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Chapter 02 Dispute Settlement

Answer Key

True / False Questions

1. Most disputes are settled by trial juries.

(p. 27)

FALSE

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

2. Trials are generally quicker, cheaper, and less complicated procedurally than alternative dispute resolution.

(p. 28)

FALSE

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

3. In mediation, the mediator does not give an award or opinion on the merits of the dispute.

(p. 27)

TRUE

AACSB: Analytic

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Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

4. Only a few states have adopted the Uniform Arbitration Act.

(p. 28)

FALSE

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

5. The North American Free Trade Agreement has established a mechanism for resolving trade disputes through the use of binational panels.

(p. 29)

TRUE

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

6. If a settlement is not reached in a minitrial, the neutral third-party advisor will render a binding opinion.

(p. 29)

FALSE

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

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7. A summary jury trial is conducted under court guidance, while a minitrial is voluntarily
(p. 29) conducted by the parties themselves.

TRUE

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

8. Sally files a lawsuit against Jim in a Tennessee court. Jim does not live in Tennessee and has
(p. 31) never been to the state. The Tennessee court may not decide the case unless it can demonstrate that Jim somehow has a close connection with the state.

TRUE

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: Means of Dispute Settlement

9. Erik filed a case in a municipal court against Leela for a minor criminal violation. Dissatisfied with
(p. 33) the decision of the court, Erik can now appeal the case in a court of record.

FALSE

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

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10. Trial courts, like inferior courts, are limited by the amount of civil damages that can be awarded or the criminal penalties that can be imposed.
(p. 33)

FALSE

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

11. The primary way a case can be appealed to the United States Supreme Court is through a writ of mandamus.
(p. 36)

FALSE

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.
Topic: Federal Courts

12. All opinions of the Supreme Court judges can be cited as precedents.
(p. 36)

FALSE

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.
Topic: Federal Courts

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13. The adversary system in the United States is based on the idea that the truth will emerge in courtrooms through a "battle of words" between two lawyers. *(p. 36)*

TRUE

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.
Topic: The Adversary System

14. In a civil case, the plaintiff need not have the preponderance of the evidence on his or her side. *(p. 45)*

FALSE

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Procedure

15. A new trial is required for cases remanded by an appellate court. *(p. 47)*

TRUE

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-06 Discuss how an appeal works and why most appeals fail.
Topic: Appellate Procedure

Multiple Choice Questions

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16. Pursuant to the Uniform Arbitration Act:

(p. 28)

A. a court will review the wisdom of the decision of an arbitrator.

B. both the agreement of parties to arbitrate and the arbitration award are enforceable in court.

C. the agreement of parties to arbitrate is enforceable in court, but the arbitration award is unenforceable.

D. the arbitration award is enforceable in court, but the agreement of parties to arbitrate is unenforceable.

Most states have passed the Uniform Arbitration Act, which makes both the agreement of parties to arbitrate and the arbitration award enforceable in court. A court will not review the wisdom of the decision of an arbitrator. It may, however, hold that the dispute was not arbitratable under the agreement of the parties, or that the arbitrator exceeded his or her authority, or acted arbitrarily, capriciously, or in a discriminatory manner.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

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17. Which of the following statements is true about a minitrial?

(p. 29)

A. A minitrial involves a six-member mock jury empaneled by the court that hears a shortened presentation of the case by the lawyers for each side and renders an advisory verdict.

B. A minitrial often involves a neutral third-party advisor who will render a nonbinding opinion, if a settlement is not reached, regarding how a dispute is likely to be resolved if it goes to trial.

C. A minitrial is conducted under court guidance.

D. A minitrial differs from mediation in that the third-party to whom the dispute is submitted decides the outcome.

The minitrial often involves a neutral third-party advisor. If a settlement is not reached, she or he will render a nonbinding opinion regarding how the dispute is likely to be resolved if it goes to trial, and how the court is likely to rule on factual and evidentiary issues.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

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18. In the private judging method of dispute resolution, _____.

