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CHAPTER 02
THE RESOLUTION OF PRIVATE DISPUTES

I. OBJECTIVES:

As its title suggests, this chapter is concerned with the resolution of disputes that give rise to civil cases. For the most part, it is a nuts-and-bolts chapter intended to acquaint the student with courts, their civil jurisdiction, and the procedures they use in civil cases. The chapter also contains a discussion of alternative dispute resolution. After reading the chapter and attending class, the student should:

A. Be familiar with the various kinds of state and federal courts and the common bases of their trial and appellate jurisdiction;

B. Understand the various procedural steps in a civil case; and

C. Have knowledge of the significant forms of alternative dispute resolution and their advantages and disadvantages.

The Learning Objectives that appear near the beginning of the chapter provide a further roadmap for the chapter's coverage.

II. ANSWERS TO INTRODUCTORY PROBLEM:

A. Anderson clearly may pursue his case in Florida (where the defendant corporation's principal offices are located) or in New Mexico (where the corporation does business through the publication of the newspaper, where the tort allegedly occurred, and where Anderson has his primary residence). Depending upon how the applicable long-arm statute is worded and upon whether constitutional principles of due process would be satisfied, Anderson might even be able to pursue the case in Michigan (where he resides for part of the year). See the chapter's discussions of in personam jurisdiction and the use and operation of long-arm statutes.

B. Anderson would not be restricted to suing in state court. He would have the option of suing in federal court, either in an appropriate court in the district of Florida or in an appropriate court in the district of New Mexico. (Even an appropriate court in the federal district of Michigan might be possible. See above.) Again, see the chapter's discussion of in personam jurisdiction and the use and operation of long-arm statutes. The reason that federal court would be an option for Anderson is that the requirements of diversity of citizenship jurisdiction (one of the forms of subject matter jurisdiction in federal court) would be satisfied. Anderson and Allnews Publishing, Inc. are parties from different states, and there is more than $75,000 in controversy. See the chapter's discussion of diversity jurisdiction.

C. Assuming Anderson sues in state court, Allnews will have the option of removing the case to federal court if Allnews acts promptly. Allnews has the power of removal because this would be a case of concurrent jurisdiction--one that was properly brought in state court but could have been brought in federal court (in this instance, because of the diversity jurisdiction principle discussed above). See the chapter's discussion of concurrent jurisdiction and the power of removal.

D. Anderson may utilize his rights to engage in discovery. Depositions and interrogatories would likely be especially useful forms of discovery for him to utilize. Yes, Allnews would have discovery rights to exercise with regard to Anderson. See the chapter's discussion of discovery.

E. A jury trial will take place if either party want --or both parties want—a jury trial. A bench

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trial (a trial before a judge only) will take place if both parties agree to waive the right to a jury trial. See the chapter's discussion of forms of trials. Of course, the vast majority of civil cases do not actually go to trial. Some are dismissed or ruled upon at a pre-trial stage. Most other cases are settled by agreement at some point during the legal proceedings.

F. The court might decide the case without a trial by granting the defendant's motion to dismiss or a party's motion for summary judgment. See the chapter's later discussion of these topics.

G. The case is not a candidate for arbitration because it is not based on a dispute regarding a contract that contains an arbitration clause. Instead, this case is a tort case. See the chapter's later discussion of arbitration.

