Business Law Legal Environment Online Commerce Business Ethics and International Issues 9th edition Cheeseman Solutions Manual

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2 COURTS AND JURISDICTION

"I was never ruined but twice: once when I lost a lawsuit, and once when I won one."

Voltaire

I. Teacher to Teacher Dialogue

Twenty-first century technological advances have provided our students with all kinds of instant access to information. These devices have provided the students with a variety of preconceptions.

Among these is the average undergraduate's notion of how trials are conducted and the role of attorneys in that process. Invariably these perceptions center on popular television series such as "Law and Order" and "Court TV." This is not all bad. Current media focus on numerous law-related issues has generated a whole new wave of public interest in the workings of our legal system. The downside is that the media has created many myths on the folklore of law and lawyers. In the world of pop culture, no one knows until the end who really did it until a surprise witness shows up to identify the bad guy. In more modern versions, the attorney first has a business relationship with the client and then proceeds to get him or her acquitted. Regardless of the outcome, the process is always full of glamour and intrigue.

The problem is that a trial rarely resembles the goings on found in the entertainment media. Trials are long, tedious, emotionally, and financially draining processes for all parties concerned. In many ways, a trial represents a failure by the parties to reach some sort of satisfactory solution of the issue beforehand. Rarely do the parties actually want to go through a labyrinth of pleadings, motions, and the like, feeling all the while totally dependent on the sometimes questionable competence of their attorneys. Unlike the make-believe world of entertainment, the job of an attorney is to keep his or her client out of court. (This often needs some reinforcement with the student.) The attorney's professional advice should anticipate and resolve potential legal problems before, rather than after, the fact if at all possible.

It is against this backdrop that we should try to present a more realistic picture of how our system works. We can basically start by discussing how few controversies actually get to the trial stage and how even fewer of those are actually reported in the National Reporter System. Additionally, a fair amount of time should be spent reviewing the growing trend toward alternative dispute resolution (ADR) mechanisms. Personal experience examples might be helpful in illustrating the growing trends toward ADR. To complete the cycle, we can then proceed to itemize the key steps used in a court trial in this chapter and in those that follow.

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II. Chapter Objectives

1. Describe state court systems.
2. Describe the federal court system.
3. List and describe the types of decisions that are issued by the U.S. Supreme Court.
4. Compare the jurisdiction of state courts with that of federal courts.
5. Define *personal jurisdiction*, *standing to sue*, and *venue*.

III. Key Question Checklist

- If the dispute or controversy needs to be resolved in a court of law, which court has jurisdiction?
- Once jurisdiction is established, was the proper sequence of pretrial steps taken?
- Was the trial sequence properly followed?
- After the trial is completed, are any appeals from the decision applicable?

IV. Text Materials

One objective of this chapter is to familiarize students with the role of the major players in those events.

The federal court system and the court systems of the 50 states and the District of Columbia are the two major court systems in the U.S. Litigation is the process of bringing, maintaining, and defending a lawsuit. In addition, there are a number of alternative dispute resolutions that can be used.

State Court Systems

Limited-Jurisdiction Trial Court – Inferior trials like traffic courts, juvenile courts, justice-of-the peace courts, probate courts, and family law courts hear specialized matters. Another example of these is the small claim courts that hear limited dollar amount civil cases.

General-Jurisdiction Trial Court – Courts of Record keep a record of the testimony and evidence presented at trial for future reference. These courts hear felony cases, civil cases over a certain dollar amount, and other items.

Intermediate Appellate Court – Courts of Appeal hear appeals from trial courts, reviewing records of trials for errors without hearing any new evidence.

Highest State Court – State supreme courts hear appeals from intermediate state courts and some trial courts, without hearing new evidence.

Contemporary Environment*: Delaware Courts Specialize in Hearing Business Disputes*
Delaware has created a special Chancery Court to decide business litigation, with a reputation for handling corporate matters. Delaware's laws also tend to favor corporate management, so together with the Chancery Court, the state has created an environment that encourages incorporation in that state. Other states are beginning to follow suit and create their own variation of Delaware's Chancery Court.

