting funny stories. Ted, a resident of Northridge, California, posts a story on the website. Stu, another California resident from San Diego, files a lawsuit against Calvin in a federal district court in California, claiming that Calvin had defamed him on his website. Based on these facts, does Calvin have sufficient "minimum contacts" to give the California federal district court in personam jurisdiction over him?

A. No, Ted's posting alone is not enough to create sufficient "minimum contacts."
B. Yes, Ted's posting creates sufficient "minimum contacts."
C. Yes, by creating a website that is accessible in California, Calvin has sufficient minimum contacts with that state.
D. Calvin has sufficient "minimum contacts" with California only if Stu's claim is in excess of $75,000.

When the parties have a contractual relationship, minimum contacts may be shown by the parties' negotiations preceding their agreement, the course of dealing between the parties, the terms of the agreement, and foreseeable future consequences arising out of the agreement. Federal circuit courts have rejected that merely posting defamatory or invasive material to the World Wide Web is enough to create minimum contacts and personal jurisdiction.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

19. Bubble Wrap Co. (BWC), an Atlanta corporation, has its principal place of business in New York. John, a resident of Florida, asserted on his website that BWC is engaged in ongoing criminal activity, scams, and phishing. BWC sued John in the U.S. District Court for the District of New York, alleging defamation and injury to BWC's business in New York. John filed a motion to dismiss the case alleging that neither subject-matter nor in personam jurisdiction existed. The court granted the defendant's motion and dismissed the case because:

A. BWC could not meet its burden of establishing sufficient minimum contacts.
B. BWC did not have subject-matter jurisdiction.
C. BWC neither had subject-matter jurisdiction nor in personam jurisdiction.
D. publishing of those statements did not amount to defamation and thus no injury was caused to BWC's business.

When the parties have a contractual relationship, minimum contacts may be shown by the parties' negotiations preceding their agreement, the course of dealing between the parties, the terms of the agreement, and foreseeable future consequences arising out of the agreement. In this case, there is no such agreement and hence, it does not apply. Federal circuit courts have rejected that merely posting defamatory or invasive material to the World Wide Web is enough to create minimum contacts and personal jurisdiction.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

20. Jurisdiction based on the presence of property within the state is called _____ jurisdiction.

A. in rem
B. personam
C. *sui iuris*
D. subject-matter

In rem jurisdiction is based on the presence of property within the state.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

21. Jack, a resident of Texas, sued Jill, a resident of Kentucky, alleging breach of contract. Jack may attach Jill's bank account in Kentucky to recover the amount of the judgment from the account, if his suit is successful. This is an example of:

A. in rem jurisdiction.
B. in personam jurisdiction.
C. quasi in rem jurisdiction.
D. venue.

Quasi in rem jurisdiction is based on the presence of property within the state. Cases based on quasi in rem jurisdiction do not necessarily determine rights in the property itself. Instead, the property is regarded as an extension of the out-of-state defendant—an extension that sometimes enables the court to decide claims unrelated to the property.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

22. In general, a court has _____ if it is a territorially fair and convenient forum in which to hear the case.

A. venue
B. original jurisdiction
C. limited jurisdiction
D. standing

A court has venue if it is a territorially fair and convenient forum in which to hear the case. Even if a court has jurisdiction, it may be unable to decide the case because venue requirements have not been met.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

23. Contracts sometimes contain a provision reciting that disputes between the parties regarding matters connected with the contract must be litigated in the courts of a particular state. What is such a provision called?

A. Choice of law clause
B. Forum selection clause
C. Substantive clause
D. Minimum contacts clause

Contracts sometimes contain a forum selection clause reciting that disputes between the parties regarding matters connected with the contract must be litigated in the courts of a particular state. Depending on its wording, a forum selection clause may have the effect of addressing both State Courts and Their Jurisdiction issues.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

24. Bob is a merchant in New York and Betty is a merchant in California. Bob wants to do business with Betty but he is concerned that if a lawsuit should result from their transaction, he might have to travel to California and hire a California litigation lawyer to litigate the dispute. What type of clause should Bob try to include in his contract with Betty that will probably assure him that if litigation ensues, it will take place in New York?

A. Confession of judgment clause
B. Forum selection clause
C. Choice of law clause
D. Substantive clause

A forum selection clause may address both State Courts and Their Jurisdiction issues. Hence, it would be a useful tool for Bob in case any type of litigation takes place in the future.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

25. Defending against a federal district court suit by Paul, Dan claims that Paul has sued him in the wrong federal district court. Dan has raised a question of:

A. long-arm jurisdiction.
B. in personam jurisdiction.
C. venue.
D. standing.

Even if a court has jurisdiction, it may not be able to decide a case because of venue requirements. A court has venue if it is a territorially fair and convenient forum in which to hear the case.

