Chapter 2

THE COURT SYSTEM AND DISPUTE RESOLUTION

RESTATEMENT

A court is a government-established tribunal created to hear and decide matters brought before it. Courts have specific types or classes of cases assigned to them and over which they have authority; referred to as jurisdiction. The types of jurisdiction include original jurisdiction which is the authority to conduct the first proceedings in the case. Appellate jurisdiction is the authority to review the proceedings of other courts. Courts can have broad authority over a variety of cases, or general jurisdiction as with a trial court, or can have special or limited jurisdiction as with juvenile or probate courts.

There are federal and state court systems. The federal court system consists of specialty courts such as tax court and bankruptcy courts, a general trial court called federal district court, the U.S. court of appeals and the U.S. Supreme Court. State court systems have a general trial court, called a county, circuit or superior court, an appellate court, and a state supreme court.

When a dispute is taken to court, it begins with a plaintiff filing a complaint. The defendant answers the complaint by denying the allegations or counterclaiming. The parties may be represented by lawyers who are officers of the court trained to represent others in the presentment of a case.

Following the pleadings in a case, the parties begin discovery whereby they determine the facts of the case through depositions, requests for production and interrogatories.

Based on the evidence obtained during discovery, the parties may move for summary judgment which is a decision in a case in which the facts are not in dispute.

A trial begins with voir dire, or the process of questioning jurors for bias or arbitrary exclusion through the use of peremptory challenges. The trial proceeds with opening statements and then the plaintiff's case. The order for questioning witnesses is direct, cross-, redirect, and recross-examination. A directed verdict can be granted if the plaintiff's proof was insufficient to establish the elements of the case. Following a jury verdict, the losing party can move for a judgment N.O.V. or a new trial. The collection of a judgment is obtained through execution on a writ of execution or garnishment.

Other methods, besides litigation, that can be used to settle disputes are called alternative dispute resolution. The methods of alternative dispute resolution include arbitration, mediation, medarb, reference to third person, association tribunal, summary jury trial, rent-a-judge, minitrial, contract provisions and ombudsmen. These methods vary in formality but are all non-judicial means for dispute resolution.

STUDENT LEARNING OUTCOMES

LO.1: Explain the federal and state court systems.

LO.2: Describe court procedures.

LO.3: List the forms of alternative dispute resolution and distinguish among them.

INSTRUCTOR'S INSIGHTS

Break the chapter down into three components – related Learning Outcomes are indicated in ( ):

1. *What are the court systems and names of the various courts?* (LO.1)

   - Cover the federal court system
   - Explain generally how state court systems work
   - Discuss the types of courts and their jurisdiction

2. *How does a case go through a court?* (LO.2)

- List the parties involved in a court case
- Explain the initial steps in a law suit
- Describe how a trial proceeds
- Discuss the parties' options after a trial is finished

3. *What are the alternatives to litigation for dispute resolution?* (LO.3)

- Explain arbitration
- Discuss mediation
- Cover MedArb
- Define and discuss reference to a third person, association tribunals, summary jury trials, rent-a-judge, mini-trial, contract provisions, and ombudsmen as alternative means of dispute resolution

CHAPTER OUTLINE

I. What are the Court Systems and Names of the Various Courts?

A. Types of courts

1. Subject matter jurisdiction – courts have authority based on type of case

2. Original jurisdiction – trial courts; where case is heard initially

3. General jurisdiction – authority of broad subject matter in cases

4. Limited or special jurisdiction – narrow scope of subject matter; e.g., probate, domestic relations, juvenile courts

5. Appellate jurisdiction – court that reviews the work of other courts

a. Reversible error – mistake in lower court with the potential to affect the outcome
b. Court can affirm, reverse, or remand

CASE BRIEF: *Stanford v. V.F. Jeanswear, LP*
84 So.3d 825 (Miss. App. 2012)

FACTS: Mary Kay Stanford (Stanford) was driving a truck for V.F. in late evening of February 7, 2006 when she began to feel nauseous. She pulled into a truck scale house to rest for the evening. She parked the truck, and as she attempted to climb into the sleeper compartment, she tripped over a cooler. Stanford fell into the sleeper compartment and hit her head on the bed rail; the fall knocked her unconscious. Stanford's husband, William Stanford, who was riding with her, attempted to revive her. After she regained consciousness, William offered to take her to the emergency room. Stanford declined and decided to stay in the sleeper compartment and rest until morning. Stanford contacted V.F. dispatch and made the notifications to the company about her injury. The company arranged for the two to return home.