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Federal Court System

Special Federal Courts – There are six courts of limited jurisdiction: the U.S. tax court, federal claims court, the Court of International Trade, bankruptcy court, and the courts of appeals for the armed services and for veteran's claims.

U.S. District Courts – These are the federal court system's 94 trial courts of general jurisdiction.

U.S. Courts of Appeal – These are the federal court system's 13 intermediate appellate courts.

Supreme Court of the United States

The Supreme Court is composed of nine justices who are nominated by the President and confirmed by the Senate. The President appoints one as the chief justice who is responsible for the administration of the Court, while the other eight are considered associate justices.

Contemporary Environment: *The Process of Choosing a U.S. Supreme Court Justice*
The President appoints Supreme Court justices, with the advice and consent of the Senate (majority vote). This allows a form of balance of power between the executive and legislative branches of the government.

Jurisdiction of the U.S. Supreme Court – The Supreme Court hears appeals from the federal district courts and from the highest state courts. Legal briefs are filed, oral arguments are made, lower court records are reviewed, but neither new evidence nor testimony is heard. The Supreme Court decision is final.

Decisions by the U.S. Supreme Court – Congress has established the rules for the mandatory appellate review by the Supreme Court, which may also elect to hear cases at its discretion. Petitioners file a petition for certiorari asking for the Supreme Court to review their case. If the court decides to sit on the matter, it issues a writ of certiorari. The court hears about 100 cases per year.

> **Unanimous Decisions –** All the justices voting agree as to both the outcome and the reasoning. These decisions become precedent.
>
> **Majority Decision –** Decisions by the Supreme Court are considered majority decisions if a majority of the justices agree on the outcome and reasoning. These decisions become precedent.
>
> **Plurality Decision –** A plurality decision is when the majority of the justices agree on the outcome, but not the reasoning. This settles the case, but does not serve as precedent.
>
> **Tie Decision –** In this case, the winner in the lower court prevails. This does not serve as precedent.
>
> **Concurring Opinion –** When a justice agrees with the outcome of the majority, but not the reasoning, they will issue a concurring opinion explaining their stand.

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Dissenting Opinion – Any justice who does not agree with the decision may state their opinion.

Contemporary Environment: "*I'll Take You to the U.S. Supreme Court!*"
This discusses the process necessary to win a review by the U.S. Supreme Court.

Jurisdiction of Federal Courts

Federal Question – Federal courts have limited jurisdiction to hear cases involving federal questions with no dollar amount limit.

Diversity of Citizenship – The federal courts have jurisdiction to hear cases involving diversity of citizenship. There must be diversity of state citizenship or the cases must be between a citizen and a subject of a foreign country. The amount in controversy must be over $75,000.

Case 2.1 Service of Process: *Chanel, Inc. v. Zhixian*
2010 U.S. Dist. Lexis 50745 (2010), United States District Court for the Southern District of Florida
Facts: Chanel is an international cosmetics company, which averred that a Chinese resident infringed upon its trademark. The Chinese defendant evaded service of process through the use of false names and addresses.
Issue: Chanel asked the court for permission to serve the defendant electronically.
Decision: The U.S. district court ruled that electronic service would satisfy the court and that Chanel also should issue a public announcement of the suit in China.
Ethics Questions: Trademark infringement is not lawful and it is unlikely the Chinese defendant will defend in the case.

Jurisdiction of State Courts – State courts hear cases that the federal courts do not have the jurisdiction to hear.
Federal courts may have concurrent jurisdiction with state courts to hear cases involving diversity of citizenship.

Critical Legal Thinking – Diversity of citizenship ensured that no single state in the Union possessed too much power in adjudicating cases, which involved citizens from different states. With the federal courts and federal statutory law being the pre-eminent law in our country (particularly with the increase in multinational business transactions and globalization), the diversity of citizenship issue is somewhat of a lost concept in the modern American legal system.