AACSB: Analytical Thinking

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

26. Infobox Online, an Internet services provider, includes in its "clickwrap" contract a clause stating that California courts have "exclusive jurisdiction" over subscribers' disputes with Infobox Online. This clause will most likely be:

A. unenforceable because it was not the result of bargaining.
B. unenforceable against a subscriber in another state.
C. enforceable if the subscriber does not file a motion to dismiss.
D. enforceable if it is considered reasonable by a court.

An Internet access provider (IAP) may include a forum selection clause in a so-called "clickwrap" document that sets forth the terms of its Internet-related services—terms to which the IAP's subscribers are deemed to have agreed by virtue of utilizing the IAP's services. Forum selection clauses, whether expressly bargained for or included in a "clickwrap" agreement, are generally enforced by courts unless they are shown to be unreasonable in a given set of circumstances.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

27. For federal "diversity" jurisdiction to exist:

A. the case must begin in a federal court of appeals.
B. the amount in controversy must exceed $75,000.
C. both the plaintiff and the defendant must be citizens of the same state.
D. the case must pertain to the Constitution, laws, or treaties of the United States.

Diversity jurisdiction arises when the case is (1) between citizens of different states and (2) the amount in controversy exceeds $75,000. Federal question jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

28. In federal courts, a corporation is:

A. a citizen of only the place where is has been incorporated.
B. a citizen of only it principal place of business.
C. a citizen of both its place of incorporation and the state where it has its principal place of business.
D. a citizen of that state which has enacted a "long-arm" statute and thus has jurisdiction.

Under diversity jurisdiction, a corporation is a citizen of both the state where it has been incorporated and the state where it has its principal place of business.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

case.
Topic: Federal Courts and Their Jurisdiction

29. _____ jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States.

A. Original
B. Federal question
C. Diversity
D. Exclusive

Federal question jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States. The requirement normally is met when a right created by federal law is a basic part of the plaintiff's case.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

30. Patent cases being litigated in the federal system are an example of:

A. concurrent jurisdiction.
B. original jurisdiction.
C. exclusive jurisdiction.
D. certiorari jurisdiction.

The federal district courts have exclusive jurisdiction over some matters, such as patents. Patent cases must be litigated in the federal system.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

31. In a case where concurrent jurisdiction exists, a state court may decide a case involving federal questions if:

A. it is a criminal case.
B. it is a civil case.
C. the plaintiff asserts so.
D. the defendant belongs to that state.

Sometimes, federal district courts have concurrent jurisdiction with state courts—meaning that both state and federal courts have jurisdiction over the case. State courts may sometimes decide cases involving federal questions if concurrent jurisdiction exists and the plaintiff opts for a state court.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

32. Today, most appealable decisions from the lower courts fall within the Supreme Court's _____ jurisdiction, under which the Court has discretion whether to hear the appeal.

A. appellate
B. certiorari
C. original
D. exclusive

The United States Supreme Court, the highest court in the land, is mainly an appellate court considers only questions of law when it decides appeals from the federal courts of appeals and the highest state courts. Today, most appealable decisions from these courts fall within the Supreme Court's certiorari jurisdiction, under which the Court has discretion whether to hear the appeal.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

33. In which of the following cases will the U.S. Supreme Court have original, but not exclusive, jurisdiction?

A. When the validity of any treaty has been questioned.
B. When the validity of a federal statute has been questioned.
C. When there is a controversy between two or more states.
D. When a state proceeds against citizens of another state.

The U.S. Supreme Court has original, but not exclusive, jurisdiction over cases involving foreign ambassadors, ministers, and like parties, controversies between the United States and a state, and cases in which a state proceeds against citizens of another state or against aliens. Article III of the Constitution grants the Supreme Court jurisdiction of controversies between individual States and citizens from different states. The Supreme Court has original and exclusive jurisdiction over all controversies between two or more states.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
Topic: Federal Courts and Their Jurisdiction

34. Which of the following notifies the defendant that he, she, or it is being sued?

A. Summons
B. Motion to Dismiss
C. Deposition
D. Interrogatories

A summons notifies the defendant that he, she, or it is being sued. It typically names the plaintiff and states the time within which the defendant must enter an appearance in court. In most jurisdictions, it is accompanied by a copy of the plaintiff's complaint.

AACSB: Ethics

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

35. The _____ are the documents that the parties file with the court when they first state their respective claims and defenses.

