Law for Business 13th edition Barnes Solutions Manual

SKU: 9781259722325-SOLUTIONS

CHAPTER 2: DISPUTE SETTLEMENT

LECTURE OUTLINE

1. The introductory Plastix hypothetical raises the two main themes of the chapter: (1) how to resolve disputes outside of a traditional lawsuit, and, (2) how a lawsuit would proceed, including basic jurisdictional and procedural concepts, when a lawsuit is brought.

    a. The hypo can be used to point out the advantages of resolving a dispute through direct discussion and compromise. These advantages include maintaining good relations (especially with long-time customers) and avoiding expense (especially in a dispute involving a relatively small amount like $2,000).

    b. The first Plastix question invites a discussion of the various means of dispute settlement that do not involve a lawsuit. Since lawsuits get the attention of the media, it is easy for students to overlook what may be preferable alternatives. Compare the advantages and disadvantages of each alternative.

        (1) Point out that *arbitration* and *mediation* are the forms of ADR most commonly used by businesspeople. Discuss the differences between mediation and arbitration, and what qualities make one more appropriate for certain types of disputes than the other. Point out that contracts between consumers and businesses increasingly require that disputes be arbitrated. An example from an insurance or securities contract could be used.

        (2) Employment contracts also increasingly require arbitration. Some courts and legislators view such contracts as contracts of adhesion and are beginning to disallow them. Ask the students if they feel they have a choice in agreeing to such a term if they want the job.

        (3) Note that there is now a combined *Med/arb* ADR mechanism.

        (4) Discuss international arbitration and the international treaties that facilitate it. Most often international contracts require arbitration. Be certain that students understand the great deference that courts give arbitration – particularly in the international environment. Note the existence of the *UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and its effect on enforcement. Compare it to the WTO rules. Point out that regional trade organizations, such as NAFTA, also have ADR mechanisms.

        (5) Discuss the differences between a *minitrial* and a *summary jury trial*.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

Point out that a minitrial is a nonbinding settlement procedure. The Center for Public Resources Legal Program has developed model minitrial procedures. They recommend that the model minitrial agreement be incorporated into major contracts between companies, especially where there are terms that may give rise to serious dispute. That agreement should prohibit either party from initiating litigation before the minitrial is concluded. Note that the use of a summary jury trial is generally directed by the court.

(6) Contrast *private judging* with the other forms of ADR.

(7) You may want to note that settlement negotiations are now taking place on the Web. Services such as Cybersettle, clickNsettle, and U.S. Settlement Corp., offer rounds of bidding to settle cases. For example, lawyers can negotiate for three rounds, and when they arrive at an agreed-upon range (usually 30% or $5,000) the case automatically settles for the medium amount.

c. Discuss the disadvantages of using ADR mechanisms. Note that increased reliance on some forms of ADR could lead to a two-tier justice system, one for the rich, and the public system for the poor. ADR places many disputes outside the evolutionary common law system and avoids open proceedings, written decisions, and appellate review. Also, when cases go through ADR, there is no public reporting of them, or oversight, and knowledge of important issues such as discrimination or safety may be lost. For example, Ford and Firestone arbitrated more than fifty cases involving deadly tire-tread separation. Only after years of possibly preventable deaths and injuries were journalists and consumer advocates able to piece together information of individual lawsuits. Also, discuss why businesses would file suit instead of using ADR. Point out that sometimes a lawsuit is filed in order to get stalled negotiations moving again. However, this is risky because it can make it impossible to continue the business relationship.

d. The material at the end of the chapter dealing with court problems and solutions could be dealt with here. Certainly the problems of delay and expense are illustrative of why more people are turning to alternatives. It was put at the end of the chapter because it was felt that the material would be more meaningful after the students had a better understanding of how the courts work. Discussion points could include:

(1) Why we are such a litigious society.

(2) The backlogs in our courts, including the impact of drug trials on delays of civil suits. It can take up to four years for a civil suit to get a trial date in some states. The underfunding of the system and politics delaying judicial appointments are also problems.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

(3) Whether the large number of lawyers contributes to the problem.

2. Discuss the kinds of issues that courts will not hear such as *moot* or *hypothetical* cases. Also point out that there are certain kinds of disputes that courts generally will not hear, such as "educational malpractice" cases, or cases involving political questions. You might want to discuss the Supreme Court's decision to hear the Florida presidential voting case in this context. Discuss the reasoning behind such refusals. The students should understand that the courts *do not* provide a remedy for every wrong.

3. The second question in the Plastix hypo raises issues of *jurisdiction*. In your discussion of jurisdiction, emphasize that the idea relates to which governmental entity has the power to issue binding legal decisions affecting people, property and activities. Discuss personal jurisdiction.

   a. You may want to explain venue, and differentiate it from jurisdiction.

   b. You may want to point out that the Internet and the transnational flows of people and products have raised new issues for jurisdiction.