(p. 30)

A. a hired judge renders a binding opinion after hearing the evidence and arguments of the parties
B. executives of the disputing companies, who have settlement authority, hear a shortened presentation of the case by the lawyers for each side
C. a six-member mock jury empaneled by the court hears a shortened presentation of the case by the lawyers for each side
D. executives of the disputing companies meet with lawyers for each side to negotiate a settlement

In the private judging, or "rent-a-judge," method of dispute resolution, a hired judge (who is often a retired judge) renders a binding opinion after hearing the proofs and arguments of the parties.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

19. An individual appointed within an organization to settle disputes is called a(n) _____.

(p. 30)

A. private judge
B. arbitrator
C. mediator
D. ombudsperson

An ombudsperson is an individual appointed within an organization to settle disputes.

AACSB: Analytic

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Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-01 Describe the various ways to settle disputes.

Topic: Means of Dispute Settlement

20. Jurisdiction is defined as:

(p. 31)

A. the authority of a court to hear and determine disputes.

B. the unlimited authority of the court.

C. the process by which legal cases are decided.

D. the power an individual appointed within an organization possesses to settle disputes.

Jurisdiction is the authority of a court to hear and determine disputes.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.

Topic: Means of Dispute Settlement

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21. *(p. 31)* Adia filed a case against Chang in the court at Ohio. However, Chang had never visited Ohio and had no personal ties with anyone in Ohio. Chang could successfully argue that the court:

A. lacked personal jurisdiction.
B. was in proximity to the place where Chang resides.
C. was limited by subject matter jurisdiction.
D. did not have judges that would understand the language spoken by him.

In this scenario, Chang can successfully argue that the court lacks personal jurisdiction. A court may not decide a legal dispute unless it has personal jurisdiction over the defendant. Personal jurisdiction generally does not exist unless the defendant has some close connection with the territory where the suit is brought. Personal jurisdiction is likely to exist if the defendant is a resident of the territory where the court is located or if a nonresident defendant is physically present in that territory.

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: Means of Dispute Settlement

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22. _____ courts may be called _____ courts in urban areas and _____ courts in rural areas.

(p. 33)

A. Inferior; justice of the peace; municipal

B. Superior; justice of the peace; municipal

C. Inferior; municipal; justice of the peace

D. Superior; municipal; justice of the peace

Inferior courts may be called municipal courts in urban areas and justice of the peace courts in rural areas.

AACSB: Analytic
Blooms: Remember
Difficulty: 2 Medium
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

23. Trial courts differ from inferior courts in that the trial courts:

(p. 33)

A. are courts of limited jurisdiction.

B. are limited by the amount of civil damages that can be awarded.

C. are courts of record, and their decisions can be appealed.

D. are called municipal courts in urban areas.

Trial courts differ from inferior courts in that the trial courts are courts of general jurisdiction; they are not limited by the amount of civil damages that can be awarded or the criminal penalties that can be imposed. Their geographic jurisdiction is often a county. In addition, trial courts are courts of record. Thus, an appeal can be taken from a trial court decision.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium

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Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

24. Generally, the role of appellate courts is to:

(p. 33)

A. hear witnesses once again.
B. establish new facts for all cases.
C. accept the findings of the trial court with minor changes even if it goes against all the evidence.
D. review the proceedings in the trial court and correct legal errors made by the trial judge.

As the name implies, state appeals courts hear cases that have been appealed from trial court decisions or state administrative agency rulings. Generally, appellate courts do not hear witnesses or determine facts. Their job is to review the proceedings in the trial court and correct legal errors made by the trial judge. Appellate courts must accept the trial court's findings of fact unless it goes against all the evidence.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

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25. A certain court receives an appeal by parties dissatisfied with the decision of a trial court. *(p. 33)* However, neither does it hear any witnesses nor does it review new facts about the case. The court discussed in the example is a(n) _____.