A. summons
B. pleadings
C. appeals
D. clauses

The pleadings are the documents that the parties file with the court when they first state their respective claims and defenses. They include the complaint, the answer, and, in some jurisdictions, the reply.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

36. A(n) _____ must state the remedy requested in the case.

A. summons
B. interrogatory
C. affirmative defense
D. complaint

The complaint states the plaintiff's claim in separate, numbered paragraphs. The complaint must also state the remedy requested.

AACSB: Ethics

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

37. Which of the following may contain an affirmative defense?

A. Summons
B. Interrogatory
C. Complaint
D. Answer

A defendant needs to file an answer to the plaintiff's complaint within a designated time after service of the complaint. An answer may include an affirmative defense to the claim asserted in the complaint. A successful affirmative defense enables the defendant to win the case even if all the allegations in the complaint are true and, by themselves, would have entitled the plaintiff to recover.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

38. A counterclaim differs from an affirmative defense in that, a counterclaim:

A. is a new claim by the plaintiff.
B. does not permit a defendant to claim for damages caused by a fraud.
C. is merely an attack on the plaintiff's claims.
D. attempts legal relief for the defendant.

A counterclaim is a new claim by the defendant arising from the matters stated in the complaint. Unlike an affirmative defense, it is not merely an attack on the plaintiff's claim, but is the defendant's attempt to obtain legal relief. In addition to using fraud as an affirmative defense to a plaintiff's contract claim, for example, a defendant might counterclaim for damages caused by that fraud.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 3 Hard
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

39. Paul sues Dan for "aesthetic pollution." The basis for his suit is Dan's habit of wearing clothes Paul considers ugly. Paul's complaint offers details of Dan's "ugly" clothing in many separate, numbered paragraphs. However, no law requires one to pay damages for wearing clothes that another considers ugly and for causing aesthetic dissatisfaction to some other party. Thus, Dan wants to defeat Paul's claim as fast as possible. The best procedural device for doing so is the:

A. motion to dismiss.
B. motion for summary judgment.
C. motion for judgment notwithstanding the verdict.
D. motion for a directed verdict.

Sometimes it is evident from the complaint or the pleadings that the plaintiff does not have a valid claim. In such a situation, it would be wasteful for the litigation to proceed further. The procedural device for ending the case at this early stage is commonly called the motion to dismiss. The most important type of motion to dismiss is the motion to dismiss for failure to state a claim upon which relief can be granted, sometimes called the demurrer. It asserts that the plaintiff cannot recover even if all of his/her allegations are true because no rule of law entitles him/her to win on those facts.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

40. The motion to dismiss for failure to state a claim upon which relief can be granted is sometimes called the:

A. deposition.
B. demurrer.
C. interrogatory.
D. directed verdict.

The procedural device for ending the case at an early stage is commonly called the motion to dismiss. The most important type of motion to dismiss is the motion to dismiss for failure to state a claim upon which relief can be granted, sometimes called the demurrer.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Topic: Civil Procedure

41. The right of _____ is available for information that is not subject to a recognized legal privilege and is relevant to the case or likely to lead to other information that may be relevant.

A. demurrer
B. counterclaim
C. discovery
D. affirmative defense

To help litigants obtain the facts and to narrow and clarify the issues for trial, the state and federal court systems permit each party to a civil case to exercise discovery rights. Discovery is available for information that is not subject to a recognized legal privilege and is relevant to the case or likely to lead to other information that may be relevant.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

42. Which of the following characterizes discovery?

A. It begins before the pleadings are completed.
B. Information may be subject to discovery only if it is ultimately be admissible at trial under the legal rules of evidence.
C. It is an efficient and time-saving remedy for litigants.
D. Interrogatories are a commonly utilized form of discovery.

The discovery phase of a lawsuit normally begins when the pleadings have been completed. Information may be subject to discovery even if it would not ultimately be admissible at trial under the legal rules of evidence. Interrogatories are among the commonly utilized forms of discovery. Participation in the discovery process may require significant expenditures of time and effort, not only by the attorneys but also by the parties and their employees.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

43. What are depositions?

A. Written questions directed to a party, answered in writing, and signed under oath.
B. Documentary evidence introduced at a trial.
C. Oral examinations of a party by the opposing party's attorney.
D. Written statements made during arbitration.

In a deposition, one party's attorney conducts an oral examination of the other party or of a likely witness, usually belonging to the other party.

AACSB: Ethics
Accessibility: Keyboard Navigation

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

44. Discovery generally takes place without a need for court orders or other judicial supervision. Which of the following is an EXCEPTION to this rule?

A. A request for written questions directed at the opponent.
B. Requests for admission directed at the opponent.
C. A request for a physical or mental examination of the opponent.
D. Requests for the production of documents in civil cases.