OBB Personenverkeher A.G. v. Sachs, pg. 32

A Californian who bought a Eurail pass over the Internet from a Massachusetts company and who was injured in Austria while boarding a train, is denied the right to sue the Austrian train company.

Points for Discussion: This is a good case to outline or have the students do so because of the many parties and laws involved. You may want to explain sovereign immunity and agency. Sachs argued that the sale was from a Massachusetts-based travel agent and therefore fell within an exception to the Foreign Sovereign Immunities Act (which shields foreign governments and their agencies from suit in U.S. courts unless an exception applies). There is an exception for commercial activity carried on in the U.S. by a foreign state. She argued her suit was based on the commercial sale of the ticket in the U.S. and that it could be attributed to the state-owned railroad through agency law. Have them explain why the Court found that the commercial activity exception did not apply in this case. Ask if any of them have bought Eurail passes over the Internet. Explain that Austrian law is likely to be more restrictive than U.S. law in regard to recovery if she were allowed to sue there.

c. *Additional Example:* Problem Case 7. It is increasingly clear that modern businesses no longer require an actual physical presence in a state in order to engage in commercial activity there. With the advent of "e-commerce," business may set up shop without ever actually setting foot in the state where they intend to sell their wares. Our conceptions of jurisdiction must be flexible enough to respond to the realities of the modern marketplace. Businesses who structure their activities to take full advantage of the

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

opportunities that virtual commerce offers can reasonably anticipate that these same activities will potentially subject them to suit in the locales that they have targeted. Might this cause some businesses to avoid on-line transactions with "high risk" jurisdictions? According to a global survey on internet jurisdiction, it appeared that some companies seemed to avoid business with such jurisdictions and employed various legal and technological tools to influence jurisdictional outcomes. The survey suggested that North American companies are generally more worried about expansive Internet-related jurisdiction exposure than were their counterparts in Europe and Asia. Discuss the ways that expansive notions of jurisdiction shape the way organizations transact business, both in the States and abroad. In a global business context, as internet jurisdiction "grows," so too does the need for companies to familiarize themselves with the laws of the countries in which they do transactions.

4. For your discussion of the *state courts*, you may wish to prepare a diagram of the state court system in your state if it differs significantly in terminology or structure from the California system presented in the text.

    a. Students should be made familiar with how cases are brought in the *small claims court*, if any, in their city. Note that a small claims court was used in Problem Case 7.

        (1). An assignment the students are likely to find interesting and fun is to watch one of the televised judge shows such as *Judge Judy*, brief one of the situations (for practice when cases are read) and describe how the court differs in procedure and jurisdiction from a trial court. Tell them to assume that the court is the same as a small claims court.

        (2). Note that small claims court can be seen as a form of ADR, and shares many of its advantages.

        (3). Plastix, if it decided to sue, would be advised to seek recovery of its $2,000 in small claims court. This would be a good time to discuss how expensive it is to litigate, if this has not already been done.

    b. Stress that *trial courts* determine the facts as well as render a decision, while *appellate courts* only decide questions of law.

    c. Stress that an appeal is not a "second trial" as the students usually think of it, and that the overwhelming majority of appeals are not successful. Appellate procedure is discussed later in the chapter.

5. Point out that the basic structure of the *federal courts* is similar to that of the state courts except there are no courts like small claims courts.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

a. Discuss *diversity jurisdiction*, and how it arose. Point out that the reasons for its creation no longer exist, and that there is a strong movement for its elimination, primarily because of the burden it puts on the federal court system, and the forum shopping that it engenders.

(1). Note that the jurisdictional amount is $75,000.

(2). Point out the fact that federal courts typically apply state law in diversity cases.

(3). Point out that for diversity jurisdiction purposes, a corporation is deemed to be a citizen of both the state where it has been incorporated and the state where it has its principal place of business.

(4). *Example:* Problem Case number 7.

b. In your discussion of the *Supreme Court* you may want to bring up the controversy about whether the Court is too activist, and makes law in areas that should be left to the legislature. The abortion decisions are an excellent focus for the discussion. The recent abortion decisions are also a good focus for a discussion of the impact of different personnel on the outcome of cases, Trump's potential influence on the Court, and whether the current Court is being equally "activist" in changing precedent.

(1). In your discussion of *certiorari*, point out that this is the way almost all cases come to the Supreme Court. Congress eliminated the *right of appeal* in 1988. Note that the Supreme Court hears very few cases appealed to it. Stress that a denial of *cert*. is *not* a decision on the merits, and should not be interpreted as such. Also stress that most cases cannot be appealed from state courts to the Supreme Court.

(2). Explain *concurring* and *dissenting* opinions, and point out that they can occur in any court opinion, not just in Supreme Court opinions.