III. SUGGESTIONS FOR LECTURE PREPARATION:

A. State Courts and their Jurisdiction

1. This section's description of state courts themselves (as opposed to their jurisdiction) probably can be dealt with briefly in class. Emphasize, however, that appellate courts only decide questions of law, not fact. Of course, the line between fact and law is indistinct, and appellate courts often consider legal issues with factual dimensions. Examples include the trial court's evidentiary rulings, and its rulings on the motions for summary judgment, directed verdict, and judgment not withstanding the verdict.
2. With regard to state court jurisdiction:
   a. Emphasize that this is based on the state's power. The various examples of state court jurisdiction may generally be seen as reflecting a state's ability to issue binding legal decisions that affect persons, property, and activities within the state's borders.
   b. Emphasize that for state trial courts to have jurisdiction in a civil case, *both* subject-matter jurisdiction and *either* in rem or in personam jurisdiction are necessary. (Both subject-matter jurisdiction and in personam jurisdiction are also necessary in federal courts.)
   c. Discuss the role that long-arm statutes may play in allowing a state court to have in personam jurisdiction over a non-resident. Mention that federal courts may rely on state long-arm statutes as a means of obtaining in personam jurisdiction over a defendant who does not reside in the federal district where the litigation is being pursued.
   d. Note that according to the typical long-arm statute, a non-resident defendant may be subjected to suit in the forum state if he, she, or it has: done business in the forum state; contracted to supply goods or services in the forum state; committed a tort within the state; or committed a tort outside the state, if the resulting damage occurs within the state. (The chapter's opening vignette/introductory problem may raise issues along these lines.) The chapter states that "[s]ome long-arm statutes are phrased with even broader application in mind." Note, therefore, that some long-arm statutes allow the forum state's in personam jurisdiction to extend to the full limits of due process. (Once again, the chapter's opening vignette/introductory problem may raise issues along these lines.) When such a broad provision appears in a long-arm statute, the due process inquiry merges with the due process analysis that must be applied as a constitutional matter. As the text points out, the due process analysis must always be applied--for constitutional reasons—even though the provisions of the long-arm statute have been satisfied. This is true even if the long arm statute does not contain a to-the-limit-of-due-process provision.
   e. *Abdouch v. Lopez* (p. 38): The Supreme Court of Nebraska holds that the defendants, a Massachusetts resident and his Massachusetts-based company, are not subject to

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the in personam jurisdiction of a Nebraska court in a case that centered around statements in an advertisement that appeared on the defendants' website.

Points for Discussion: Note the court's discussion of specific jurisdiction: jurisdiction over a defendant in a case arising out of or related to the defendant's contacts with the forum. Emphasize that such jurisdiction can be acquired by a court over a defendant who resides in a different state if the long-arm statute of the forum state and the constitutional due process standard are both satisfied. After reviewing the categories of non-resident defendants' behaviors that are typically covered by long-arm statutes, point out that some states' long-arm statutes contain a provision allowing the statute's application, for in personam jurisdiction purposes, as far as principles of due process will allow. The Nebraska long-arm statute, at issue in this case, is such a statute. In such a situation, the statutory and constitutional issues merge into a single due process inquiry in which the "minimum contacts" issue becomes critical. Ask the students why the court concluded that the defendants did not possess the requisite minimum contacts with Nebraska. Ask about the court's discussion of the *Zippo* test for whether a defendant's website will or may support a determination that a state's court has in personam jurisdiction over the defendant even though he, she, or it does not reside in that state. Ask about the three categories of websites identified in *Zippo*, the effect of each on the in personam jurisdiction issue, and what to make of the defendants' website. Note that the nature of the defendants' website was a factor in the court's conclusion that in personam jurisdiction did not exist regarding the defendants, but that it was not solely determinative. Ask about what the court also considered important in determining whether the defendants possessed the necessary minimum contacts: whether the defendants, through their website, specifically targeted Nebraska. (The court said "no." Instead, the website was directed at the entire world.)

f. The Global Business Environment box at p. 40 deals with *Daimler AG v. Bauman*, a 2014 Supreme Court decision dealing with whether the U.S. District Court for the Northern District of California could assert general in personam jurisdiction over a German company. Discuss with the students the difference between specific in personam jurisdiction and the general variety of in personam jurisdiction. (See the Court's explanation.) Ask why the Court concludes that the defendant corporation's contacts with the forum district were neither significant enough nor continuous enough to warrant the exercise of general jurisdiction.

g. For further examples of long-arm statute-related issues and due process concerns, see Problems #1, #3, #7, and #10.

h. Explain the difference between in personam jurisdiction and in rem jurisdiction.

i. Although the text mentions it only in a footnote, you might want to discuss quasi-in-rem or "attachment" jurisdiction, which (along with subject-matter jurisdiction) also gives a court the power to decide a case. Here, the court bases its jurisdiction on the location of property within the state, but issues a judgment affecting rights unrelated to the property (unlike what occurs in cases involving in rem jurisdiction). In some cases, the property in question may be intangible. One example of quasi in rem jurisdiction is based on *Harris v. Balk*, 198 U.S. 215 (1904). Suppose Y owes X a debt, but Y is outside the in personam jurisdiction of X's state. Suppose also that Z owes Y a debt, and Z comes into X's state. X may get quasi in rem jurisdiction over Y on the basis of Z's debt, which is considered to reside wherever the debtor (Z) resides. This gives the court the power to determine Y's obligation to X--a matter unrelated to the property on which jurisdiction is based. In such cases, however, the most the plaintiff should be able to recover is the value of the property on which jurisdiction is based.

