Business Law 10th 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. Learning Objectives and Chapter Contents

- Describe state court systems.
- Describe the federal court system.
- List and describe the types of decisions that are issued by the U.S. Supreme Court.
- Explain the jurisdiction of federal courts and compare it with the jurisdiction of state courts.
- Define standing to sue, jurisdiction, and venue.
- Explain how jurisdiction is applied to digital commerce.

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

2.1 Describe state court systems.

Limited-Jurisdiction Trial Court – Inferior trial-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.

Business Environment: *Delaware Courts Specialize in Hearing Business Disputes*

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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.

Federal Court System

2.2 Describe the 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.

Contemporary Environment
Foreign Intelligence Surveillance Court
Created in 1978, this court handles FBI, NSA, and warrants pertaining to national security issues called FISA warrants.

Supreme Court of the United States

2.3 Describe the U.S. Supreme Court and the types of cases it decides.

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 and agree as to both the outcome and the reasoning. These decisions become precedent.

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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.

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

2.4 Explain the jurisdiction of federal courts and compare it with the jurisdiction of state 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 $75,000.00.

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.

Full Faith and Credit Clause – Federal constitutional clause which requires that a judgment from one state court be recognized by every other state.

Case 2.1 ***Full Faith and Credit Clause***
V.L. v. E.L, 136 S.Ct. 1017 (2016)
Facts: Two women in a romantic relationship use technology to have three children together. The couple raised them jointly until they split up.
Issue: Who has maternity rights to the children? Does a Georgia court final judgment of adoption make one the legal parent over the other woman as it applies to Alabama?
Decision: Full faith clause of the Constitution caused a remand of the case in Alabama for further proceedings.
Ethics Question: Students will have differing opinions on this issue.

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Standing to Sue, Jurisdiction and Venue

2.5 Define 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 the 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.

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

Critical Legal Thinking
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 serve 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 Process 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) 2nd 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.

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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 it 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.

2.2 Forum-Selection Clause ***Carter's of New Bedford, Inc. v. Nike, Inc.***
790 F.3d 289 (2015)
Facts: Nike attempts to enforce a forum-selection clause against Carter's, a retailer of its shoes in Massachusetts.
Issue: Is the forum-selection clause enforceable?
Decision: Yes
Critical Legal Thinking Questions: Students will have differing ideas on these questions.

Jurisdiction in Digital Commerce

2.6 Explain how jurisdiction is applied to digital commerce.

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.

Information Technology
Jurisdiction Over an Internet eBay Seller
Internet forums like eBay expand the seller's market across the world and sellers know that and avail themselves of the benefits. This opens up personal jurisdiction much more broadly.

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. 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.

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- 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, D.C., that has special appellate jurisdiction to review the decisions of the Claims Court, the Patent and Trademark Office, and the Court of International Trade.
- 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 shopping—Looking for a favorable court without a valid reason.
- Forum-selection clause—Contract provision that designates a certain court to hear any dispute concerning nonperformance of the contract.
- 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—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—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—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.

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- Limited-jurisdiction 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.
- Quasi in rem 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 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— 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 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.

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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 of 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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Chapter 2
Courts and Jurisdiction

Answers to Critical Legal Thinking Cases

2.1 Personal Jurisdiction

No, defendants Live Siri Art, Inc. and Siri Galliano are not subject to lawsuit in New York pursuant to New York's long-arm statute. This is because defendant Live Siri Art, Inc, a California corporation, and defendant Siri Galliano, a California resident, did not have the requisite minimum contacts with the state of New York to make them subject to a lawsuit brought by plaintiff Richtone Design Group LLC (Richtone), a New York LLC, in a New York court pursuant to the New York long-arm statute. Assuming that the defendants did violate the plaintiff's copyright by selling Richtone's pilates manuals in New York using a website and made $1,000 in more than a decade doing so, this is but de minimis contact that does not arise to the minimum contact required by due process to subject them to a lawsuit in New York. The U.S. district court dismissed plaintiff Richtone's New York lawsuit against the California defendants for lack of personal jurisdiction. *Richtone Design Group, LLC v. Live Art*, *Inc.,* 2013 U.S. Dist. Lexis 157781 (United States District Court for the Southern District of New York, 2013)

2.2 Service of Process

Yes, May Facebook, Inc. may use alternative service of process by sending email notices to the defendants' websites. Facebook sued the defendants for trademark infringement, cybersquatting,