6. Explain the *adversary system*, and discuss its pros and cons. Note that it is at work in each stage of a lawsuit.

7. There are two primary reasons why basic *procedure* should be learned. One is so that if students or their employers become involved in a lawsuit, an understanding of procedure will make them better clients and permit their lawyer to do a better job of representing their interests, as well as enabling them to understand what is going on. Second, it will facilitate understanding the cases in subsequent chapters. The third question in the Plastix case raises procedural questions.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

a. Stress that the basic purpose of procedure is *fairness*.

b. Discuss *class actions*, and point out that even outside of class actions, lawsuits often involve more than one party on each side.

(1) Discuss the Class Action Fairness Act and the reasons it was enacted.

Wal-Mart Stores, Inc. v. Dukes pg. 38

A class made up of 1.5 million Wal-Mart employees was denied the right to bring a class action suit for sex discrimination.

Points for Discussion: Explain why there must be a "commonality" among the plaintiffs. Have the students explain why the Court found it lacking. Do they think the size of the class was a cause of finding no commonality? Ask them what recourse most of those in the class have if they can't sue as a class. Can most individually afford a lawyer? Point out that the EEOC could bring a suit on their behalf. Should the lack of a general policy of discrimination preclude a suit for discrimination? Is this decision likely to further the policy of nondiscrimination?

Additional Example: Problem Case number 6. Point out that Wong would not now be able to bring the suit due to the Supreme Court case. Explain that without a class action, the damages are too small to be worth suing about. However, state attorney generals could sue.

c. Discuss the various steps and documents that make up the *pleadings*. The students may be interested to know that the pleadings appearing in the book come from an actual case, although fact changes have been made.

(1). In your discussion of *summons*, you may want to discuss the problem of permitting service of a summons by delivery to a place of business or residence rather than service on the person. One result is the phenomenon known as "sewer service. " Process servers have been known to attest to the fact they have delivered a batch of summons to the specified addresses when they have only burned them or tossed them into the sewer. The defendant, often poor and unfamiliar with his or her rights, then is saddled with a default judgment. Service by mail is more reliable because the officer in charge can more closely supervise a mailing than personal delivery. Point out that if a summons is not answered, a default judgment can be entered.

(2). Make sure students can distinguish between legal facts and evidence. (Evidence is the testimony of witnesses and exhibits,

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

such as the signed contract in a breach of contract suit, presented at the trial. The legal facts are the basic facts necessary to be proved by the evidence in order for the plaintiff to win the case. For example, in a breach of contract suit the legal facts required would include the making of a contract, the failure of the defendant to perform an obligation under it, and economic injury to the plaintiff resulting from the breach.) Why is numbering of separate paragraphs for each legal fact required? (For clarity and so that after the answer is filed all concerned can determine which legal facts are being contested and which are not; also whether all necessary facts have been alleged by the plaintiff.)

(3). Discuss an *affirmative defense*. Ask the students to determine whether World Press or Herbert Miller stated an affirmative defense in their answer.

(4). The defendant can move to dismiss the case for failure to state a cause of action for which a remedy can be granted. In the past this was called a *demurrer*. In most states today it is merely called a *motion to dismiss*. After such a motion has been filed the attorneys for the two parties then give the judge arguments as to why the motion should be sustained or overruled. If sustained the case ends, unless the judge permits the plaintiff to amend the complaint. If the motion is overruled the defendant must answer.

(a). Explain that at any point in the trial process that it becomes clear that one party should win, the *process is stopped*.

d. You may want to elaborate on the various kinds of *discovery*, especially a *deposition*. Also talk about e-discovery and the new rules developed for that.

e. Discuss the *pre-trial conference*, and the inducement this is to settlement. Point out that over 90 per cent of cases filed are settled or disposed of in some other way before they get to trial.

f. When discussing the *trial*, you may want to discuss jury selection, or *voir dire*. Stress the different roles of the judge and jury at the trial—e.g., law versus facts.

(1). Explain burden of proof, and preponderance of the evidence.

(2). Explain the role of objections at trial and their necessity for appeals.

(3). You may want to discuss *general and special verdicts*, and *directed verdicts* at this point.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

(4). Point out that *judgment n.o.v.* is a jury policing device designed to take the case away from the jury in certain situations. This could lead to a general discussion of the wisdom and necessity of having juries today.

10. Stress that a judgment is "just a piece of paper" and does not mean that payment automatically follows for the plaintiff. Collection can be time consuming and expensive. Discuss the various ways a *judgment* can be *enforced*.

11. Contrast *appellate procedure* with trial procedure. Point out that an appeal is essentially a written process that is designed to ensure that the parties got their "fair day in court." Make sure the students understand what a *material* error is.

    a. An overruling of the finding of facts in the trial court is possible if the appellate court finds that there was no competent evidence on which an unbiased and rational fact finder could base the finding. However, such a determination by an appellate court is rare and students should realize this.

12. Discuss the problems with the courts, and the pros and cons of various solutions, if this was not done earlier.

ANSWERS TO QUESTIONS AND PROBLEM CASES pg. 48

1. A class action involves a lawsuit with several plaintiffs joined in the suit. This can happen when there are questions of law or fact common to the class. A person can represent the class if the class is so numerous that joinder of all members is impracticable, the claims or defenses of the representative are typical of the class, and the representative parties will fairly and adequately protect the interests of the class.