With the exception of a motion for a court order requiring that the opponent undergo a physical or mental examination, discovery generally takes place without a need for court orders or other judicial supervision.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

45. Malcolm has brought a lawsuit against Will. Malcolm feels that there is no genuine issue of material fact in dispute, and also that he is entitled to win this case as a matter of law. What legal procedure would allow Malcolm to win this case as quickly as possible?

A. Discovery
B. *Voir dire*
C. Jury trial
D. Summary judgment

Summary judgment is a device for the speedy disposal of clear cases. The party can ask for summary judgment if it can prove that (1) there is no genuine issue of material fact, and (2) he/she is entitled to judgment as a matter of law.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

46. At a _____, the judge meets informally with the attorneys for both litigants in an attempt to get the attorneys to stipulate, or agree to, a resolution of certain issues in order to simplify the trial.

A. demurrer
B. directed verdict
C. pretrial conference
D. minitrial

Depending on the jurisdiction, a pretrial conference is held where the judge meets informally with the attorneys for both litigants. He/she may try to get the attorneys to stipulate, or agree to, the resolution of certain issues in order to simplify the trial.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

47. The American legal system gives considerable power to the jury; however, it also has devices for limiting that power. The _____ provides a judgment to one party before the jury gets a chance to decide the case.

A. motion to dismiss
B. motion for a new trial
C. motion for summary judgment
D. motion for a directed verdict

Although the general verdict gives the jury considerable power, the American legal system also has devices for limiting that power. The directed verdict takes the case away from the jury and provides a judgment to one party before the jury gets a chance to decide the case.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

48. Abby gets a state court civil judgment against Casey, but Casey does not pay. Which of the following is one of the tools available to Abby to enforce the judgment against Casey?

A. Mediation
B. Long-arm jurisdiction
C. Writ of execution
D. In rem jurisdiction

A writ of execution enables the sheriff to seize designated property of the defendant and sell it at a judicial sale to help satisfy the judgment.

AACSB: Analytical Thinking

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

49. Harvey is planning to file a case against a petrochemical giant which has a plant in his town. The petrochemical plant is dumping toxic wastes into its surrounding areas. Harvey is mobilizing the residents of the town, all of whom have suffered from various health problems due to the activities of the plant. Which of the following would be of most help to Harvey and the other residents?

A. Demurrer
B. Class action
C. Directed verdict
D. Affirmative defense

A class action lawsuit allows one or more persons to sue on behalf of themselves all others who have suffered similar harm from substantially the same wrong. This type of lawsuit is fairly common in environmental issues.

AACSB: Analytical Thinking
AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

50. Which of the following helps a plaintiff to seize the property that belongs to the defendant but is in the hands of a third party?

A. Class action
B. Garnishment
C. *Non obstante veredicto*
D. Settlement

Garnishment is a procedure through which a plaintiff can claim the damages awarded to him by seizing the defendant's property in the hands of third party such as a bank.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

51. A party may win a judgment even after the jury has reached a verdict against it through the procedure of:

A. *mens rea*.
B. *non obstante veredicto*.
C. demurrer.
D. *habeas corpus*.

The procedure of *non obstante veredicto*, or judgment notwithstanding the verdict, enables a losing party to win a judgment even when the jury has reached a verdict against it.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

52. Dillon's, a discount retailer with over 500 employees, includes a clause in its employment application stating that all future employment disputes will be resolved through binding arbitration. This clause most likely:

A. will be considered valid by federal courts.
B. will be considered unenforceable by all courts.
C. will result in employees having to mediate their employment-related claims against Dillon's.
D. will require an employee to mediate employment-related disputes.

Arbitration is the submission of a dispute to the arbitrator who issues a binding decision resolving the dispute. Arbitration usually results from the parties' agreement. That agreement normally is made before the dispute arises (most often through an arbitration clause in a contract). The Federal Arbitration Act requires judicial enforcement of a wide range of agreements to arbitrate claims. This means that if a contract contains a clause requiring arbitration of certain claims but one of the parties attempts to litigate such a claim in court, the court is very likely to dismiss the case and compel arbitration of the dispute.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Topic: Alternative Dispute Resolution

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

53. A method of alternative dispute resolution in which a neutral third party helps the parties reach a resolution of the dispute by facilitating communication, clarifying areas of agreement, helping see each other's viewpoints, suggesting settlement options, but who cannot make decisions that bind the parties, is called:

A. conciliation.
B. mediation.
C. minitrial.
D. arbitration.

In mediation, a neutral third party called a mediator helps the parties reach a cooperative resolution of their dispute by facilitating communication between them, clarifying their areas of agreement and disagreement. Mediators, unlike arbitrators, cannot make decisions that bind the parties.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Topic: Alternative Dispute Resolution

54. In the form of alternative dispute resolution (ADR) called court-annexed arbitration:

A. a neutral third party is called in to mediate.
B. courts decide on certain types of criminal lawsuits.
C. the losing party has the right to a regular trial.
D. civil lawsuits are sent to the Supreme Court for a hearing.