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and false designation of origin by their use of typosquatting schemes whereby the defendants register internet domain names that are confusingly similar to facebook.com (e.g., facebock.com) so that potential users of Facebook's website who enter a typographical error are diverted to the typesquatter's website, which is designed to look strikingly similar in appearance to Facebook's website, to trick users into thinking that they are using Facebook's website. Facebook has introduced evidence that it has not been able to serve the defendants personally, by mail, or by telephone. The U.S. district court granted Facebook's motion to be permitted to serve these defendants by sending an email notice to the defendants' websites. The U.S. district court stated "Here, service by email is reasonably calculated to provide actual notice." The U.S. district court issued an order permitting Facebook to serve the defendants by email. *Facebook, Inc. v. Banana Ads LLC.* 2012 U.S. Dist. Lexis 65834 (United States District Court for the Northern District of California, 2012)

2.3 Standing to Sue

Michigan law, and not Ohio law, applies in this case. The court noted that because the accident took place in Michigan, there is a presumption that Michigan law applies absent any other jurisdiction having more substantial contacts. Plaintiff Bertram, however, contended that Ohio law should apply, because all of the parties were residents of Ohio at the time of the accident and all consequences flowing from his injury occurred in Ohio. The court disagreed. The court stated, "Because the snowmobiling accident took place in Michigan, the place where the conduct causing Bertram's injury occurred in Michigan and Michigan has enacted specific legislation involving the risks of snowmobiling, we find that Michigan law clearly controls in this case. While all parties are residents of and have their relationships in the State of Ohio, we are not

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persuaded by Bertram's argument that this issue should control." The Court of Appeals of Ohio held that the law of the state of Michigan, where the accident occurred, and not the law of the state of Ohio, the state of the residence of the parties, applied. The court applied the Michigan assumption of the risk statute and granted summary judgment to the three defendant friends of plaintiff Bertram. *Bertram v. Norden, et al.,* 823 N.E.2d 478, 2004 Ohio App. Lexis 550 (Court of Appeals of Ohio, 2004)

2.4 Long-Arm Statute

Yes, the Missouri court has personal jurisdiction over the Illinois casino based on Missouri's long-arm statute. Although the Casino Queen casino is located in Illinois, it could reasonably foresee its pervasive advertising directed at Missouri residents would entice those residents, such a Mark Myers, to cross the state line into Illinois to participate in gambling at the Illinois casino. If an Illinois defendant can reasonably foresee that his or her negligent actions have consequences felt in Missouri, personal jurisdiction is authorized under the Missouri long-arm statute. The U.S. court of appeals held that Casino Queen, which operated a casino in Illinois, is subject to personal jurisdiction in courts in Missouri under Missouri's long-arm statute. The court of appeals stated, "While Myers's injuries did not arise out of Casino Queen's advertising in a strict proximate cause sense, his injuries are nonetheless related to Casino Queen's advertising activities because he was injured after responding to the solicitation." The court of appeals ruled that Casino Queen must stand trial in a Missouri court and defend the charges brought against it by Myers. *Myers v. Casino Queen, Inc.,* 689 F.3d 904, (United States Court of Appeals for the Eighth Circuit, 2012)

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2.5 Standing to Sue

No. The U.S. District Court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King did not have standing to sue McDonald's and dismissed the case. In deciding the case the court noted that the goal of standing is to determine whether the plaintiff is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers. It was Simon Marketing, Inc. (Simon), who McDonald's hired to operate the promotional games, who committed fraud by steering cash prizes of up to $1 million to its conspirators. McDonald's may have been negligent in allowing this to happen. Thus, McDonald's customers who did not have a chance to win the cash prizes because of the fraud would have standing to sue Simon and McDonald's. However, the court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King, did not have standing to sue McDonald's. The court stated, "In this case, the harm caused by McDonald's allegedly false advertisements more directly affects the customers who were denied the opportunity to compete for the high-value prizes criminally co-opted by Jacobson. While these customers do not have standing to sue under the Lanham Act, they could and did vindicate the public interest by suing McDonald's for fraud. Thus, there is no need to empower Phoenix to act as a private attorney general in this case." *Phoenix of Broward, Inc. v. McDonald's Corporation,* 441 F.Supp.2d 1241, 2006 U.S. Dist. Lexis 55112 (United States District Court for the Northern District of Georgia, 2006)