Standing to Sue, Jurisdiction, and Venue

Standing to Sue – The plaintiff must have a stake in the outcome of the lawsuit.

***In Personam* Jurisdiction –** *In personam* jurisdiction over a person is achieved by the plaintiff filing a lawsuit with a court and by serving a summons on the defendant. If personal service is unavailable, notice of the case by mail or publication in newspapers is allowed.

Defendants disputing the jurisdiction of a court may make a special appearance to argue their case, and cannot be served while making this appearance.

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Long-Arm Statute – A court can obtain jurisdiction over persons and businesses located in another state through the use of a long-arm statute, provided the defendant has had some minimum contact with the state.

Landmark U.S. Supreme Court Case Minimum Contacts
International Shoe Company v. State of Washington
International Shoe had salespeople that sold shoes door-to-door within the state of Washington, and were paid on a commission basis. They had no office in the state. Washington State determined that they had failed to pay unemployment taxes on International's employees, and served notice to the organization on one of their Washington sales representatives as well as by mailing the notice to the headquarters in St. Louis. International made a special appearance to argue that it had insufficient contacts within the state to warrant payment of the tax. The unemployment office and appeals board, as well as various courts within the state ruled against International, which appealed to the U.S. Supreme Court. The Supreme Court ruled that International had neither casual nor irregular contacts within the state, and was, therefore, subject to *in personam* jurisdiction and service upon one of their agents, based on their "minimum contacts" within the state. The Supreme Court clearly stated that the Due P/rocess Clause permits jurisdiction over a defendant in any state in which the defendant has "certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."
Critical Legal Thinking Questions: There are firmly established standards developed through case law, which allow a court to determine when minimum contact has been made with a state.

Case 2.2 Long Arm Statute: *MacDermid, Inc. v. Deiter*
702 F.3d 725, 2012 U.S. App. Lexis 26382 (2012), United States Court of Appeals for the Second Circuit
Facts: Prior to her employment termination, the defendant took proprietary property from her employer who in turn sued her to get it back.
Issue: Does the district court have personal jurisdiction over the defendant?
Decision: Yes
Ethics Questions: The defendant took property that did not belong to her which seems to be a more pressing substantive issue than personal jurisdiction.

***In Rem* Jurisdiction –** Courts may have jurisdiction over property found within the state, based on *in rem* (over the thing) jurisdiction.

***Quasi In Rem* Jurisdiction –** Attachment jurisdiction occurs when a plaintiff who has obtained a judgment attempts to satisfy the judgment by attaching property located in another state.

Venue – The court with the jurisdiction that is located closest to where the incident occurred or where the parties live should hear the lawsuit.
Pretrial publicity may prejudice jurors and may lead to a request for a change of venue in order to get a more impartial jury. Forum shopping is the process of looking for a more favorable court without a valid reason, and is frowned upon by most courts.

Forum-Selection and Choice-of-Law Clauses – Because many business agreements are formed between people from different states and different countries, many contracts have clauses that specifically address the state's or country's laws that will be applied in the case of a dispute, in what are known as choice-of-law clauses. Additionally, they will often agree as to which court will have jurisdiction over any dispute in forum-selection clauses.

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2.3 Forum-Selection Clause: *Fteja v. Facebook, Inc.*
841 F.Supp.2d 829, 2012 U.S. Dist. Lexis 12991 (2012), United States District Court for the Southern District of New York
Facts: The plaintiff contends that Facebook committed religious discrimination in closing his Facebook account. Facebook filed a motion to have the suit moved to federal court, the Northern District of California, based on a clause in the click wrap agreement the plaintiff signed when he opened his account.
Issue: Is the Facebook forum selection clause enforceable?
Decision: The court enforced the forum-selection clause .
Ethics Questions: Student' answers will vary; there might be a consumer cost to using Facebook if it had to defend lawsuits across the world.