On February 8, 2006, Stanford went to Dr. Allie Prater for an evaluation of her injuries. Dr. Prater's notes reflect that Stanford's chief complaints were blackouts, syncope, and slurred speech. Stanford told Dr. Prater that her symptoms had begun one week prior to her visit. Dr. Prater's notes do not mention Stanford's fall in the truck or that she was knocked unconscious. Dr. Prater diagnosed Stanford with benign essential hypertension and ordered blood tests, an ultrasound, and a brain MRI.

Upon receiving the test results, Dr. Prater referred Stanford to Dr. Glenn Crosby, a neurosurgeon. Before seeing Dr. Crosby, Stanford presented to Dr. Johnny Mitias, an orthopedic surgeon, on March 15, 2006. There was no mention of her fall in Dr. Mitias's notes. In fact, he noted that "[t]here was no injury that started this." Dr. Mitias diagnosed Stanford with right sciatica and ordered physical therapy.

On March 31, 2006, Dr. Crosby diagnosed Stanford with symptomatic cervical spondylosis with

osteophyte complex and ordered physical therapy. The physical therapy aggravated Stanford's symptoms, so Dr. Crosby recommended a cervical diskectomy and fusion at C3–4. Dr. Crosby performed the recommended surgeries on August 8, 2006. After surgery, Stanford began complaining of pain in her left buttock and down her left leg. Dr. Crosby ordered a lumbar MRI, which revealed a large rupture of the lumbar spine at L4. On November 28, 2006, Dr. Crosby performed a diskectomy at the L4 level.

Dr. Crosby's notes indicate that Stanford "had a fall this past year" that may have aggravated her back. However, Dr. Crosby's notes do not mention that Stanford suffered a fall at work until her follow-up visit with Dr. Crosby on May 30, 2008. Dr. Crosby testified in his deposition that prior to that visit, Stanford had not disclosed any history of an accident at work. However, he testified that the problems with her neck and back were probably related to her work injury.

A hearing was held before an administrative judge (AJ), who denied Stanford's claim for workers' compensation benefits. Stanford appealed the AJ's decision to the Commission, which affirmed the AJ's decision. Stanford appealed the Commission's decision to the Circuit Court of Union County, and the circuit court affirmed the Commission's decision denying benefits. Stanford then appealed.

ISSUE: Was the admission of the evidence about the cruise and horseback riding and hairy chest contest prejudicial and a basis for reversible error?

HOLDING: No,

REASONING: The evidence was damaging to Stanford's case but was not prejudicial particularly given that the AJ let in all sorts of evidence for Stanford from family and friends. The court affirmed the denial of workers' compensation benefits because the evidence indicated clearly that Stanford did not tell the doctors about her work injury. The testimony about the cruise and the videos of horseback riding were damaging to Stanford's case, but they did not indicate bias particularly because the AJ had allowed evidence from Stanford's husband, friends, and relatives about her condition. Because evidence is damaging to one party does not mean that it should not be admitted.

