Cengage Advantage Books Business Law Today The Essentials Text and Summarized Cases 11th edition Miller Test Bank

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Chapter 2 Courts and Alternative Dispute Resolution

TRUEFALSE

1. The role of the courts is to interpret and apply the laws.

(A) True

(B) False

Answer : (A)

2. *Minimum* contacts with a jurisdiction are never enough to support jurisdiction over a nonresident defendant.

(A) True

(B) False

Answer : (B)

3. A court can exercise jurisdiction over property located within its boundaries.

(A) True

(B) False

Answer : (A)

4. A business firm may have to comply with the laws of any jurisdiction in which it actively targets customers.

(A) True

(B) False

Answer : (A)

5. The minimum-contacts requirement is usually met if a corporation advertises or sells its products within a state.

(A) True

(B) False

Answer : (A)

6. Cases involving diversity of citizenship arise only between citizens of different states.

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(A) True

(B) False

Answer : (B)

7. The amount in controversy in a diversity of citizenship case must be more than $1 million before a federal court can take jurisdiction.

(A) True

(B) False

Answer : (B)

8. States do *not* have exclusive jurisdiction on any matter.

(A) True

(B) False

Answer : (A)

9. The United States Supreme Court can review any case decided by any of the federal courts of appeals.

(A) True

(B) False

Answer : (A)

10. The use of evidence outside the pleadings distinguishes the motion for summary judgment from the motion for judgment on the pleadings.

(A) True

(B) False

Answer : (A)

11. Before a trial, the plaintiff can file a motion to dismiss.

(A) True

(B) False

Answer : (A)

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12. A *justiciable controversy* is a case in which the court's decision-the "justice" that will be served-will be controversial.

(A) True

(B) False

Answer : (B)

13. To have standing to sue, a party must have a sufficient stake in a matter to justify seeking relief through the court system.

(A) True

(B) False

Answer : (A)

14. An answer can admit to the allegations made in a complaint.

(A) True

(B) False

Answer : (A)

15. A motion for summary judgment may be made before, during, or after a trial.

(A) True

(B) False

Answer : (B)

16. Only a defendant may file a motion for summary judgment.

(A) True

(B) False

Answer : (B)

17. State supreme courts generally deny most appeals.

(A) True

(B) False

Answer : (A)

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18. An appellate court can reverse the decision of a trial court that erred.

(A) True

(B) False

Answer : (A)

19. A trial commences with the plaintiff's attorney's direct examination of the first witness.

(A) True

(B) False

Answer : (B)

20. After the defense concludes its presentation, the attorneys present closing arguments.

(A) True

(B) False

Answer : (A)

21. A motion for a new trial will be granted only if the trial judge feels that it is appropriate to grant a judgment for the other side.

(A) True

(B) False

Answer : (B)

22. A case is *remanded* when it is sent back to a trial court for further proceedings consistent with the opinion of the appellate court.

(A) True

(B) False

Answer : (A)

23. Small claims courts are inferior trial courts.

(A) True

(B) False

Answer : (A)

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24. In a few states, in suits brought in small claims courts, lawyers are not allowed.

(A) True

(B) False

Answer : (A)

25. A federal case typically originates in a state court.

(A) True

(B) False

Answer : (B)

26. Any relevant material, including information stored electronically, can be the object of a discovery request.

(A) True

(B) False

Answer : (A)

27. At the beginning of a trial, only the defendant's attorney makes an opening statement.

(A) True

(B) False

Answer : (B)

28. *Interrogatories* are written questions for which written answers are prepared by a judge.

(A) True

(B) False

Answer : (B)

29. *Discovery* is the process of obtaining information from an opposing party before trial.

(A) True

(B) False

Answer : (A)

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30. The term *alternative dispute resolution* refers to any method for resolving a dispute outside the traditional judicial process.