2.6 U.S. Supreme Court Decision

This is a plurality decision of the U.S. Supreme Court and does not create precedent for further cases. This is because although 5 justices upheld the Salinas's verdict of guilty, 3 did so for one reason and 2 did so for a different reason. If the 5 justices would have agreed to the verdict of

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guilty based on the same reason as to why the evidence of the defendant's silence at the precustodical hearing could be admitted at trial, then it would have been a majority opinion, and a majority opinion would have become precedent. However, in this case, 5 justices upheld the guilty verdict, but 3 for one reason and 2 justices for another reason, with 4 justices dissenting, created a plurality decision that does not create precedent. *Salinas v. Texas,* 133 S.Ct. 2174, 2012 U.S. Lexis 4697 (Supreme Court of the United States, 2012)

Answers to Ethics Cases

2.7 Ethics Case

Yes, the Maryland court has personal jurisdiction over the Florida defendant Ladawn Banks. Chanel is engaged in the business of manufacturing and distributing throughout the world various luxury goods, including handbags, wallets, and numerous other products under the federally registered trademark "Chanel" and monogram marks. Chanel alleged that Banks owned and operated the fully interactive website www.lovenamebrands.com, through which she sold handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks. According to Chanel, although defendant Banks is a resident of Florida, she conducted business in Maryland via several interactive websites. The *Zippo* court distinction between interactive, semi-interactive, and passive websites is particularly relevant. Defendant's website at issue in this case was highly interactive and provided a platform for the commercial exchange of information, goods, and funds. Thus, the Maryland court, under its long-arm statute, has personal jurisdiction over the Florida defendant Banks in this matter. The court granted default judgment

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to Chanel, assessed damages of $133,712 against Banks, and issued a permanent injunction prohibiting Banks from infringing on Chanel's trademarks.

Regarding the issue of ethics, if defendant Ladawn Banks operated the website www.lovenamebrands.com and sold knock-off handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks, she has acted unethically. Stealing another party's rightful trademarks and selling knock-off goods bearing those trademarks is not only unethical but it also constitutes illegal trademark infringement. *Chanel, Inc. v. Banks,* 2010 U.S. Dist. Lexis 135374 (United States District Court for Maryland, 2010)

2.8 Ethics Case

No, Hertz Corporation is not a citizen of California and therefore is not subject to plaintiff Melinda Friend's—a California citizen—suit in California state court. A corporation is a citizen of the state in which it is incorporated and in which it has its principal place of business. Hertz Corporation is incorporated in the state of Delaware and has its headquarters office in the state of New Jersey. Hertz is not incorporated in California nor does it have its principal place of business in California. The U.S. Supreme Court stated, "We conclude that the phrase 'principal place of business' refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities. We believe that the 'nerve center' will typically be found at a corporation's headquarters. The metaphor of a corporate 'brain,' while not precise, suggests a single location." Here, that location for Hertz was Hertz's headquarters office in New Jersey. Because Hertz was not a citizen of California, and plaintiff Friend was a resident of California, there was diversity of citizenship and Hertz can legally have Friend's lawsuit moved from California state court to the U.S. district court in California.

It was probably not unethical for Hertz to deny citizenship in California even though it has