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j. Be sure to distinguish jurisdiction from venue. Emphasize that a court may have jurisdiction even when proper venue is lacking. Also note that jurisdiction presupposes venue in the sense that the latter is not an issue until the former exists or is assumed to exist.

k. Note the role that contractual forum selection clauses may play in determining matters of jurisdiction and venue. As the text indicates, "clickwrap" provisions of this nature tend to be honored if their terms do not seem unreasonable, even though genuine, informed consent to such provisions may often be lacking.

C. Federal Courts and their Jurisdiction

1. Briefly describe the various federal courts and their functions. Be sure to emphasize the territorial organization of the district courts and the courts of appeals. See the chapter's Figure 1. You may want to make only passing mention of the specialized federal courts.

2. With regard to federal district court jurisdiction and venue:

a. Emphasize the elements necessary for diversity jurisdiction: (1) the case is between citizens of different states (or is between a citizen of a state and either a citizen of a foreign nation or the government of a foreign nation); and (2) the amount in controversy exceeds $75,000. Note that for federal question jurisdiction, there is no dollar test. Such jurisdiction exists as to any claim that "arises under" federal law.

b. Point out that the traditional reason for diversity jurisdiction was the possibility of prejudice against out-of-state defendants in state courts. You might ask whether this justification packs much weight today. Note, also, that Congress has increased the requisite amount in controversy various times over the years, and that there have been many defeated proposals to eliminate the district courts' diversity jurisdiction.

c. Note that the rule regarding a corporation's citizenship may sometimes have the effect of limiting a plaintiff's ability to rely on diversity jurisdiction. The *Hertz* case (discussed below in the section dealing with the power of removal) clarified what constitutes a corporation's *principal place of business* for purposes of the diversity rule that a corporation is a citizen of the state in which it is incorporated and of the state of its principal place of business.

d. Stress that diversity jurisdiction and federal question jurisdiction are forms of subject-matter jurisdiction. In order to have the power to render a decision that is binding on the parties, a federal court must have both subject-matter jurisdiction and in personam jurisdiction. As noted above and in the chapter, the analysis of in personam jurisdiction issues in the federal court system is essentially the same as in the state court systems. Remind the students that federal courts may rely on state long-arm statutes as a means of obtaining in personam jurisdiction over a defendant who does not reside in the federal district where the litigation is being pursued.

e. Again, note the Global Business Environment box (discussed earlier).

f. Consider using a simple example to illustrate the options potentially available to a plaintiff who wants to sue an out-of-state defendant. (You might use the chapter's introductory problem or something similar to it.) The plaintiff might: (1) try to establish state court in personam jurisdiction over the defendant in the plaintiff's home state (through a long-arm statute or otherwise); (2) try to establish federal court in personam jurisdiction over the defendant in the plaintiff's home federal district (through a long-arm statute or otherwise); (3) sue the defendant in a state court in the defendant's home state; or (4) sue the defendant in a federal court in the defendant's home district. (Options #2 and #4 would be available only if the amount in controversy exceeds $75,000.)

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g. Explain the power of removal that is available to a defendant when the case was filed in state court but concurrent jurisdiction exists (i.e., the case could properly have been filed in state court or in federal court). Assuming the defendant acts promptly, the case can be removed to federal court.

h. *Hertz Corp. v. Friend* (p. 44): The U.S. Supreme Court holds that for purposes of federal diversity jurisdiction, a corporation's principal place of business is where its "nerve center" is located. Applying the nerve center test to the facts, the Court concludes that the plaintiff and the defendant were citizens of different states, that federal jurisdiction would have existed (on the basis of that fact and the further fact that more than $75,000 was in controversy), and that the defendant was therefore entitled to have the case removed from state court (where the plaintiff filed it) to federal court.

Points for Discussion: Begin by asking when the power of removal applies and about strategic issues associated with deciding whether to exercise it when it does apply. Then ask for an overview of the basic facts here. Ask what state or states in which a corporation is considered to be a citizen for diversity jurisdiction purposes. (State of incorporation and state of principal place of business.) What test for *principal place of business* does the plaintiff ask the Court to apply? (What might be called a greatest-volume-of-business test.) If the Court had adopted that test, what would have happened here? (Hertz would have been considered a citizen of California because it allegedly did more business there than in any other state. If Hertz were considered a citizen of California—the same state of which the plaintiff was a citizen—the diversity requirements would not have been met and Hertz would not have been entitled to remove the case to federal court.) What principal-place-of-business test does the Court adopt instead? (Nerve center test.) What's the nerve center? (Where the big corporate decision are made—usually the corporate headquarters.) Why that test? (More reliable, more consistent and predictable, etc.) What's the effect of that test here? (Hertz is citizen of state where incorporated (state other than California) and of New Jersey, where corporate headquarters located. Plaintiff is California citizen. With more than $75,000 in controversy, diversity jurisdiction requirements are met, concurrent jurisdiction exits, and Hertz can remove case to federal court.)