2. The main advantages of using ADR are that it is cheaper, quicker and less formal than going to trial. It can also help maintain the previous relationship.

3. The factors that are considered in determining personal jurisdiction are whether the defendant has a close connection with the territory where the suit is brought or that the nonresident defendant has minimum contacts or a close connection to where the suit is brought. The exercise of jurisdiction must also be reasonable.

4. In mediation, the parties to a dispute choose a third party to help them settle it. The mediator usually proposes bases for settlement, but does not determine the outcome. Arbitration differs from mediation in that the person to whom the dispute is submitted decides the outcome.

5. The burden of proof in a civil case is preponderance of the evidence. The jury determines whether the plaintiff has met that burden.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

6. Arbitration agreements can take a back seat to public policy in some cases if the agreement waives plaintiff's substantive rights or remedies. The federal statute does not encompass plaintiff's claim, which is essentially a billing dispute and should be decided under state law. If the class action waiver were enforced, consumers would effectively not be able to vindicate their rights because their damages are too small to make arbitration worthwhile. *Wong v. T-Mobile USA, Inc.*, 2006 U.S. Dist. LEXIS 49444 (E. Dist. Mich. July 20, 2006).

7. No. Personal jurisdiction is related to the defendant's contacts with the forum. Courts in other states have found that the usual online auction transaction does not give the purposeful contact necessary for personal jurisdiction because they are random and attenuated contacts. However, there is sufficient contact here because the Attaways: could see the seller's location before bidding on the car; they agreed to appear in Indiana by submitting the eBay bid; and hired a shipping company as their representative to retrieve the car. These contacts exceeded a single online purchase; it was a purposeful availment. Additionally, justice is served because imposing an Indiana forum is no more burdensome on the buyers than an Idaho forum on the sellers. *Attaway v. Omega*, WL690296 (Ind. Ct. App. 2009).

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

CHAPTER 2
DISPUTE SETTLEMENT

Outline

I. Means of Dispute Settlement
   A. Negotiation – those involved in the dispute settle it among themselves
   B. ADR (Alternative Dispute Resolution)
      1. Mediation – an outside party, the mediator, assists in finding a compromise
      2. Arbitration – an outside party, the arbitrator, has the power to settle the dispute
      3. International Alternative Dispute Resolution – arbitration on a global scale
      4. Mini/Summary Trial – a shortened version of a trial is held, without a judge or jury, to inform the disputing company executives of the case to assist in a settlement
      5. Private Judging – a retired judge is hired to hear and decide the outcome of a dispute
      6. Other Dispute Resolution Mechanisms
   C. The Courts – a court of law determines the outcome of the dispute
   D. Jurisdiction – the authority of a court to decide a case

      Example: OBB Personenverkeher A.G. v. Sachs: The court found Sach's injuries all took place in Austria. It reasoned that the crucial moment in a personal injury case is where the point of contact causing the injury occurs. Location of ticket purchase is not enough of a connection to grant jurisdiction to a different country.

II. State Courts
   A. Inferior Courts - not courts of record, therefore there can be no appeal
   B. Trial Courts – find relevant facts, identify the rule of law, and decide the case, which can later be appealed.
   C. Appeals Courts – hear cases that have been appealed from the trial courts

III. Federal Courts

   Cases heard in the federal court are either cases involving a federal question or cases in which there is diversity of citizenship between the parties.

   A. District court

      District courts are the general jurisdiction federal trial courts.

   B. Special Courts

      Special Courts are the special jurisdiction federal trial courts.

   C. Courts of Appeals

      Court of Appeals are separated into 13 circuits generally based on geographic location.

   D. U.S. Supreme Court

      The U.S. Supreme Court is the highest court in the country.

III. The Adversary System – trial through the battle of words
   A. Functions of the Judge – unbiased and passive, the judge keeps order in the court
   B. Advantages and Disadvantages

      Advantages include exposing deception through cross-examination. A disadvantage of the system is that the caliber of the attorneys may decide the case.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

IV. Procedure

A. The Functions of Procedure – to promote fairness

B. Pleadings

Pleadings include the complaint, the answer, and the reply.

Example: Wal-Mart Stores, Inc. v. Dukes: The court did not find sufficient commonality of the claims to allow a class action. A party seeking class certification must show that the class has common questions of law or fact.

C. Discovery

Discovery involves the parties gathering evidence for trial.

D. The Trial

V. Appellate Procedure

A. Basis for Appeal

The court must have made an error of law.

B. The Appeal

The Appeal must be filed in the proper court within the established time period.

C. Results of Appeal

VI. Court Problems and Proposed Solutions

A. Some Criticisms

One of the greatest problems with the court system is the delay.

B. Proposals

One proposal to solve the problem of delay is to remove whole classes of cases from the courts.