A. municipal court
B. inferior court
C. appellate court
D. justice of peace court

As the name implies, state appeals courts hear cases that have been appealed from trial court decisions or state administrative agency rulings. Generally, appellate courts do not hear witnesses or determine facts. Their job is to review the proceedings in the trial court and correct legal errors made by the trial judge.

AACSB: Analytic
Blooms: Understand
Difficulty: 3 Hard
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

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26. *(p. 34-35)* Karl, a resident of Ohio, was convicted of a bank robbery worth $90,000 in California. In which of the following courts should his case be filed?

A. Small claims court
B. Tax court
C. District court
D. Justice of peace court

Karl's case should be filed in a district court. Cases heard in the federal courts fall into one of two classes: They are either cases involving a federal question or cases in which there is diversity of citizenship between the parties. If the parties are from different states, and the amount involved in the dispute is $75,000 or more, the plaintiff may choose to bring suit in either state or federal court. With few exceptions, lawsuits brought in federal courts must be started in district courts. These are the federal trial courts.

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: Federal Courts

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27. District courts:

(p. 35)

A. only review the legal conclusions reached by lower federal courts.

B. are the intermediate courts of the federal court system.

C. have both fact-finding and law-finding functions.

D. are specialized courts in the federal court system.

With few exceptions, lawsuits brought in federal courts must be started in district courts. These are the federal trial courts. Like state trial courts, they have both fact finding (by the judge or jury) and law-finding (by the judge) functions.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.

Topic: Federal Courts

28. A U.S. court of appeals is empowered to:

(p. 35)

A. take up appeals only from other districts.

B. review legal conclusions reached by lower federal courts.

C. hear cases that have been appealed from Supreme Court decisions.

D. take the final responsibility for interpretation of the Constitution and federal statutes.

An appeal from a district court is taken to a U.S. court of appeals. Like state intermediate appellate courts, the U.S. courts of appeals generally do not have a fact-finding function. They only review the legal conclusions reached by lower federal courts. The courts of appeal also hear appeals from many federal administrative agency decisions.

AACSB: Analytic

Blooms: Remember

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Difficulty: 1 Easy

Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.

Topic: Federal Courts

29. The United States Supreme Court:

(p. 36)

A. decides all of the cases appealed to it.

B. decides a majority of the cases appealed to it.

C. decides only a small percentage of the cases appealed to it.

D. defers to the decision of the court of appeals in the event of a concurring opinion.

Because most appeals to the Court involve its certiorari jurisdiction, and relatively few of these are heard, the Court decides only a small percentage of the cases appealed to it.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.

Topic: Federal Courts

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30. Writ of certiorari (cert.) may be granted when:

(p. 36)

A. a person does not want to appeal to the Supreme Court.

B. there have been conflicting decisions in similar cases by different courts of appeal.

C. the Supreme Court has too many cases to be heard and has no time to take up a new case.

D. a case has the validity of a federal statute in agreement.

The primary way a case can be appealed to the Supreme Court is through writ of certiorari (cert.). Hearing such cases is entirely discretionary with the Court. If there have been conflicting decisions in similar cases by different courts of appeals, the Court may grant *cert*. It may also grant *cert*. in a case from the highest court of a state where a right is claimed under the Constitution or where the validity of a federal statute is in question.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.

Topic: Federal Courts

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31. Which of the following statements about the adversary system is true?

(p. 36)

A. The adversary system represents the idea that truth is best discovered through the presentation of competing ideas.

B. The judge, in an adversary system, is actively involved in determining the facts of a case.

C. The lawyers, in an adversary system, do not persuade the judge that the other party's view of the facts is in error.

D. The judges have a duty to direct the search for truth rather than expecting it to emerge from the efforts of the lawyers for the parties.