i. The federal venue statute, whose details were omitted in the text, says that a diversity case may be brought only in a judicial district where: (1) any defendant resides, if all defendants reside in the same state; (2) a substantial part of the events giving rise to the case occurred, or the property to which the case relates is located; or (3) the defendants are subject to in personam jurisdiction, if there is no other district in which suit may be brought. In other cases, the litigation may be brought only in a district where: (1) any defendant resides, if all defendants reside in the same state; (2) a substantial part of the events giving rise to the case occurred, or the property to which the case relates is located; or (3) the defendant may be found, if there is no other district in which suit may be brought.

j. Note that the federal courts generally apply state substantive law in cases in which jurisdiction is based solely on diversity of citizenship. Sometimes, however, determining which state's substantive law to apply is a problem, especially in cases involving multistate transactions. The resulting choice-of-law issues are beyond the scope of this text. You may want to do little more than note the existence of these issues.

3. Note that the Supreme Court's mandatory "appeal" jurisdiction no longer exists, and that most appeals coming to the Supreme Court now do so through its discretionary certiorari

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jurisdiction. Thus, the Court continues to hear only a small percentage of the appeals directed to it.

4. On the Supreme Court's original jurisdiction, see Problem #9.

D. Civil Procedure

1. In presenting civil procedure, it is probably best to proceed sequentially, as the text does. Instructors with the time to do so might concoct a hypothetical civil action and use it to illustrate each procedural step.
2. You should note that the adversary system is at work throughout the procedural steps to be discussed. A few words on the pros and cons of the adversary system may be useful. Briefly explain the operation and effect of the preponderance of the evidence standard.
3. Emphasize that jurisdiction and adequacy of service of process are separate questions. Also, regarding service of process, you might note that the text's discussion is only illustrative. For example, so-called constructive service--service by publication in some communications medium--may still be permissible as a sort of "last resort" in certain instances. One possible example is where a state court has in rem jurisdiction over property in which an out-of-state party has an interest, and neither that party nor his domicile can be located.
4. Discuss the pleadings and distinguish among the complaint, answer, counterclaim, and reply. Note that there is no need for an answer if the defendant successfully moves to dismiss the case. Be sure to note the possibility of an affirmative defense in the answer. Throughout, stress the general movement away from technical pleading rules.
5. Emphasize that a demurrer attacks the legal sufficiency of the plaintiff's complaint and assumes the truth of the factual allegations in the complaint *for purposes of the motion*. The example in the text is intended to drive home the first point. Note also that if a demurrer or other motion to dismiss fails, the defendant normally must answer the complaint.
6. The text contains an extensive discussion of discovery. Comment on discovery's purposes, usefulness, and broad scope in civil cases. Note, also, that discovery is available to each party to the case and that it generally occurs without judicial involvement or oversight unless a problem develops. Explain these forms of discovery:
   a. *Depositions*. Note how depositions are conducted and why an attorney would want to take the deposition of an opposing party or a potential witness (to find out what that person knows, to pin that person down to a particular story, to see what sort of witness that person would be, etc.). Note, also, the ways in which depositions may be used at trial and the circumstances under which use is allowed. See the text's discussion of such issues.
   b. *Interrogatories* and *requests for admission.* Note their similarities and differences. Explain the obligation to respond, under oath, within the appropriate time period. Stress that a request for admission is deemed admitted if no response is made within the allotted time. See Problem #8. Note how answers to interrogatories and requests for admission may be used at trial.

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c. *Requests for production of documents and other physical items*. Stress that when a proper request is made, a party to litigation may have to produce--from its own files and records--copies of documents and other items that it would prefer not to release. Note that sometimes the most effective evidence presented by a party at trial may consist of copies of documents that came from the opposing party's files and records.

d. *Motions for physical or mental exam* (where relevant to the case). Note that unlike the other main forms of discovery, this one requires a court order.

7. Although the discovery process normally is conducted without judicial involvement or supervision, there are instances in which courts must become involved. If a party raises a privilege objection or some other legally recognized objection to a discovery request, the court must decide whether the objection has merit. Judicial involvement is also necessary if a party does not comply with discovery obligations (e.g., doesn't answer interrogatories, doesn't produce a requested document that is relevant, etc.).