Learning Objectives

1. You should understand dispute resolution techniques including arbitration, mediation, mini-trial, and international dispute resolution.
2. You must know what is required for the two types of federal court subject-matter jurisdiction: diversity jurisdiction and federal question jurisdiction.
3. You should be able to name and describe all of the procedural steps in a civil lawsuit.
4. You should know the difference between the burden of proof in a criminal case and the burden of proof in a civil case.
5. You should know the permitted grounds and procedures for appealing the decisions in civil lawsuits.
6. You should know the theory behind the adversary system, and how the judge and the lawyers function in this system.
7. You should understand the principle of federal supremacy and the U.S. Supreme Court's ultimate power to declare a federal or state law unconstitutional.
8. You should understand the principle of personal and subject matter jurisdiction and distinguish it from venue.

Learning Hints

1. Most cases are heard in state (rather than federal) courts. An important distinction between state inferior courts and state trial courts of general jurisdiction is the fact that inferior courts are not courts of record. This means that in many instances, an appeal from a state inferior court will result in a new trial at the state trial court level.
2. In most cases, there are two aspects to jurisdiction. The first is the ability of the court to hear a particular

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

kind of case--this is referred to in the textbook as "subject-matter jurisdiction." For example, a state may set up special courts to handle only a certain type of case, such as special divorce, probate, and juvenile courts. The other aspect of jurisdiction is the territorial or geographical reach of the court. This issue arises mainly during discussions of the state courts, for federal courts have nationwide jurisdiction.

3. In federal cases brought under diversity jurisdiction, the amount involved must be at least $75,000. There is no minimum amount of money that is required for federal question jurisdiction to exist.
4. Many civil lawsuits may be brought either in a state trial court or in a federal District Court. For example, a lawsuit against a driver from another state for an amount over $75,000 can be brought in either state trial court or in federal District Court. The existence of this choice creates strategic questions for the plaintiff's lawyer. Keep in mind also that the defendant may ask to have a case filed in state trial court removed to federal District Court.
5. With very few exceptions, cases do not begin in appellate courts. Appellate courts are usually limited to correcting alleged errors of law (not fact) made at the trial court level.
6. Be aware of the ways in which the basic state court structure or hierarchy parallels the basic federal court structure or hierarchy.
7. The summons and the complaint, while often served on the defendant together, are not the same, and serve very different functions.
8. The motion to dismiss disposes of many cases. The most common form of the motion to dismiss goes to the legal sufficiency of the complaint, and states that even if the facts stated in the complaint are true, the plaintiff still cannot recover because there is no legal remedy for such a situation. For this reason, it is often said that the motion to dismiss amounts to saying "So what?" to the plaintiff's complaint.
9. The motion for a directed verdict and the motion for judgment notwithstanding the verdict are both ways of asking the judge to decide the case instead of the jury. Basically, both assert that no reasonable jury could decide in favor of the other party. The existence of these motions reveals the American legal system's ambivalence about juries, because if all juries were reasonable, the motions would not be necessary.
10. Generally speaking, the appellate courts only review legal errors that one party claims were made by the trial court--not errors in deciding questions of fact. Legal errors include at least the following: lack of jurisdiction, rulings during discovery, rulings on motions to dismiss, evidentiary rulings at trial, rulings on motions for directed verdict and motions for judgment notwithstanding the verdict, and the judge's findings of law (if there was no jury present at the trial).

True-False

In the blank provided, put "**T**" if the statement is True or "**F**" if the statement is False.

_____ 1. In some cases, a federal administrative agency decision may be appealed to the U.S. Court of Appeals.
_____ 2. Parties who want to change the place where their trial will be held ask for a "court of record".
_____ 3. The decision of a mediator is binding upon the parties.
_____ 4. The decision of a state court can never be appealed to the U.S. Supreme Court.
_____ 5. In the American legal system, a judge cannot overturn a jury verdict.
_____ 6. A mini-trial is conducted under the supervision of the court.
_____ 7. The Tax Court would have jurisdiction to hear appeals cases involving decisions made by the Internal Revenue Service.
_____ 8. A writ of certiorari is the most common way to appeal a case to the Supreme Court.
_____ 9. Cases heard in the federal courts must involve either a federal question or situations in which there is diversity of citizenship between the parties.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

_____ 10. A motion to dismiss may be requested by the defendant if it is clear that the plaintiff does not have a case.

Multiple Choice

Circle the best answer.