The adversary system represents the idea that truth is best discovered through the presentation of competing ideas. It is the lawyer's job to present the client's view of the facts to the judge, or to the jury if one is used. The judge's role, under the adversary system, is viewed as not only unbiased but also essentially passive. In essence, a trial judge acts as a referee.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-03 Explain why all cases can't be appealed all the way to the Supreme Court.

Topic: The Adversary System

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32. Under the adversary system, the judge's role is viewed as not only _____ but also essentially _____.
(p. 36)

A. unbiased; passive
B. biased; passive
C. unbiased; active
D. biased; active

The judge's role under the adversary system is viewed as not only unbiased but also essentially passive. The trial judge is to keep order in the court and, when a jury is present, to see that the lawyers do not use improper methods to influence the jury. Generally, the judge stops questions from lawyers or orders witnesses to change their behavior only when asked to do so by one of the lawyers.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain the advantages and disadvantages of the adversary system.
Topic: The Adversary System

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33. *(p. 37)* The Smiths, an affluent family, own a hospitality chain called Smith Hotels Inc. When a lawsuit was filed against the hotel for serving stale food to its guests, the managers of the hotel decided to hire a lawyer who practices in an adversary system. How is this situation advantageous to Smith Hotels Inc.?

A. The system makes it easier for a biased judge to control the outcome of a case.
B. The wealthy can hire better lawyers as the system does not work when the opposing lawyers are of unequal skill.
C. The system lays emphasis on the competition to win which discourages overstatement of the truth.
D. The adversary system resents the idea that truth is best discovered through the presentation of competing ideas.

Critics argue that the adversary system does not work when the opposing lawyers are of unequal skill. This gives an advantage to the wealthy, such as the Smiths, who can hire better lawyers.

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-04 Explain the advantages and disadvantages of the adversary system.
Topic: The Adversary System

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34. Which of the following statements is true of pleadings?

(p. 37)

A. The first step in starting a lawsuit is the serving of a summons on the defendant.

B. These are the first documents filed with the court, and they start and define the lawsuit.

C. The case is set for trial on the court calendar once the pleadings have commenced.

D. Both disputed and undisputed matters in the pleadings are tried in court.

Pleadings include complaints, answers, and replies. These are the first documents filed with the court, and they start and define the lawsuit. They serve two major functions: They inform the parties of each other's claims, and they form the basis for a trial. Only those matters that are disputed in the pleadings are tried in court.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

35. In the context of filing a lawsuit, a complaint:

(p. 38-40)

A. must contain sufficient facts to show that the plaintiff is entitled to some legal relief.

B. is a rule of law enabling the defendant to win even if all of the plaintiff's allegations are true.

C. was created to help deal with the increasing congestion of cases in most civil courts.

D. is a procedural device that is designed to narrow down issues to be proved at trial.

A complaint must contain sufficient facts to show that the plaintiff is entitled to some legal relief and to give the defendant reasonable notice of the nature of the plaintiff's claim.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

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Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

36. A rule of law enabling a defendant to win even if all of plaintiff's allegations are true is a(n) _____. *(p. 43)*

A. counterclaim

B. affirmative defense

C. deposition

D. judgment notwithstanding the verdict

An answer that responds to a complaint may also state an affirmative defense. An affirmative defense is a rule of law enabling the defendant to win even if all of the plaintiff's allegations are true. For example, the plaintiff may allege that the defendant breached their contract. The defendant might respond by admitting that the contract had been breached but that he or she should not be held liable because the contract had been induced by the plaintiff's fraudulent misrepresentations.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

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37. A new claim stating that plaintiff owes defendant damages because of harm resulting from the incident alleged in the complaint is called a(n) _____.
(p. 43)

A. counterclaim
B. affirmative defense
C. cross-claim
D. dissenting opinion

A counterclaim is a new claim stating that plaintiff owes defendant damages because of harm resulting from the incident alleged in the complaint.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Procedure

38. A motion to dismiss made by a defendant is granted when:
(p. 43)

A. the defendant is scared of losing the case.
B. it is clear that the plaintiff does not have a case, and it would be wasteful to continue.
C. either party feels that the judge is not impartial.
D. people or groups other than the parties involved are interested in the outcome of a certain appeal.