(A) True

(B) False

Answer : (A)

31. Negotiation is the most complex form of alternative dispute resolution.

(A) True

(B) False

Answer : (B)

32. No court offers mediation as an option before a case goes to trial.

(A) True

(B) False

Answer : (B)

33. In mediation, the mediator proposes a solution and makes a decision resolving the dispute.

(A) True

(B) False

Answer : (B)

34. Arbitration that is mandated by a court is often binding on the parties.

(A) True

(B) False

Answer : (B)

35. A court's review of an arbitrator's award may be restricted.

(A) True

(B) False

Answer : (A)

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MULTICHOICE

36. Flo wants to file a suit against Gerry. For a court to hear the case,

(A) Gerry must agree.

(B) the court must have jurisdiction.

(C) the parties must have no minimum contacts with each other.

(D) both parties must own property.

Answer : (B)

37. Huey, a resident of Illinois, owns a warehouse in Indiana. A dispute arises over the ownership of the warehouse with Jac, a resident of Kentucky. Jac files a suit against Huey in Indiana. Regarding this suit, Indiana has

(A) federal jurisdiction.

(B) *in personam* jurisdiction.

(C) *in rem* jurisdiction.

(D) no jurisdiction.

Answer : (C)

38. A Rhode Island state court can exercise jurisdiction over Standard Business Corporation, an out-of-state defendant, if Standard has minimum contacts with

(A) the state.

(B) the United States.

(C) any lawyer or law firm.

(D) any of the choices.

Answer : (A)

39. Milo files a suit against Nick in an Ohio state court, noting that Nick operates a Web site through which Ohio residents have done substantial business with him. The court is most likely to have jurisdiction over Nick if Milo's claim arises from

(A) anything an Ohio resident has done.

(B) Nick's Web site activities.

(C) nothing an Ohio resident has done.

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(D) something other than Nick's Web site.

Answer : (B)

40. David, an Alabama resident, files a suit in an Alabama court against QuickAds, an Internet company based in Georgia that provides advertising services. QuickAds only contact with persons in Alabama has been through QuickAds's passive advertising. The Alabama court is

(A) likely to have jurisdiction over the case.

(B) not likely to have jurisdiction over the case.

(C) likely to refer the case to a higher district court.

(D) likely to refer the case to an appellate court.

Answer : (B)

41. Lazlo's Bikes, Inc., a firm in Minnesota, advertises on the Web. A court in North Dakota would be most likely to exercise jurisdiction over the firm if it

(A) did substantial business with North Dakota residents over the Internet.

(B) interacted with any North Dakota resident through its Web site.

(C) only engaged in passive advertising on the Web.

(D) suddenly removed its ad from the Internet.

Answer : (A)

42. Mary files a suit against Nichelle in a state court over an employment contract. The case proceeds to trial, after which the court renders a verdict. The case is appealed to an appellate court. After the state's highest court's review of *Mary v. Nichelle*, a party can appeal the decision to the United States Supreme Court if

(A) a federal question is involved.

(B) a question of state law remains unresolved.

(C) the party is unsatisfied with the result.

(D) the state trial and appellate court rulings are different.

Answer : (A)

43. Olivia, a citizen of Nebraska, wants to file a suit against Micah, a citizen of Kansas. Their diversity of citizenship may be a basis for

(A) no court to exercise jurisdiction.

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(B) a federal court to exercise original jurisdiction.

(C) a state court to exercise appellate jurisdiction.

(D) the United States Supreme Court to refuse jurisdiction.

Answer : (B)

44. Kari and Lillian, who are citizens of Mississippi, are involved in a case related to the adoption of their child. Over this case, Mississippi state courts have

(A) concurrent jurisdiction with federal courts.

(B) concurrent jurisdiction with other state courts.

(C) exclusive jurisdiction.

(D) no jurisdiction.

Answer : (C)

45. D'Antoni files a suit in a federal district court against Enya. D'Antoni loses the suit, appeals to the U.S. Court of Appeals for the Ninth Circuit, and loses again. D'Antoni asks the United States Supreme Court to hear the case. The Court is

(A) not required to hear the case.

(B) required to hear the case because D'Antoni lost in a federal court.