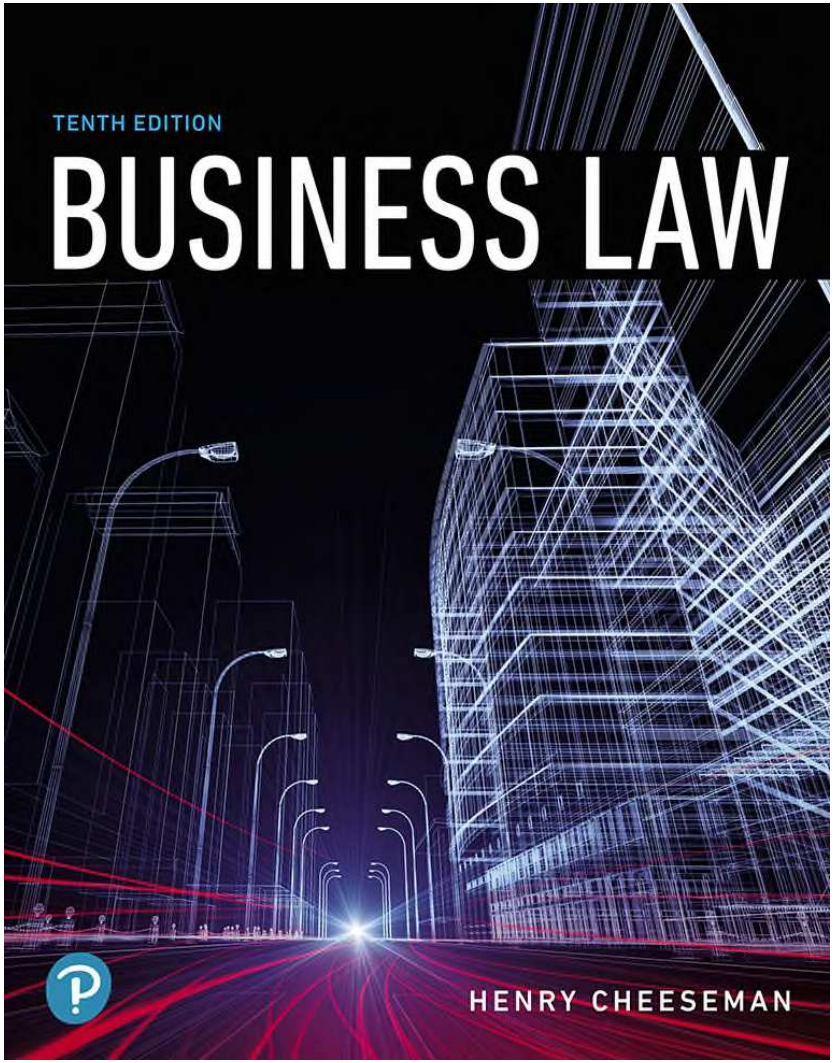
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such a large presence in California with its 270 rental car locations and more than 2,000 employees in California. Finding diversity in this case does not mean that Friend cannot sue Hertz in California. Friend will get her day in court against Hertz, but it will be in a U.S. district court in California and not in a California state court. *Hertz Corporation v. Friend,* 130 S.Ct. 1181, 2010 U.S. Lexis 1897 (Supreme Court of the United States, 2010)

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Chapter 2

Courts and Jurisdiction

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Learning Objectives

2.1 Describe state court systems.

2.2 Describe the federal court system.

2.3 Describe the U.S. Supreme Court and the types of cases it decides.

2.4 Explain the jurisdiction of federal courts and compare it with the jurisdiction of state courts.

2.5 Define standing to *sue*, *jurisdiction*, and *venue*.

2.6 Explain how jurisdiction is applied to digital commerce.

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Courts and Jurisdictions

- Major court systems in the United States
  - Federal court system
  - State court systems
- State courts resolve more than 95 percent of the lawsuits brought in this country

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State Court Systems (1 of 4)

- **Limited-jurisdiction trial courts**
  - Hear matters of specialized or limited nature
    - Evidence can be introduced and testimony can be given
  - Decision can be appealed to a general jurisdiction court or an appellate court
  - **Small claims courts:** Hear civil cases involving small dollar amounts

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State Court Systems (2 of 4)

- **General-jurisdiction trial courts**
  - Hear cases that are not within the jurisdiction of limited-jurisdiction trial courts
  - Records and stores testimony and evidence in trials
  - Some states have division as to
    - Criminal cases
    - Civil cases
  - Decisions are appealable to an intermediate appellate court or the state supreme court

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State Court Systems (3 of 4)

- **Intermediate Appellate Courts**
  - Hear appeals from trial courts
  - Review trial court record to determine if:
    - Errors of law have occurred during trial that require reversal or modification of decision
  - No new testimony or evidence permitted
  - Decisions are appealable to the state's highest court