A defendant may make a motion to dismiss the case rather than give an answer. If it is clear that the plaintiff has no case, it would be wasteful for the case to continue, and the motion would be granted.

AACSB: Analytic
Blooms: Understand

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Difficulty: 2 Medium

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

39. *(p. 44)* Salim files a case against Nina for nonpayment of dues. Before the trial, Nina is examined under oath in the presence of Salim's attorney. This process of examination is known as a(n) ____.

A. deposition
B. interrogatory
C. pretrial conference
D. default judgment

A deposition is an examination under oath, much like the questioning at a trial, in the presence of the attorney for the other party.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 2 Medium

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

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40. Which of the following is a correct statement regarding the pretrial conference?

(p. 44)

A. It is held in the courtroom.

B. The plaintiff and the defendant are present at the pretrial conference.

C. The parties' witnesses are present at the pretrial conference.

D. The judge tries to get the parties' attorneys to stipulate to as many of the material facts as possible.

At the pretrial conference, the judge tries to get the parties' attorneys to stipulate to (agree to) as many of the material facts as possible. Through this effort, the judge may find that in spite of the appearance of the pleadings, there is no true disagreement on some important facts. These stipulations can save a considerable amount of court time.

AACSB: Analytic

Blooms: Remember

Difficulty: 2 Medium

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

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41. Which of the following statements is true of the presentation of testimony?

(p. 45)

A. Under direct examination, each witness is sworn and then examined by the defendant's attorney.

B. A defendant's attorney may cross-examine each of the plaintiff's witnesses, trying to raise doubts as to the person's credibility or trustworthiness.

C. A defendant's attorney may conduct a redirect examination to clarify the plaintiff's view of the facts.

D. During a witness's testimony, the opposing attorney cannot object to the presentation of certain evidence.

A plaintiff's attorney presents the evidence through witnesses and exhibits. Each witness is sworn and then examined by the plaintiff's attorney; this is called direct examination. The defendant's attorney may cross-examine each witness, trying to raise doubts as to the person's credibility or trustworthiness. The plaintiff's attorney may then conduct a redirect examination to clarify the plaintiff's view of the facts and perhaps to minimize whatever negative effect was created in the cross-examination. During a witness's testimony, the opposing attorney may object to the presentation of certain evidence.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Procedure

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42. A _____ is designed to reach things belonging to the debtor that are in the hands of third parties. *(p. 46)*

A. writ of quo warranto

B. writ of garnishment

C. writ of certiorari

D. writ of mandamus

A writ of garnishment is designed to reach things belonging to the debtor that are in the hands of third parties, such as wages, bank accounts, and accounts receivable. Garnishment proceedings, like execution sales, are highly regulated by statute.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Procedure

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43. Which of the following is true of the burden of proof in a criminal trial?

(p. 45)

A. It must be "beyond a reasonable doubt."

B. It is placed on the defendant.

C. During the closing of a case, when the defendant's attorney goes first, he or she has the burden of proof.

D. It is similar to that for civil cases.

The attorneys make closing arguments that sum up a case. Normally the defendant's attorney goes first. This gives the plaintiff, who has the burden of proof, the last word. The burden of proof for a criminal case is different from that for a civil case. In a criminal case the state, as plaintiff, must convince the fact finder—jury or judge—beyond a reasonable doubt of the defendant's guilt.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-05 Identify the different stages of a lawsuit.

Topic: Procedure

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44. The term *amicus curiae* means:

(p. 46)

A. friendly cure or the amicable resolution to a mediated dispute.

B. friend of the court and refers to briefs filed by third parties interested in the outcome of a certain appeal.

C. small couriers or the briefs, originally used by foot messengers, which are used to communicate between lawyers and the courts.