In a court-annexed arbitration, certain civil lawsuits are diverted into arbitration. Most often, court-annexed arbitration is mandatory and is ordered by the judge, but some jurisdictions merely offer litigants the option of arbitration. The losing party in a court-annexed arbitration still has the right to a regular trial.

AACSB: Analytical Thinking

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Topic: Alternative Dispute Resolution

55. Which of the following is an informal alternative method for promoting settlement of disputes from a formal court trial?

A. Minitrial
B. Summary judgment
C. Directed verdict
D. Peremptory challenges

A minitrial is an informal, abbreviated "private" trial that aims to promote settlement of disputes.

AACSB: Ethics
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Topic: Alternative Dispute Resolution

Essay Questions

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

56. What two kinds of jurisdiction are necessary for a state court to have jurisdiction over a case? Describe each briefly.

A state must have subject-matter jurisdiction and either in personam or in rem jurisdiction. Subject-matter jurisdiction concerns the court's competence to handle the type of case in question (criminal, tax, etc.). In personam jurisdiction is based on the residence, location, or activities of the defendant himself/herself, and how they relate to the state. In rem jurisdiction is based on the presence of property within the state.

AACSB: Analytical Thinking
AACSB: Ethics
AACSB: Reflective Thinking
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

57. Greg sues Ned in an effort to get title to some land claimed by Ned and located inside the state of Texas. Ned has never been to Texas in his life, has never had any contacts of any kind with the state, and refuses to appear in Texas to defend against Greg's suit. Later, after Greg wins a default judgment against Ned, Ned shows up in Texas to claim that the judgment was invalid because he was totally outside Texas, hence Texas courts had no jurisdiction over him, and for this reason they could not affect his rights to the land. Is Ned right? Why or why not? Assume that subject-matter jurisdiction exists.

Ned is wrong. Although the utter absence of contacts with Texas would prevent Texas from having in personam jurisdiction over Ned, Texas courts still would have in rem jurisdiction over him. In rem jurisdiction is based on the presence of property within a state, and Ned's land was located inside Texas.

AACSB: Ethics
AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Topic: State Courts and Their Jurisdiction

58. Dee sues Gerry for defamation. Dee thinks that the facts clearly are not as stated in Gerry's complaint and that, given Dee's version of the facts, Gerry cannot recover for defamation. What motion gives Gerry the best chance of winning the case early? What does it involve?

The motion for summary judgment is a device for disposing of relatively clear cases without a trial. Under that motion, Dee and Gerry will present factual "evidence" such as pleadings, depositions, and affidavits to demonstrate their versions of the facts, and also will make legal arguments. If there is no genuine issue of material fact, and if (given those facts) the law directs that one party wins, that party gets a judgment.

AACSB: Analytical Thinking
AACSB: Ethics
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

59. What are the consequences of document alteration or destruction that interferes with legitimate discovery requests?

As Arthur Andersen discovered in 2002, the potential legal consequences of document alteration or destruction that interferes with legitimate discovery requests include criminal prosecution for obstruction of justice. Additionally, courts have broad discretionary authority to impose appropriate sanctions for such conduct. These sanctions may include court orders prohibiting the party from raising certain claims or defenses in the civil action, jury instructions regarding the wrongful destruction of documents, and court orders for the party to pay certain attorney's fees to the opposing party. Of course, the long-term effect on the reputation of the party who destroys or alters documents in this manner can be severely adverse to the party's interests.

AACSB: Ethics

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank

AACSB: Reflective Thinking
Blooms: Understand
Difficulty: 3 Hard
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Topic: Civil Procedure

60. Does the Federal Arbitration Act (FAA) override a state law vesting initial decision making authority to a court or administrative agency?

The Supreme Court in the case of *Preston v. Ferrer*, held that when parties have agreed to arbitrate disputes, the Federal Arbitration Act (FAA) controls and the dispute must therefore be submitted to arbitration even if otherwise applicable state law appears to give initial decision making authority to a court or an administrative agency.

AACSB: Analytical Thinking
AACSB: Ethics
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Topic: Alternative Dispute Resolution

Copyright © 2016 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Business Law The Ethical Global and E-Commerce Environment 16th edition Mallor Test Bank