1. Which of the following is not true of the appellate procedure?
   a. The appellate court hears witnesses and gathers new evidence.
   b. A transcript of the trial must be sent to the appeals court.
   c. The appealing party must show that material errors occurred in the trial.
   d. The appeals court may reverse and remand the decision.
2. If P sues D, and D wants to allege that P's own negligence caused her injury, D should allege this in:
   a. The complaint.
   b. The answer.
   c. The reply
   d. The counterclaim.
3. Venue concerns:
   a. Whether a federal court has jurisdiction.
   b. Whether a state court has jurisdiction.
   c. The most appropriate place for the action to be brought.
   d. Whether a defendant has been properly served with process.
4. Which of the following is not true of trials?
   a. Preponderance of evidence is the standard used in civil trials.
   b. Proof beyond a reasonable doubt is the standard used in criminal trials.
   c. The state can make a motion for judgment n.o.v. when the defendant is acquitted in a criminal trial.
   d. A directed verdict may be granted if the plaintiff's evidence is not sufficient to support her allegations.
5. Eve attempts suicide by locking herself inside the trunk of her car. Someone discovers Eve after several days. She is still alive. Eve sues the manufacturer of her car for a large amount of money because it did not provide for a latch inside the trunk. Which of the following may be a good course of action for the car manufacturer in this case?
   a. Make a motion to dismiss the case.
   b. Make a motion for a directed verdict.
   c. Make a motion of judgment n.o.v.
   d. Take the case to small claims court.
6. Which of the following is a type of alternative dispute resolution that is binding on the parties?
   a. Mediation
   b. Mini-trial
   c. Private judge
   d. Summary jury trial
7. Federal question jurisdiction:
   a. Is a type of jurisdiction possessed by state trial courts.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

b. Is the most common form of U.S. Supreme Court jurisdiction.
c. Requires that the amount in controversy be at least $10,000.
d. Is jurisdiction over questions arising under federal laws, treaties, and the U.S. Constitution.

8. Which of the following statements is not true?
   a. Bob, a resident of New Jersey, sues Ed, a resident of Florida, for $100,000 over a real estate deal. Bob must bring his suit in a Florida court.
   b. The conflict of laws may guide a federal court in deciding which state's laws to apply in a case.
   c. Federal courts have exclusive jurisdiction over bankruptcy cases.
   d. You are not required to be represented by an attorney in small claims court.
9. Johnson is a creditor of Barnes. Johnson wants to file a petition to have Barnes declared bankrupt. Which of the following statements is true?
   a. Johnson can file his petition in either state or federal court.
   b. Johnson should file his petition in U.S. District Court.
   c. Only a federal bankruptcy court can hear a bankruptcy case.
   d. Bankruptcy cases can be heard in Federal Tax Court.
10. Which of the following is not an inferior court?
   a. Justice of the peace
   b. U.S. District Court
   c. Small claims court
   d. Municipal court

Short Essay

1. Briefly describe some advantages and disadvantages of the adversary system.

2. Andrea and Tom are planning on a late June wedding. Several weeks before the wedding date, Andrea breaks things off with Tom. Tom learns that Andrea sold their shower gifts, withdrew more from a joint checking account than she deposited, and made a large amount of charges on Tom's credit card. Tom sues Andrea. Assuming Tom wins this case, what is one way that the court could enforce its judgment on Andrea?

3. What are the basic steps in a civil lawsuit?

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

4. The board and faculty of Happy College cannot reach a contract agreement for the school year. Under state law, the next step is for each side to present its case to a mediator. The mediator agrees with the board's arguments. Is the mediator's decision binding upon the two parties? Why or why not?

5. The "borderless" Internet has created a new wave of jurisdictional issues for our courts. Over the years, the use of "long arm" statutes helped courts ascertain jurisdictional boundaries when courts could find some minimal contact of doing business in a state for it to be able to assert its jurisdiction. How much Internet activity would you consider to be sufficient to satisfy the minimum contact rule?

6. Briefly describe two types of discovery.

7. Briefly discuss the standards for burden of proof in civil cases and criminal cases.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

CHAPTER 2
DISPUTE SETTLEMENT

Answers

True-False

1. T
2. F
3. F
4. F
5. F
6. F
7. T
8. T
9. T
10. T

Multiple-Choice

1. A
2. B
3. C
4. C
5. A
6. C
7. D
8. A
9. C
10. B

Short Answer

1. The truth may be brought out more efficiently in an adversary system. The adversary system may make it difficult for a dishonest judge to control case outcomes. The system may not work so well when the lawyers are not of equal skill and ability. Some witnesses may be confused by questioning in an adversary system.

2. A writ of garnishment would enable Tom to receive payment from Andrea over time through her salary. Garnishments are regulated by state statutes.

3. The plaintiff files a complaint, serves it with a summons on the defendant, who then files an answer. Defendant may file a counter-claim against plaintiff. There are a number of discovery procedures that may be pursued. The case is set for one or more pre-trial conferences, and then goes to trial (unless settled or dismissed.) Motions, such as a motion for summary judgment or motion to dismiss may be filed prior to or in some cases during trial.

4. No. A mediator makes a recommendation that may or may not be followed. If this case were settled by an arbitrator, the decision would be binding upon both parties.

5. Most courts look at physical presence, contract benefit, or tort-related harm to find minimal contact. More and more cases look at the amount of Internet commerce conducted within its jurisdiction to decide these matters, i.e., the more business conducted, the more likely that jurisdiction is asserted.