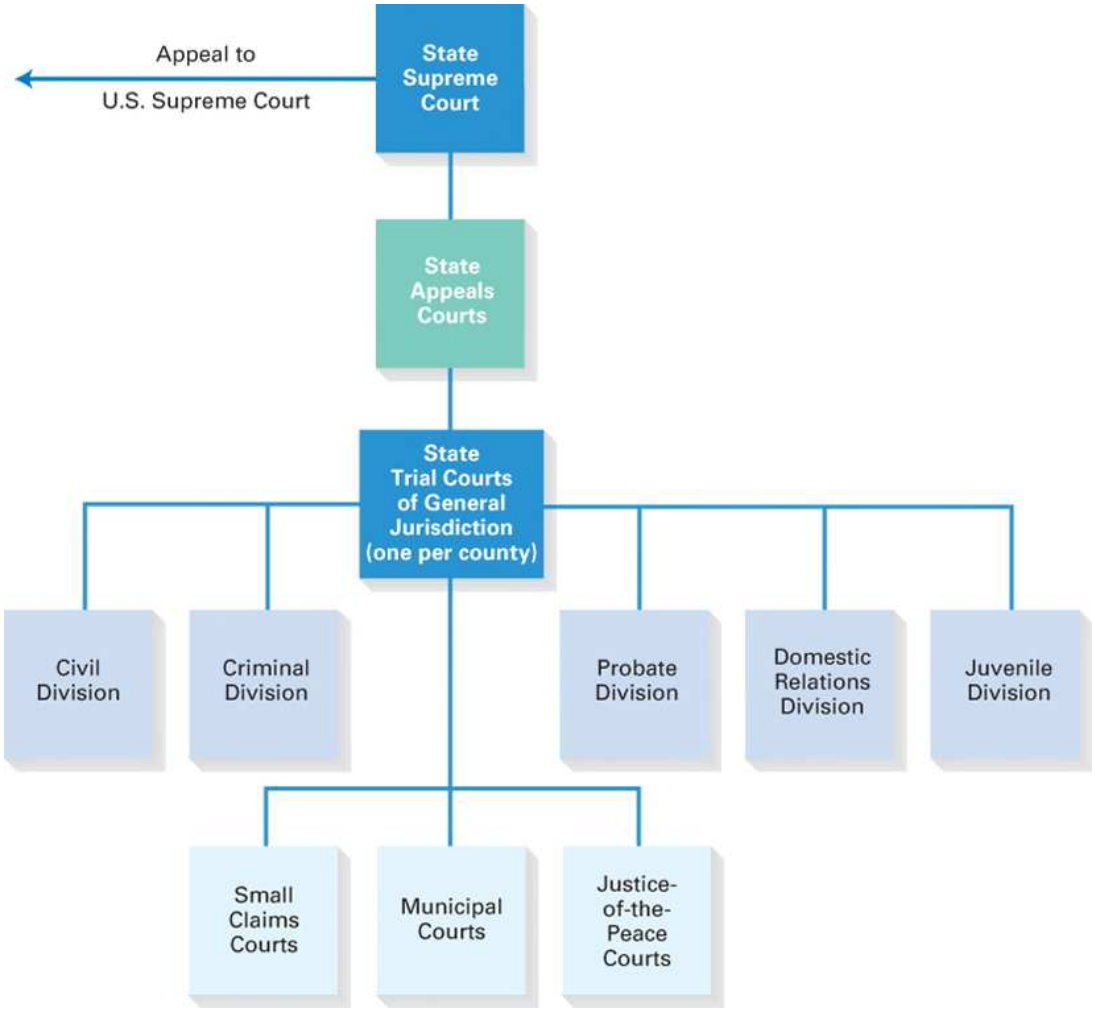
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State Court Systems (4 of 4)

- **Highest State Court**
  - Most states call it the **state supreme court**
  - Hears appeals from intermediate appellate state courts and certain trial courts
  - No new testimony or evidence is heard
  - Decisions of state supreme courts are final, unless there is an error related to federal law, then it is appealable to the U.S. Supreme Court
    - Death penalty cases involving U.S. Constitutional issues are often cases that are appealed to SCOTUS

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Exhibit 2.1: Typical State Court System



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Federal Court System (1 of 4)

- **Special Federal Courts**
  - Limited jurisdiction
    - **U.S. Tax Court**
    - **U.S. Court of Federal Claims**
    - **U.S. Court of International Trade**
    - **U.S. Bankruptcy Court**
    - **U.S. Court of Appeals for the Armed Forces**
    - **U.S. Court of Appeals for Veterans Claims**

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Federal Court System (2 of 4)

- **U.S. District Courts**
  - Trial courts of general jurisdiction empowered to:
    - Impanel juries
    - Receive evidence
    - Hear testimony
    - Decide cases
  - At least one district court in each state
    - **District:** Geographical area served by each court

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Federal Court System (3 of 4)

- **U.S. Courts of Appeals**
  - Intermediate appellate courts
  - Hear appeals from:
    - District courts located in its circuit
    - Certain special courts
    - Federal administrative agencies
  - 13 Circuits in federal court system
    - **Circuit:** Geographical area served by each court of appeals

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Federal Court System (4 of 4)