8. The chapter's Cyberlaw in Action box deals with the federal rules governing discovery of electronically stored information (ESI). Note what is covered by the ESI definition. Work through the steps in the ESI discovery process, as outlined in the Cyberlaw box. Note what the discoverability of ESI means for businesses' retention and preservation of potentially discoverable electronic information.

9. Remind your students of something noted earlier: that the discovery process sometimes makes one's own files and records the source of evidence that may be very helpful to the opposing party. The temptation to destroy the potentially damaging material in one's files may lead to significant legal problems if the destruction occurs. This temptation also raises serious ethical questions. The chapter's Ethics in Action box discusses such legal and ethical issues, which have been given heightened media attention in the wake of recent scandals involving corporate misconduct and accounting fraud.

10. Stress that summary judgment involves both law-identifying and fact-resolution functions. Note why the summary judgment option is available in appropriate cases. (Why go to the trouble and expense of a full-scale trial if the material facts aren't in dispute and the correct legal treatment of the facts is clear?)

11. With regard to the civil trial:

    a. Note the purpose and role of the pre-trial conference and any order emerging from it.

    b. You may want to go beyond the text by saying a few words about the issues surrounding the availability of a jury trial. Briefly, a jury trial is available at the demand of either party if certain tests are met. The federal and state constitutions set minimum standards for the availability of a jury trial. For example, the Seventh Amendment (which does not apply to the states) makes a jury trial available "in suits at common law" exceeding $20, and most states have similar provisions in their constitutions or statutes. The test for determining whether the case is "at common law" is generally whether the claim was traditionally one classed as "at law," rather than "in equity." The complex body of law devoted to this question cannot be discussed in detail here, although it is accurate to say that a high percentage of cases in which money damages would be the typical remedy are cases "at law" and thus likely to be covered by a jury trial right. In addition, because the constitutional standards merely state a minimum, Congress and the state legislatures have authorized jury trials in other situations.

    c. You might also want to say more about the process of jury selection---especially *voir dire*, challenges for cause, and peremptory challenges. Challenges for cause are

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unlimited in number but require the judge's approval. Peremptory challenges do not require the judge's approval but are limited in number. Of course, peremptory challenges are generally used to eliminate potential jurors who, the attorney suspects, may be likely to be unsympathetic toward his or her client but could not successfully be challenged for cause.

d. Note the basic division of labor between judge and jury in jury trials.

e. With the above preliminaries out of the way, the stage is set for the text's summary of the typical trial scenario. Work through the basics of trial procedure outlined in the text. Note the differences between direct and cross-examination. Explain how typical TV show and movie depictions of courtroom scenes usually don't depict direct and cross-examination accurately and show even less accuracy when they depict the making of objections during trial. (On TV and in the movies, merely saying "Objection!" seems to be enough. In the real world, a legal basis for the objection must also be cited.)

f. Note the difference between lay witnesses and expert witnesses. Explain the standard for whether a party may testify as an expert witness.

g. Following the basic trial scenario, discuss the different procedures followed in trials before a judge and trials before a jury. Also, discuss the pros and cons of the general verdict. This can lead those who are so inclined into a general discussion of the jury's role in the American legal system.

h. Continuing the theme of the jury's role, discuss the motion for a directed verdict and the motion for judgment notwithstanding the verdict. Stress that both are "jury-policing" devices designed to take the case away from the jury in certain situations (with the directed verdict doing so before the jury decides the case and the judgment n.o.v. doing so after the jury's decision). Mention the similarities between the two motions--especially the stern nature of the test applicable to each and the reality that such motions are denied most of the time. You might add that in many jurisdictions, the motion for a directed verdict is a necessary prerequisite to a motion for judgment n.o.v. On these two motions, see Problem #6.

i. Regarding the motion for a new trial, see Problem #6.

13. When discussing the appeal of civil judgments, re-emphasize that appellate courts are limited to the resolution of "legal" issues. Supplement the examples in the text with additional examples of legal issues. Note the options available to appellate courts: affirm (in whole or in part); reverse (in whole or in part); and reverse and remand.

14. Regarding the text's discussion of enforcement of a judgment, emphasize the bearing effective enforcement has on the decision to sue a particular party in the first place.