6. A deposition is an examination under oath. An interrogatory is a written examination under oath.

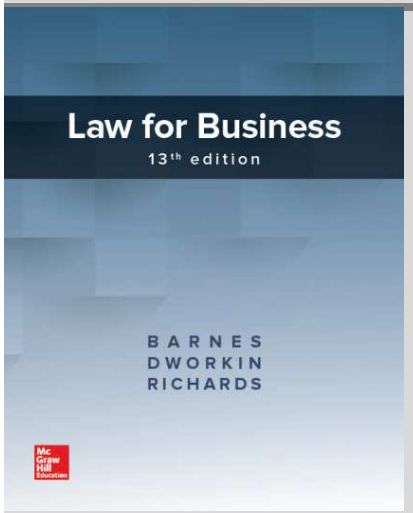
Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

7. In a criminal case, the prosecution must prove beyond a reasonable doubt that the defendant committed the crime. In a civil case, the plaintiff must show a preponderance of evidence that supports his or her claim.

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual



Chapter 2

Dispute Settlement

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Means of Dispute Settlement

Settlement Through Negotiation and Alternative Dispute Resolution (ADR)

- **Mediation**
  - Voluntary Process
  - Mediator helps parties achieve settlement
  - Disputants make decisions
- **Arbitration**
  - Binding Outcomes
  - Arbitrator makes decisions
  - International Arbitration
- **Minitrial**
  - Refocuses dispute as business problem
  - Company executives make decisions
- **Summary Jury Trial**
  - Similar to a minitrial
  - Conducted under court guidance
  - Mock jury renders a verdict to help parties settle
- **Private Judge**
  - Hired judge renders an opinion
- **Other Dispute Resolution Methods**
  - Ombudsman

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual



The Courts

- Dispute resolution mechanism of last resort
  - Either party may bring a lawsuit to the courts
  - Courts can only decide cases with actual controversies
- Jurisdiction
  - **Personal Jurisdiction**: Courts have jurisdiction over the parties
  - **Subject Matter** (In Rem) Jurisdiction: Courts have jurisdiction over the subject matter or item.
  - **Venue**: Location in jurisdiction where the case must be heard

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

State Courts

Structures of state courts varies By state

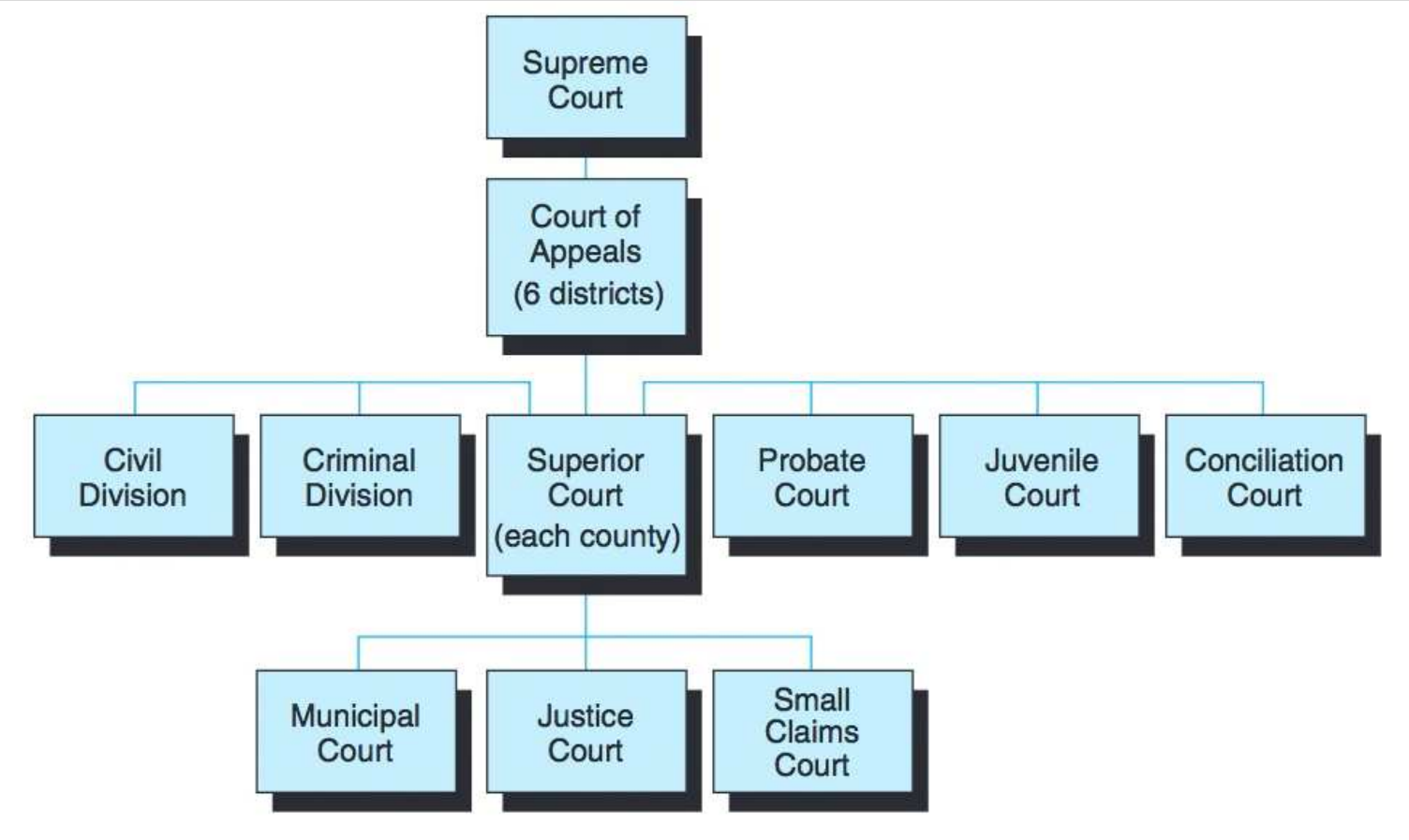
- **Inferior Courts**
  - Not courts of record
  - No appeals, dissatisfied parties have new trials (trial de novo)
- **Examples of Inferior Courts**
  - Municipal courts or justice of the peace courts
  - Small claims courts
- **Trial Courts**
  - Find facts and apply rule of law to reach conclusions
  - Courts of general jurisdiction
- **Appeals Courts**
  - Hear cases already decided by trial courts or administrative agencies
  - Correct for legal errors