(C) required to hear the case because D'Antoni lost in a lower court.

(D) required to hear the case because it is an appeal.

Answer : (A)

46. The case of *Max v. National Credit Co*. is heard in a trial court. The case of *O! Boy! Ice Cream Co. v. Pecan Corp.* is heard in an appellate court. The difference between a trial and an appellate court is whether

(A) a trial is being held.

(B) the court is appealing.

(C) the parties question how the law applies to their dispute.

(D) the subject matter of the case involves complex facts.

Answer : (A)

47. Taylor, a citizen of Utah, files a suit in a Utah state court against Veritas Sales Corporation, a

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Washington state company that does business in Utah. The court has original jurisdiction, which means that

(A) the case is being heard for the first time.

(B) the court has a unique method of deciding whether to hear a case.

(C) the court has unusual procedural rules.

(D) the subject matter of the suit is interesting and new.

Answer : (A)

48. Carol files a suit against Duffy in a state trial court and loses. Carol

(A) cannot take her case any higher in the court system.

(B) can insist that the United States Supreme Court hear her case.

(C) can plead her case before an appellate court.

(D) can plead her case before a small claims court.

Answer : (C)

49. Isabel and Josh engage in a business transaction that leads to a dispute. Isabel initiates a lawsuit against Josh by filing a complaint. The sheriff serves Josh with a summons. If Josh chooses to ignore it,

(A) Isabel must file an amended complaint.

(B) Isabel will have a judgment entered in her favor.

(C) Josh must be served with a second summons.

(D) Josh will have a judgment entered in his favor.

Answer : (B)

50. Ballpark Sports field, Inc., files a suit against Concessions & Tailgate Services. The document that informs Concessions & Tailgate that it must file an answer within a specified time period is

(A) the answer.

(B) the complaint.

(C) the writ of *certiorari*.

(D) the summons.

Answer : (D)

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51. In a suit by the National Forest Preservation Organization (NFPO) against Old Growth Logging, Inc., NFPO serves a written request for Old Growth to admit the truth of matters relating to the trial. Old Growth's admission in response is the equivalent of

(A) an admission in court.

(B) a statement to the media.

(C) information to which Old Growth has a right of privacy.

(D) irrelevant evidence.

Answer : (A)

52. Gilbert wants to initiate a suit against Healthways Insurance Company by filing a complaint. The complaint should include

(A) an explanation of the proof to be offered at trial.

(B) a statement refuting any defense that the defendant might assert.

(C) a motion for judgment on the pleadings.

(D) a statement alleging the facts showing the court has jurisdiction.

Answer : (D)

53. Gabrielle files a suit against Hard ‘n Fast Adhesives, Inc. Hard ‘n Fast responds that even if Gabrielle's statement of the facts is true, according to the law Hard n' Fast is not liable. This is

(A) a counterclaim.

(B) a motion for judgment on the pleadings.

(C) a motion for summary judgment.

(D) a motion to dismiss.

Answer : (D)

54. Sofia files a suit against Turista Airlines, Inc. Turista responds that it appears from the pleadings that the parties do not dispute the facts and the only question is how the law applies to those facts. Turista supports this response with witnesses' sworn statements. This is

(A) a counterclaim.

(B) a motion for judgment on the pleadings.

(C) a motion for summary judgment.

(D) a motion to dismiss.

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Answer : (C)

55. Mediocrité, Inc., makes and sells goods that are substandard. Nancy, who has never bought or used a Mediocrité item, files a suit against the firm, alleging that its products are defective. The company's best ground for dismissal of the suit is that Nancy does *not* have

(A) *certiorari*.

(B) jurisdiction.

(C) standing.

(D) venue.

Answer : (C)

56. Destiny and Enzo engage in a business transaction. When a dispute arises, Destiny initiates a lawsuit against Enzo by filing a complaint. If Enzo files a motion to dismiss, he is asserting that

(A) Destiny did not state a claim for which relief can be granted.

(B) Destiny's statement of the *facts* is not true.