D. the name for the conductor of an arbitration, a position originally filled by medieval clergy.

When people or groups other than the parties involved are interested in the outcome of a certain appeal, they may request to be permitted to file *amicus curiae* (friend of the court) briefs.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-06 Discuss how an appeal works and why most appeals fail.

Topic: Appellate Procedure

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45. In order to appeal a decision, _____.

(p. 46)

A. a party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision.

B. a party need not have objected to a judge's action at the time the alleged error was made.

C. a party must prepare for a new fact-finding process and must be dissatisfied with the judgment of the court.

D. the defendant must show that the errors made were not material.

To be able to appeal, a party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision. The appellate courts hear no witnesses and gather no new evidence.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-06 Discuss how an appeal works and why most appeals fail.

Topic: Appellate Procedure

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46. A record in writing of the entire trial proceedings including the testimony of all the witnesses and any discussions between the judge and the attorneys that must be prepared and forwarded to the appeals court is called a _____.

(p. 46)

A. treatise
B. citation
C. transcript
D. brief

A transcript of the entire trial proceeding, including the testimony of all the witnesses and any discussions between the judge and the attorneys, must be prepared and forwarded to the appeals court.

AACSB: Analytic
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Discuss how an appeal works and why most appeals fail.
Topic: Appellate Procedure

Short Answer Questions

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47. *(p. 27-30)* The employees of Claudio Inc. were on strike for 30 days and that led to huge losses for the business. Owing to loss of business and wages, both parties wanted to settle the dispute but were unable to negotiate successfully. Which method of alternative dispute resolution is best suited to them? Why?

The alternative dispute resolution method that is best suited to them is mediation. Mediation is the best suited method to resolve the dispute in the given case because a mediator often tries first to communicate the positions of the parties to each other. It allows the parties to settle the case by appointing a mediator who merely facilitates the negotiation by proposing a basis for settlement and does not give awards or opinions on the merits of the dispute. It is a suitable method when the two parties, here the employees of Claudio Inc. and the management, have a continuing relationship because it allows them to compromise and to reach a solution themselves.

AACSB: Reflective Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Means of Dispute Settlement

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48. Explain the differences between trial courts and inferior courts.

(p. 33)

Trial courts differ from inferior courts in that the trial courts are courts of general jurisdiction; they are not limited by the amount of civil damages that can be awarded or the criminal penalties that can be imposed. Their geographic jurisdiction is often a county. They also differ in that the judge must be a lawyer, and juries are provided for. The juries decide the facts and, under instructions from the judge about the applicable law, reach a verdict. In addition, trial courts are courts of record. Thus, an appeal can be taken from a trial court decision.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Define jurisdiction and explain the jurisdictional limits of small claims, trial, and appellate courts.
Topic: State Courts

49. What are the advantages and disadvantages of the adversary system?

(p. 37)

Advocates of the adversary system believe that truth is most effectively determined as a result of each lawyer presenting his or her client's "case" through witnesses, and that deception and misperception are best exposed through cross-examination. In addition, the system makes it more difficult for a dishonest or biased judge to control the outcome of a case. Critics argue that honest witnesses can be confused by hostile questioning. They say that the system does not work when the opposing lawyers are of unequal skill. This gives an advantage to the wealthy, who can hire better lawyers. Furthermore, the competition to win can encourage suppression of unfavorable facts and overstatement, if not misstatement, of the truth.

AACSB: Diversity
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-04 Explain the advantages and disadvantages of the adversary system.

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Topic: The Adversary System

50. *(p. 38)* Under what conditions can one or more members of a class sue or be sued as representative of a class? What type of lawsuit can their claims be consolidated into?

Lawsuits can have more than one plaintiff and/or defendant. Sometimes, when a defendant's actions have injured many plaintiffs, their claims may be consolidated into a class action lawsuit. One or more members of a class may sue or be sued as representative of a class if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

AACSB: Analytic
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Procedure

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