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

California State Court

California State Court



Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Federal Courts

- **Handles Two Types of Cases**
  - Federal Question
  - Diversity jurisdiction
- **The Federal Court System**
  - **District Court**: Federal trial courts where cases are heard
  - **Special Courts**: Bankruptcy court, tax court, etc.
  - **Court of Appeals**: Review district court decisions
  - **U.S. Supreme Court**: ***Writ of certiorari*** required
    - Justices may produce concurring and dissenting (minority) opinions

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

Federal Court

NOTE TO McGraw-Hill, Current slide is incorrect

Please have editors insert Figure 2.2 (p. 35) from Chapter 2 for this slide

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Federal Judicial Circuits

[Note to McGraw Hill editors. Please insert in this slide, Figure 2.3 (p. 35) from Chapter 2.]

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

The Adversary System

- Trial Through a Battle of Words
- Judges Act as Referees



- **Advantages**
  - Truth may be revealed through attorneys presenting cases and cross-examining witnesses.
  - Bad judges cannot influence outcomes
- **Disadvantages**
  - Hostile questions may confuse witnesses
  - Opposing lawyers may have unequal skills
  - Competition may encourage dishonest behavior

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.



Procedure

- Procedural laws govern the conduct of a case
- Objective is fairness
- Rules differ in criminal and civil cases
- Pleadings are the first step in a civil lawsuit
  - Form the basis of a trial
  - Filed by plaintiffs and defendants
  - A group of plaintiffs may file a class action

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Civil Procedure

Complaint: Filed with court state facts & claim	→	Summons: Defendant Given Notice	→	Answer: Responds to Complaint

- Includes material facts
- Shows plaintiff entitled to relief
- Provides defendant information
- Requests remedy

- Defendant served with notice
- States time when defendant must appear to avoid default judgment

- May state affirmative defense
- Counterclaims may be made
- Defendant may move to dismiss

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.

Law for Business 13th edition Barnes Solutions Manual

Civil Procedure

Discovery: Gather evidence to use at trial	→	Pretrial Conference: Narrow Issues	→	Trial: Case presented in court

- Rules of discovery ensure access to information by all parties
- Plaintiff may undergo exams (depositions)
- Interrogatories

- Held in judges chambers
- May help facilitate settlement
- Parties may stipulate to truth of facts
- Establishes limits of evidence and scope of trial

- Opening the case
- Testimony, cross examinations and redirects
- Closing statements of the case
- Plaintiff has burden of proof

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.



Burdens of Proof

- Beyond a reasonable doubt
- Manifest weight of the evidence
- Preponderance of the evidence

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.



Post Trial Motions

- Motion for New Trial
- Motion for Mistrial
- Motion (JNOV) Judgement not withstanding verdict

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.



Appeals

- Must be filed with appellate court
  - Include transcript of trial proceedings
  - Submit a brief explaining basis for appeal
- Basis for Appeal
  - Error of law or procedure
  - Verdict not supported by facts
- Results
  - Must show material error for successful appeal
  - Court could affirm, reverse or remand

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.



Problems and Solutions

- Criticisms of the Legal System
  - Delay and high costs
  - Unequal access to justice (protecting the powerless)
  - Courts not equipped to handle all cases
- Proposed Solutions
  - Remove certain types of cases from courts
  - Increase efficiency
  - Loser Pay Rules and Attorney Fee Changes

Copyright © 2018 McGraw-Hill Education. All rights reserved. No reproduction or distribution without the prior written consent of McGraw-Hill Education.