- **U.S. Courts of Appeals**
  - Review the record of lower courts or administrative agency proceedings
    - Determine if there has been any error of law that would warrant reversal or modification of decision
  - Appeals are heard by a three-judge panel
  - No new evidence or testimony is heard
  - Petitioner can request an ***en banc*** **review**

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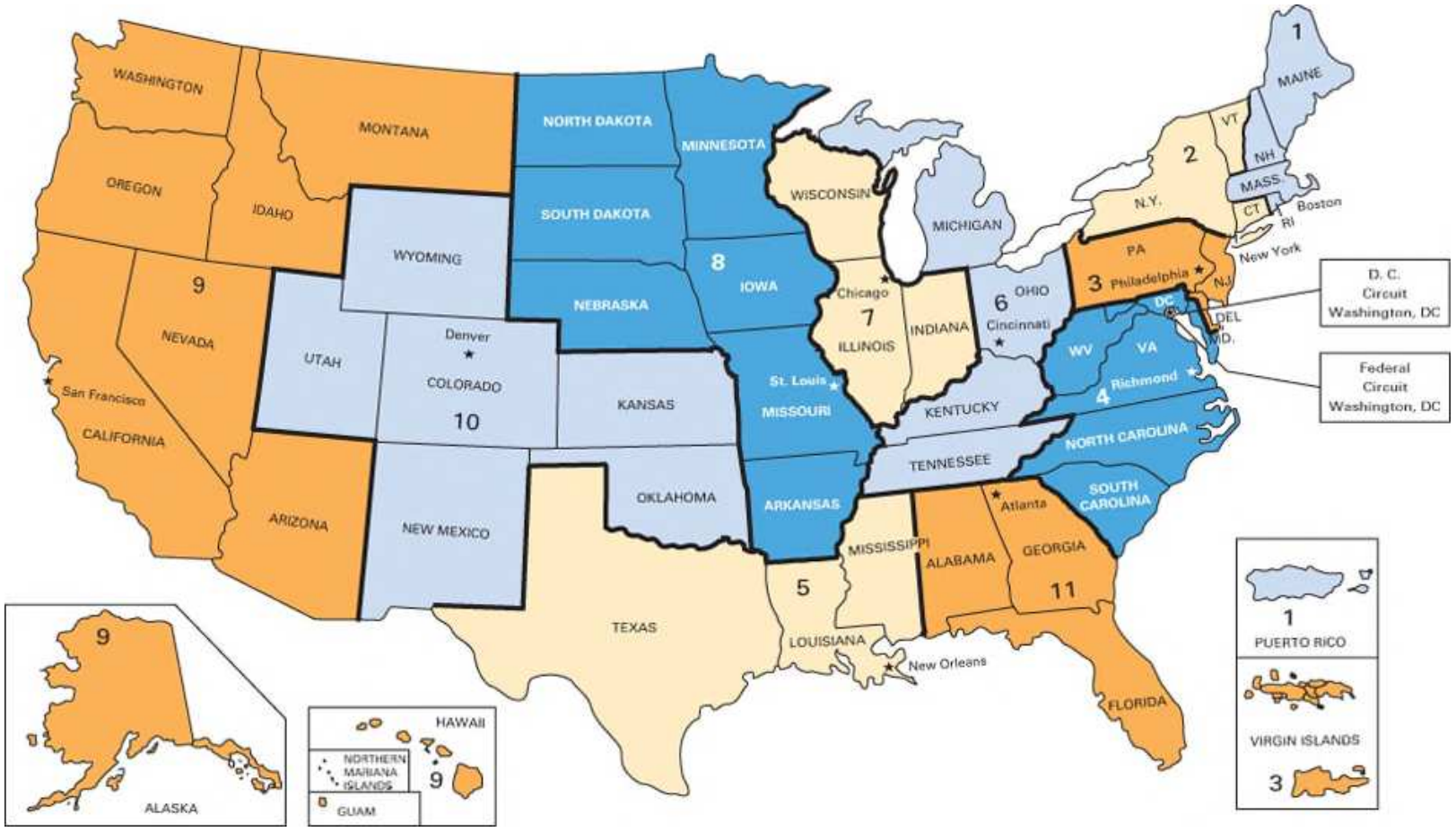
Supreme Court of the United States (1 of 4)

- Hears appeals from:
  - Federal Circuit Courts of Appeals
  - Federal District Courts
  - Special federal courts
  - Highest state courts
- No new evidence or testimony is heard
- The Supreme Court's decision is final