15. Explain the nature of class actions, the rationale for allowing them in appropriate instances, and the usual standards that must be met in order for a court to certify a case as a class action. On the latter point, emphasize that a case cannot proceed as a class action unless a court has approved its going forward in that form. Discuss the 2005 statute enacted by Congress in an effort to restrict the number of class actions in state courts and to require that many class actions, if they are to be litigated at all, must be pursued in federal court. Also, discuss the views among some that the 2005 statute did not go far enough and that some proposed classes are simply "too big." Then note the opposing concerns that may arise if courts become less inclined to certify cases as class actions.

16. *Wal-Mart Stores, Inc. v. Dukes* (formerly a text case; now discussed in the text): The Supreme Court holds that class action certification should not have been granted with regard to a lawsuit in which a supposed class of 1.5 million women alleged that Wal-Mart

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committed sex discrimination in deciding on promotions and salary increases.

Points for Discussion: Note that this decision is likely to be very influential as lower courts decide on whether to certify a case as a class action. The decision may in some instances make it harder for plaintiffs to convince courts to certify cases as class actions. Ask the students why the Court said class action certification should not have been granted. Note the Court's emphasis on the varying nature and specifics of the female employees' claims, even though they all dealt with sex discrimination in some sense. The claims, therefore, were not sufficiently common in their facts and in the issues they presented. Simply put, the employees' claims were not similar enough to warrant treatment in a single legal action. Was the Court influenced by "too big" concerns of the sort noted above? Perhaps such a thought crossed the mind of some of the justices, but the differences among the various claims provided the Court with a reasonable basis on which to hold that the case could not proceed as a class action. Note, of course, that the individual plaintiffs could still bring their own cases, but it seems doubtful that all 1.5 million persons would file separate lawsuits.

17. *Tyson Foods, Inc. v. Bouaphakeo* (p. 55): The Supreme Court holds that the lower courts correctly granted class action certification in a case in which Tyson employees sought overtime pay for time spent putting on and taking off necessary safety gear, where the time spent doing so put them over the 40-hours-per-week threshold for overtime pay under federal law.

Points for Discussion: Note or ask about some important facts: that the specific amounts of time employees spent in donning and doffing the safety gear varied from employee to employee; that Tyson paid overtime to some of the Tyson employees but not to others; that Tyson kept records on regular hours that employees worked, but not on how much time they spent putting on and taking off the gear; that Tyson used estimates of how much time different forms of safety gear would (or should) take employees to put on and take off; and that these estimates caused some employees not to be paid, or to be underpaid, for the supposed overtime hours. Ask how this case differs from *Wal-Mart v. Dukes* (i.e., if commonality was lacking there, why was it present here?). Note the important role of expert testimony in this case. Work the students through the Court's discussion of why the expert witness's use of representative evidence of a subset of employees was appropriate here.

E. With regard to ADR:

1. Emphasize the main reasons for the growing popularity of ADR: the "litigation explosion;" the demands this has placed on the courts and the social costs these demands have generated; and the cumbersomeness, expense, and aggravation associated with using normal judicial procedures for resolving disputes. Also note the possible costs of ADR mentioned in the text
2. Explain the major forms of ADR. You may wish to focus most of your attention on arbitration and mediation, being sure to clarify the ways in which they are different.
3. The text indicates that arbitrators sometimes may have freedom to ignore substantive rules of law that would apply in court. Stress, however, that most of the time, the substantive rules of law that apply in court also apply in arbitration proceedings.
4. Additional example of situations in which "private" mediation may be used: school disputes. Court-annexed mediation sometimes tends to be associated with small claims, housing, and family courts.
5. *AT&T Mobility LLC v. Concepcion* (p. 59): The U.S. Supreme Court holds that if an arbitration clause in a contract not only requires that disputes be arbitrated but also bars class-wide arbitration, the clause is valid and enforceable under the Federal Arbitration Act.

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Points for Discussion: Ask students about the basic facts here and about why the plaintiffs who filed suit would have wanted this case to proceed in court as a class action, as opposed to having to go through arbitration on an individual-claims basis. (Because the damages for them individually and for other individual consumers would be miniscule in amount—meaning that the vast majority of consumers probably wouldn't bother to proceed with a complaint.) Ask why the plaintiffs thought they could proceed in court despite the arbitration provision. (Because California cases had established that arbitration clauses prohibiting class arbitration were unenforceable on the ground of unconscionability, and because the Federal Arbitration Act's general command that arbitration clauses must be enforced was subject to an exception for state law-based grounds for attacking the validity of a contract.) Work through the Supreme Court's reasoning in support of the conclusion that the FAA's general command controls here and that the exception for state law-based grounds doesn't apply. The effect, of course, is that arbitration clauses are enforceable even if they bar class-wide aggregation of claims. What do your students think about the Court's reasoning? What do they think will happen as a result of this decision? (Almost certainly, companies will respond to the decision by adding prohibitions on classwide aggregation of claims to the arbitration clauses they put into their contracts. Class arbitration is very likely to become a seldom-encountered breed.) Note the objections raised by Justice Breyer in the brief excerpt from his dissent. Note that in later decisions (including the *Italian Colors* decision discussed briefly in the text), the Supreme Court has reaffirmed the principles set forth in *Concepcion*.