Jurisdiction in Cyber Space

Today, with the advent of the Internet and the ability of persons and businesses to reach millions of people in other states electronically, particularly through websites, modern issues arise as to whether courts have jurisdiction in cyberspace. *Zippo Manufacturing Company v. Zippo Dot Com, Inc*. is an important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.

International Law: ***Judicial System of Japan***
There is very little litigation in Japan when compared to the United States. A primary reason for the difference is cultural because Japan nurtures the attitude that confrontation should be avoided. Other reasons include the high cost that must be borne by plaintiffs who want to file a lawsuit. Even if the plaintiff wins, the damages awarded are low. In the past, a relatively low number of lawyers graduated every year from the few law schools in Japan. But now, due to increasing business and personal disputes, the government is building new law schools and plans to double the number of lawyers by the year 2020.

V. Key Terms and Concepts

- Article III of the U.S. Constitution— It provides that the federal government's judicial power is vested in one "Supreme Court." This court is the U.S. Supreme Court.
- Associate Justices of the U.S. Supreme Court—The eight other justices apart from the Chief Justice of the U.S. Supreme Court.
- Change of Venue—In certain circumstances, when pretrial publicity may prejudice jurors, a change of venue may be requested so that a more impartial jury can be found.
- Chief Justice of the U.S. Supreme Court—Appointed by the president and responsible for administration of the U.S. Supreme Court.
- Choice-of-law clause—A contract provision that designates a certain state's law or country's law that will be applied in any dispute concerning nonperformance of the contract.
- Circuit—The geographical area served by each U.S. court of appeals.
- Concurrent jurisdiction—Jurisdiction shared by two or more courts.
- Concurring opinion—An opinion that can be issued by a justice of the Supreme Court who agrees with the outcome of a case but not the reason proffered by the other justices.
- Court of Appeals for the Federal Circuit—A court of appeals in Washington DC, that has special appellate jurisdiction to review the decisions of the Claims Court, the Patent and Trademark Office, and the Court of International Trade.

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- Delaware Court of Chancery—A special court which decides cases involving corporate governance, fiduciary duties of corporate officers and directors, mergers and acquisitions, and other business issues.
- Dissenting opinion—An opinion which sets forth the reason why a justice of the Supreme Court does not agree with a decision.
- District—The geographical area served by a U.S. district court.
- District of Columbia Circuit—The 12th circuit court, located in Washington DC.
- Diversity of citizenship—A case between (1) citizens of different states and (2) a citizen of a state and a citizen or subject of a foreign country.
- *En banc* review—A review that can be requested by a petitioner in the U.S. court of appeals after a decision is rendered by a three-judge panel.
- Exclusive jurisdiction—Jurisdiction held by only one court.
- Federal question case—A case arising under the U.S. Constitution, treaties, and federal statutes and regulations.
- FISA warrant—A warrant issued by a FISA Court for the government to conduct surveillance against persons who are suspected of being threats to national security.
- Forum-selection clause—Contract provision that designates a certain court to hear any dispute concerning nonperformance of the contract.
- Forum shopping—Looking for a favorable court without a valid reason.
- Full Faith and Credit Clause—A clause of the U.S. Constitution under which a judgment of a court of one state must be given "full faith and credit" by the courts of another state.
- General-jurisdiction trial court (court of record)—A court that hears cases of a general nature that are not within the jurisdiction of limited-jurisdiction trial courts. Testimony and evidence at trial are recorded and stored for future reference.
- Highest state court—The highest court in a state court system; it hears appeals from intermediate appellate state courts and certain trial courts.
- *In personam* jurisdiction (personal jurisdiction)—Jurisdiction over the parties to a lawsuit.
- *In rem* jurisdiction—Jurisdiction to hear a case because of jurisdiction over the property of the lawsuit.
- Intermediate appellate court (appellate court or court of appeals)—An intermediate court that hears appeals from trial courts.
- *International Shoe Company v. State of Washington*—A landmark U.S. Supreme Court case that established the minimum contacts standard.
- Limited-jurisdiction trial court (inferior trial court)—A court that hears matters of a specialized or limited nature.
- Long-arm statute—A statute that extends a state's jurisdiction to nonresidents who were not served a summons within the state.
- Majority decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome and reasoning used to decide a case.
- Minimum contact—A nonresident defendant in a civil lawsuit must have had some minimum contact with the state such that the maintenance of that lawsuit in that state does not offend traditional notions of fair play and substantial justice.
- Petition for certiorari—A petition asking the Supreme Court to hear one's case.
- Plurality decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome of a case but not as to the reasoning for reaching the outcome.