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U.S. Court of Appeals

Exhibit 2.3: Map of the Federal Circuit Courts



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Supreme Court of the United States (2 of 4)

- Composed of nine justices – Nominated by the president and confirmed by the Senate
- President appoints:
  - One justice as the **Chief Justice of the Supreme Court**
  - The other eight justices are **Associate Justices**
- The Supreme Court is an appellate court
- Lower court records are reviewed to determine whether errors have been made and whether decisions require changes

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Supreme Court of the United States (3 of 4)

- Types of decisions of the U.S. Supreme Court
  - **Unanimous**
  - **Majority**
  - **Plurality**
  - **Tie**
- **Petition for *certiorari*:** A petition asking the Supreme Court to hear a case

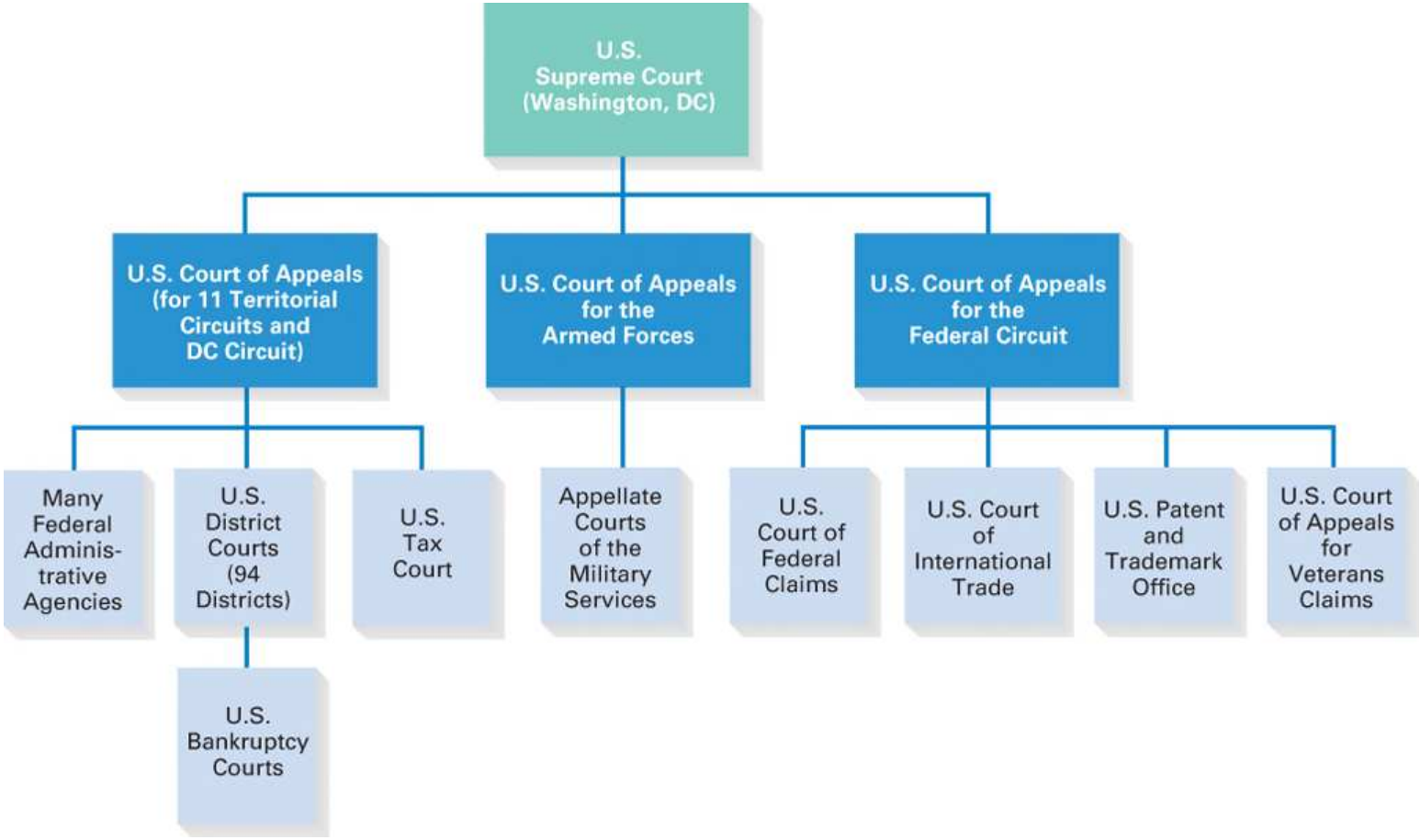
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Supreme Court of the United States (4 of 4)