6. Note the text's discussion of recent calls for federal legislation to limit companies' ability to use binding arbitration clauses in certain situations. No such legislation had been enacted as of the time the text and this manual went to press. Such issues bear watching, however.
7. For an additional example of arbitration and FAA issues, see Problem #2.

IV. RECOMMENDED REFERENCES:

A. G. HAZARD & M. TARUFFO, AMERICAN CIVIL PROCEDURE: AN INTRODUCTION.
B. M. KANE, CIVIL PROCEDURE IN A NUTSHELL.
C. J. NOLAN-HALEY, ALTERNATIVE DISPUTE RESOLUTION IN A NUTSHELL.

V. ANSWERS TO PROBLEM CASES:

1. Wilson clearly may pursue her case in New Jersey, where the defendant corporation's principal offices are located. Depending upon how the applicable long-arm statute is worded and upon whether constitutional principles of due process would be satisfied, Wilson may be able to pursue the case in her own state, Illinois. Wilson would not be restricted to suing in state court. She would have the option of suing in federal court, either in an appropriate court in the district of New Jersey or in an appropriate court in the district of Illinois (assuming in personam jurisdiction could be established on the part of a federal court in the Illinois district) The reason that federal court would be an option for Wilson is that the requirements of diversity of citizenship jurisdiction (one of the forms of subject matter jurisdiction in federal court) would be satisfied. Wilson and XYZ are parties from different states, and there is more than $75,000 in controversy. Assuming Wilson sues in state court, XYZ will have the option of removing the case to federal court if XYZ acts promptly. XYZ has the power of removal because this would be a case of concurrent jurisdiction--one that was properly brought in state court but could have been brought in federal court (in this instance, because of the diversity jurisdiction principle discussed above).
2. No. The U.S. Supreme Court held that the Federal Arbitration Act (FAA) overrides a state law that vests initial adjudicatory authority in a state administrative agency. The national

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policy in favor of arbitration was controlling, so Ferrer could not succeed in his attempt to have the case heard by the state agency. The other substantive provisions of the relevant state law would still apply, however, and would be among the rules to be applied by the arbitrator in deciding the case. *Preston v. Ferrer*, 552 U.S. 346 (U.S. Sup. Ct. 2008).