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- *Quasi in rem* jurisdiction (attachment jurisdiction)—Jurisdiction allowed a plaintiff who obtains a judgment in one state to try to collect the judgment by attaching property of the defendant located in another state.
- Rule of four—The votes of four justices are necessary to grant an appeal and schedule an oral argument before the Supreme Court.
- Service of process—A summons is served on the defendant to obtain personal jurisdiction over him or her.
- Small claims court—A court that hears civil cases involving a small dollar amounts.
- Special federal courts—Federal courts that hear matters of specialized or limited jurisdiction.
- Standing to sue—The plaintiff must have some stake in the outcome of the lawsuit.
- State courts—A separate court system that is present in each state, Washington DC and each territory of the United States. It includes limited-jurisdiction trial courts, general-jurisdiction trial courts, intermediate appellate courts, and a supreme court.
- State supreme court—The highest court in a state court system; it hears appeals from intermediate state courts and certain trail courts.
- Supreme Court of the United States (U.S. Supreme Court)—The highest court in the land located in Washington DC.
- Tie decision—A Supreme court decision where the number of votes cast by the justices leads to a tie and the decision of the lower court is affirmed. It occurs when all nine judges are not present.
- Unanimous decision—A Supreme court decision where all the justices voting agree as to the outcome and reasoning used to decide a case.
- U.S. Bankruptcy Court—Special federal court that hears cases involving federal bankruptcy laws.
- U.S. Courts of Appeals—The federal court system's intermediate appellate court.
- U.S. Court of Appeals for the Armed Forces—Special federal court that exercises appellate jurisdiction over members of the armed services.
- U.S. Court of Appeals for the Federal Circuit—A court of appeals located in Washington DC that has special appellate jurisdiction to review the decisions of the U.S. Court of Federal Claims, the U.S. Patent and Trademark Office, and the U.S. Court of International Trade.
- U.S. Court of Appeals for Veterans Claims—Special federal court that exercises jurisdiction over decisions of the Department of Veterans Affairs.
- U.S. Court of Federal Claims—Special federal court that hears cases brought against the United States.
- U.S. Court of International Trade—Special federal court that handles cases that involve tariffs and international trade disputes.
- U.S. district courts—The federal court system's trial courts of general jurisdiction.
- U.S. District of Columbia Circuit—A federal intermediate appellate court located in Washington DC.
- U.S. Foreign Intelligence Surveillance Court of Review (FISCR)—A special federal court to which the U.S. government may appeal a decision of the U.S. Foreign Intelligence Surveillance Court (FISA Court) when it denies a government application for a FISA warrant.
- U.S. House of Representatives One of the two legislative bodies that make up the bicameral legislative system of the U.S. government. The number of representatives in the U.S. House of Representatives is determined according to the population of each state.

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- U.S. Foreign Intelligence Surveillance (FISA Court)—Located in Washington DC, the court hears requests by federal law enforcement agencies for warrants to conduct physical searches and electronic surveillance against persons who are deemed to be threats to national security.
- U.S. Tax Court—Special federal court that hears cases that involve federal tax laws.
- Venue—A concept that requires lawsuits to be heard by the court with jurisdiction that is nearest the location in which the incident occurred or where the parties reside.
- Writ of certiorari—An official notice that the Supreme Court will review one's case.
- *Zippo Manufacturing Company v. Zippo Dot Com, Inc*.—An important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.

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