- **Writ of *certiorari*:** An official notice that the Supreme Court will review a case
- **Concurring opinion:** Individual reasons issued by a justice who agrees with the outcome of a case but not the reasons offered by other justices
- **Dissenting opinion:** Reasons issued by a justice who does not agree with a decision

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Exhibit 2.5: Federal Court System



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Jurisdiction of Federal Courts (1 of 2)

- **Federal question cases:** Arising under the U.S. Constitution, treaties, or federal statutes and regulation
  - No dollar-amount requirement on these cases
- **Diversity of citizenship**
  - Citizens of different states or citizen of a state and a citizen of a foreign country
    - Dollar amount of controversy must exceed at least $75,000

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Jurisdiction of Federal Courts (2 of 2)

- Federal courts have **exclusive jurisdiction** to hear cases involving:
  - Federal crimes
  - Antitrust
  - Bankruptcy
  - Patent and copyright issues
  - Suits against the United States
- These courts also hear most admiralty cases

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Jurisdiction of State Courts

- Hear cases that federal courts do not have jurisdiction to hear
- **Concurrent jurisdiction** with federal courts to hear cases involving:
  - Diversity of citizenship
  - Federal questions over which federal courts do not have exclusive jurisdiction
- The defendant decides which court hears a concurrent jurisdiction case

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Full Faith and Credit Clause

- Judgment of a court of one state must give “full faith and credit” to the courts of another state
- Case 2.1
  - V.L. v. E.L.
    - 136 S.Ct. 1017 (2016)
    - Supreme Court of the United States
    - Issue:
      - Does the Full Faith and Credit Clause require Alabama to enforce Georgia’s adoption judgment?

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Standing to Sue and Jurisdiction

- **Standing to Sue:** Plaintiff must have a stake in the outcome of case
- ***In Personam* Jurisdiction:** A court's jurisdiction over a person
  - Always have over the plaintiff, because the plaintiff files the lawsuit
  - Must determine whether the court has it for the defendant. Will have, if defendant:
    - Was served process in jurisdiction
    - Lives in the jurisdiction
    - Other reasons defined in state's long-arm statute

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Jurisdiction (1 of 3)

- **Service of process:** Summons being served on a defendant to obtain personal jurisdiction over him or her
  - Personal jurisdiction exists over a defendant who is within the boundaries of the state
  - A corporation is subject to personal jurisdiction in the state where it is incorporated, has a principal office, or does business

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Jurisdiction (2 of 3)

- **Long-Arm Statute:**
  - Extends a state's jurisdiction to nonresidents who were not served summons within the state
- **Long-arm statute must satisfy Due Process concerns**
  - International Shoe Company v. State of Washington
- **States generally permit jurisdiction over nonresidents in the following situations:**
  - D committed tort within state
  - D entered into contract either in the state or affects the state
  - D transacted other business in the state

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Jurisdiction (3 of 3)

- ***In rem* jurisdiction:** Jurisdiction to hear a case because of jurisdiction over the property of the lawsuit
- ***Quasi in rem* jurisdiction:** Jurisdiction that allows a plaintiff who obtains a judgment in one state to try to collect the judgment by attaching the defendant's property located in another state

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Venue

- **Venue**
  - Lawsuits must be heard by the court in the nearby jurisdiction in which the incident occurred or where the parties reside
  - **Change of venue –** To avoid prejudiced jurors based on pretrial publicity

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Forum-Selection and Choice-of-Law Clauses

- Issues that come up when parties from different states or countries have a legal dispute over:
  - Which jurisdiction's court will be used
  - Which jurisdiction's laws apply to a case
- **Forum-selection clause:** Contract provision that designates a certain court to hear any dispute concerning nonperformance of the contract
- **Choice-of-law clause:** Contract provision that designates a certain state's or country's law:
  - To be applied in any dispute concerning nonperformance of the contract

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Case 2.2: Forum-Selection Clause

- Case
  - Carter's of New Bedford, Inc. v. Nike, Inc.
  - 790 F.3d 289 (2015)
  - United States Court of Appeals for the First Circuit
- Issue
  - Is the forum-selection clause enforceable?

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Jurisdiction in Cyberspace

- Case that addressed jurisdiction in cyberspace was **Zippo Manufacturing Company v. Zippo Dot Com, Inc**
- It 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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