(C) Destiny's statement of the *law* is not true.

(D) Enzo suffered greater harm than Destiny.

Answer : (A)

57. Nationwide Trucking wants to initiate a suit against Open Pit Mining Corporation by filing a complaint. The complaint should include a statement alleging the facts establishing

(A) an explanation to refute any defense Open Pit might assert.

(B) a motion for summary judgment.

(C) a motion to dismiss.

(D) Nationwide's basis for relief.

Answer : (D)

58. Avery files a suit against Beth, alleging that she failed to pay him for two months' labor at her Choice Cheese Factory. Beth denies the charge and claims that Avery breached their contract to produce a certain quantity of cheeses and owes Beth damages for the breach. Beth's claim is

(A) a *contra* charge.

(B) a counterclaim.

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(C) a counterpoint.

(D) a cross-complaint.

Answer : (B)

59. Owen files a suit against Perry. If Perry fails to respond,

(A) Owen must appeal the case to a different court.

(B) Perry's failure to respond will be considered a denial.

(C) Owen will not be awarded a remedy.

(D) Perry will have a default judgment entered against him.

Answer : (D)

60. Ronnie files a suit in a state court against Sheri. The case proceeds to trial, after which the court renders a verdict. If either party appeals, the clerk of the *trial* court will send to the clerk of the *appellate* court within a prescribed period of time

(A) a brief including the arguments of both parties.

(B) a copy of the record on appeal.

(C) an explanation for the verdict.

(D) a statement of the grounds for reversal.

Answer : (B)

61. Lorena files a suit against Milton. Before going to trial, the parties, with their attorneys, meet to try to resolve their dispute. A third party suggests or proposes a resolution, which the parties may or may not decide to adopt. This is

(A) arbitration.

(B) mediation.

(C) negotiation.

(D) not a legitimate form of dispute resolution.

Answer : (B)

62. First Community Credit Union and General Hydraulics. Inc., have their dispute resolved in arbitration. Before determining the award, the arbitrator meets with First Community's representative to discuss the dispute without General Hydraulics' representative being present. If this meeting substantially prejudices General Hydraulics' rights, a court will most likely

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(A) compel arbitration.

(B) review the merits of the dispute.

(C) review the sufficiency of the evidence.

(D) set aside any award.

Answer : (D)

63. Suki files a suit against Travis. If this suit is like most cases, it will be

(A) dismissed during a trial.

(B) settled before a trial.

(C) resolved only after a trial.

(D) transferred to a higher court.

Answer : (B)

64. Liz and Moss disagree over the amount due under their con-tract. To avoid involving any third party in the resolution of their dispute, Liz and Moss might prefer to use the alternative dispute resolution method of

(A) arbitration.

(B) litigation.

(C) mediation.

(D) negotiation.

Answer : (D)

65. Farmers Pantry Products Inc. and Market Grocers LLC dispute a term in their contract. If Farmers Pantry and Market Grocers have a long-standing business relationship that they would like to continue, they may prefer to settle their dispute through mediation because

(A) the case will be heard by a jury.

(B) the dispute will eventually go to trial.

(C) the process is not adversarial.

(D) the resolution of the dispute will be decided an expert.

Answer : (C)

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66. If Cornel and Deanna resolve their dispute by having a neutral third party render a binding decision, they will have used the method of

(A) arbitration.

(B) conciliation.

(C) intervention.

(D) mediation.

Answer : (A)

67. SPF Sunscreen Corporation and Tanner agree to resolve their dispute through arbitration. The arbitrator's decision is called

(A) a conclusion of law.

(B) a finding of fact.

(C) an award.

(D) a verdict.

Answer : (C)

68. Service Employees International Union and Timberline Products, Inc., have their dispute resolved in arbitration. The arbitrator arbitrates issues that the parties did not agree to submit to arbitration. This is a ground for a court to

(A) none of the choices.

(B) review the merits of the dispute.

(C) review the sufficiency of the evidence.

(D) set aside the award.