3. No. The Illinois Court of Appeals held that the Oklahoma defendants were subject to the in personam jurisdiction of the Illinois court. The case, which centered around false statements allegedly posted by the defendants in an Internet chat room, was an appropriate one for specific jurisdiction (jurisdiction over a defendant in a case arising out of or related to the defendant's contacts with the forum state. The Illinois long-arm statute contained a provision allowing the statute's application as far as principles of due process will allow. In such a situation, the statutory and constitutional issues merge into a single due process inquiry in which the "minimum contacts" issue becomes critical. The court concluded that the requisite minimum contacts were present. In so holding, the court applied the *Zippo* test for whether a defendant's website will or may support a determination that a state's court has in personam jurisdiction over the defendant even though he, she, or it does not reside in that state. The defendants' website was interactive in nature (thus helping to lead to the conclusion that minimum contacts were present). Moreover, the defendants had also targeted Illinois (and the Illinois plaintiffs) with phone calls and other communications. Finally, the court concluded that in view of the facts, it would not be unreasonable to expect the Oklahoma defendants to litigate the parties' dispute in Illinois. *Bombliss v. Cornelsen*, 824 N.E. 2d 1175 (Ill. App. 2005).
4. The Ninth Circuit agreed with Mattel's argument and held that the district court erred. The U.S. Supreme Court also agreed, holding that parties cannot by agreement expand the Federal Arbitration Act's list of grounds on which an arbitrator's decision may be set aside. *Hall Street Associates v. Mattel, Inc.*, 552 U.S. 576 (2008).
5. The U.S. Court of Appeals for the Eighth Circuit held that the district court did not err in overruling the defendant's motion to compel the plaintiff to produce certain requested documents and records. The court agreed with the plaintiff's argument that the request was overly broad and unduly burdensome. The court also held that the lower court did not err in permitting the forensic accountant to testify as an expert witness for the plaintiff. The expert testimony provision in the Federal Rules of Evidence authorizes a court to permit such testimony if "scientific, technical, or other specialized knowledge will assist the trier of fact" in understanding the evidence or determining a fact at issue, assuming the witness qualifies as an expert and reliably applies relevant principles and methods. The court concluded that this provision did not impliedly suggest that the supposed expert must use a *complicated* method of analysis, and that the lower court acted within its discretion in permitting the expert testimony. *WWP, Inc. v. Wounded Warriors Family Support, Inc.*, 628 F.3d 1032 (8th Cir. 2011).
6. On the ground that the inadmissible evidence and improper conduct tainted the proceedings, Tyson can: (1) move for a judgment notwithstanding the verdict (also called a judgment as a matter of law in federal court); (2) move for a new trial; and/or (3) move for a remittitur in conjunction with a motion for new trial. The trial judge concluded that the $185,000 in compensatory damages "b[ore] no reasonable relation to evidence presented about damages plaintiff suffered as a direct result of defendant's conduct" and that the $800,000 in punitive damages greatly exceeded what would be necessary to accomplish the purpose for punitive damages as set forth in the jury instructions. The judge therefore ruled that both awards of damages were excessive. Additionally, the judge concluded that "the content of the improper testimony plus the number of times where instruction [to disregard] was necessary made it impossible to erase the [jury's] prejudice." Interviews he conducted with jurors helped support this conclusion. Hence, the judge granted Tyson's motion for judgment as a matter

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of law by vacating all but $50,000 of the compensatory damages and $100,000 of the punitive damages. He also granted Tyson's motion for a remittitur under which Tyson's motion for a new trial would be granted unless Gray agreed to accept the reductions in damages just described. *Gray v. Tyson Foods, Inc.*, 46 F. Supp. 2d 948 (W.D. Mo. 1999).

7. The Supreme Court of Oklahoma ruled that the lower court was wrong, and that the Oklahoma courts could assert in personam jurisdiction over the Tennessee defendants. The defendant's contacts with Oklahoma in regard to the transaction with Guffey and in regard to other transactions with persons in Oklahoma were key considerations leading to determination that the defendants possessed sufficient minimum contacts with Oklahoma. *Guffey v. Ostonakulov*, 321 P.3d 971 (Okla. Sup. Ct. 2014).
8. The federal district court held that Abbott improperly removed Lewis's claim from state court to federal court. Therefore, the federal court remanded the case to state court. Concurrent jurisdiction was lacking--meaning that the state court case was not one that could properly have been pursued in federal court--because Lewis's claim did not present a federal question and because the requirements of diversity jurisdiction were not satisfied. Although the plaintiff and defendant were parties from different states, Abbott was unable to establish that the amount in controversy exceeded $75,000. Hence, subject-matter jurisdiction was lacking. The unanswered request for admission played a key role in the court's conclusion that Abbott had failed to prove there was more than $75,000 in controversy in Lewis's case. Lewis's failure to respond meant that Abbott's request was deemed admitted and that Lewis's case would therefore be treated as one involving less than $75,000. (This case is a good illustration of the effect of an unanswered request for admission--i.e., that it is deemed admitted--but it is unusual in the sense that the deemed-admitted request served to help the party regarded as having made the admission. Usually, it is the other way around (i.e., the request that is deemed admitted normally helps the party who served the request). *Lewis v. Abbott Laboratories*, 189 F. Supp. 2d 590 (S.D. Miss. 2001).
9. No. The U.S. Supreme Court has original and exclusive jurisdiction over all disputes between two states. *New Jersey v. New York*, 526 U.S. 589 (1999).
10. Yes. The Supreme Court of Alabama held that GM Canada did not have significant enough contacts with Alabama to warrant a conclusion that general jurisdiction would be appropriate. Specific jurisdiction was unwarranted as well. Given that the vehicle at issue was not sold in Alabama, GM Canada's simply having put the vehicle into the stream of commerce was not enough of a connection to Alabama to give rise to specific jurisdiction. Therefore, the state Supreme Court affirmed the trial court's dismissal of GM Canada from the case because of lack of in personam jurisdiction. *Hinrichs v. General Motors of Canada, Ltd*., 2016 Ala. LEXIS 81 (Ala. Sup. Ct. 2016).

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