Answer : (D)

69. Millie and Noble dispute the quality of a set of patio furniture sold over the Internet. They agree to resolve their dispute in Come2Terms.com, an online forum. Like most online forums, Come2Terms.com applies

(A) general, universal legal principles.

(B) the provisions of the Federal Arbitration Act.

(C) jurisprudence developed by the United Nations.

(D) the law of California (or another specific U.S. jurisdiction).

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Answer : (A)

70. To resolve a dispute in nonbinding arbitration, Alyson in Baltimore and Chuck in Denver utilize eResolve, an online dispute resolution (ODR) service. This limits these parties' recourse to the courts

(A) not at all.

(B) until the ODR service has issued a decision.

(C) with respect to any dispute arising between the parties.

(D) with respect to this dispute only.

Answer : (A)

ESSAY

71. Norwest Trucking Corporation files a suit in a state court against Bob's Service Company (BSC), and wins. BSC appeals the court's decision, asserting that the evidence presented at trial to support Norwest's claim was so scanty that no reasonable jury could have found for the plaintiff. Therefore, argues BSC, the appellate court should reverse the trial court's decision. Is the appellate court likely to reverse the trial court's findings with respect to the facts? If not, why not? What are an appellate court's options after reviewing a case?

Graders Info :

An appellate court will reverse a lower court's decision on the basis of the facts if the evidence does not support the findings or if it contradicts them. Appellate courts normally defer to a judge's decision with regard to the facts of a case, however, for a number of reasons. First, trial judges routinely sit as fact finders. As a result, they develop a particular expertise in determining what kind of evidence and testimony is reliable and what kind is not. Second, trial judges and juries have the opportunity to observe witnesses and tangible evidence first hand. The appellate court sees only a cold record of the trial court proceedings and therefore cannot make the kind of judgments about the credibility of witnesses and the persuasiveness of evidence that can be gleaned only from first hand experience. (There are also constitutional reasons for an appellate court to defer to a jury verdict. If, based on the evidence presented to a jury, a reasonable person could have come to the same decision that the jury came to, an appellate court cannot reverse the jury's decision with regard to the facts because this would, in essence, take away a person's right to a jury trial.) An appellate court's options after reviewing a case are to affirm the trial court's judgment, to reverse it in whole, to reverse it in part, to modify the decision, or to remand the case for further proceedings.

72. Tech Performance, Inc., completes programming and other tech services for Uno IT Products Corporation. When Uno's computer system crashes, it loses $500,000 worth of business and pays $100,000 to have the system reprogrammed. Uno IT announces to the media that the crash was due to Tech Performance's incompetence and files a complaint in a federal court against the firm. What are Tech Performance's options in response?

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Graders Info :

In response to the complaint, Tech Performance (the defendant) may file an answer in which the firm admits the statements or allegations set out in Uno IT's complaint or denies them and sets out any defenses that Tech Performance may have. (If Tech Performance admits to the allegations, a judgment will be entered in favor of Uno IT. If Tech Performance denies the allegations, the matter will proceed.) In the answer, Tech Performance may assert an affirmative defense-that is, admit the truth of the complaint but raise new facts to show that the firm should not be held liable for the damage sustained by Uno IT. (The sorts of facts these might be and the legal effect they might have are details explained in later chapters in this text.) Tech Performance could also deny Uno IT's allegations and assert a counter claim alleging that the crash occurred as a result of something Uno IT did and that Uno IT owes Tech Performance damages for the harm done to its reputation. Uno IT would have to submit an answer to the counterclaim. Instead of filing an answer, Tech Performance might file a motion to dismiss. This motion might contend that Uno IT failed to state a claim for which relief can be granted-in other words, even if the facts presented in the complaint are true, their legal consequences are such that there is no reason to go ahead with the suit. Other grounds for this motion include improper service of process and the court's lack of jurisdiction or venue. (If the motion is denied, Tech Performance will be given time to file an answer. If the motion is granted, Uno IT will be given time to file an amended complaint.)

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