B. Federal court system (See Figure 2-1)

1. Federal district court (See Figure 2-2 in text)

    a. Trial court
    b. General jurisdiction

        i. U.S. is a party
        ii. Cases between citizens of different states ($75,000 or more)
        iii. Cases arising under U.S. Constitution or statute

    c. Each state is at least one federal district
    d. Specialty courts

        i. Limited jurisdiction
        ii. Bankruptcy, tax, Indian tribal court

2. U.S. Court of Appeals

    a. Twelve geographic circuits (districts grouped together) plus one additional circuit
    b. One court of appeals per circuit
    c. Three-judge panel reviews cases

3. U.S. Supreme Court

    a. Appellate jurisdiction

        i. U.S. Courts of Appeals
        ii. State supreme courts when constitutional issue is involved

    b. Review is granted pursuant to *writ of certiorari* process
    c. Trial court for ambassadors, public ministers, consuls and state vs. state

C. State court systems (See Figure 2-3 in text)

1. General trial courts: civil and criminal jurisdiction
2. Specialty courts – probate, family
3. City, municipal, and justice courts
4. Small claims courts
5. State appellate courts
6. State supreme courts

II. How Does a Case Go Through a Court? – Court Procedure

A. Participants in the court system

1. Plaintiffs – initiates proceeding (criminal case: prosecutor)
2. Defendant – party against whom proceedings are brought
3. Judge – presides over proceedings
4. Jury – citizens sworn to reach a verdict

B. Which law applies – conflicts

1. Law of state in which court is located governs procedural questions
2. Law of state in which contract was made governs
3. Choice of law provisions in contracts govern

C. Initial steps in a lawsuit

1. Complaint – states cause of action – commencement of lawsuit
2. Service of process – notifies defendant
3. The defendant's response and the pleadings
    a. Answer and/or counterclaim – also called the pleadings
    b. Motion to dismiss – demurrer
    c. Deny
4. Discovery – process of learning the evidence that exists prior to trial
    a. Deposition – sworn testimony not in court room; can be used to impeach differing recollection or testimony at trial
    b. Interrogatories – questions answered under oath
    c. Requests for production of documents – obtaining paper evidence
5. Motion for summary judgment – asks for decision when facts are not in dispute
6. Designation of expert witnesses

D. The trial

1. Jury selection
    a. *Voir dire* examination – use Martha Stewart example from text and on website update
    b. Challenge for cause – bias, conflict
    c. Peremptory or arbitrary challenge – lawyer need not give reason

2. Opening statements

3. Presentation of evidence

    a. Witnesses are examined by direct, cross-, re-direct, and recross-examination
    b. Roles change according to who is presenting his/her case

4. Motion for directed verdict granted if plaintiff did not establish case

DISCUSSION POINTS: Ethics & the Law
Honesty, Lawyers, and BP Claims

The lawyers should have declared their conflicts of interest, which would have made them ineligible to participate in representing claimants in some cases and required public disclosure in others. At a minimum, they all should have disclosed their interests to the government supervising the claims office.

They did not make the disclosures because they would have lost out on the amount to be collected from the funds. As the final report on the fund concluded, there were fraudulent claims, double payment, and conflicts of interests that resulted in abusive and nonexistent claims.

DISCUSSION POINTS: Thinking Things Through
Why Do We Require Sworn Testimony?

Discuss with students the inconsistency in the statements. The oath makes a difference in what is said. Discuss the ethics of Microsoft's differing positions.

5. Closing argument or summation

6. Motion for mistrial

DISCUSSION POINTS: E-Commerce & Cyberlaw
Google's Impact on Trials

What are the implications of your Internet connections? Should you always disclose that you are friends with someone involved in the case during jury selection? Discuss how often Google has become an issue in cases. Discuss the importance of jurors using only the evidence presented. Discuss importance of following the Judges' cautions and being forthright.

7. Jury instructions

8. Jury verdict or mistrial if deadlocked

9 Motion for new trial or judgment N.O.V. (judgment *non obstante verdicto*)

E. Posttrial procedures: Recovery

1. Costs

2. Attorney fees

3. Execution of judgment and suit

4. Writ of execution or writ of garnishment

III. What are the Alternatives to Litigation for Dispute Resolution (ADR)? (See Figure 2-4 in text)

A. Arbitration

1. Means of avoiding expensive legal costs

2. Federal Arbitration Act and Uniform Arbitration Act govern

3. Arbitration can be mandatory or elective

4. Scope of arbitration: as broad as possible

5. Finality of arbitration

    a. Usually provided for by the parties
    b. If non-binding, any litigation begins anew for a trial de novo

B. Mediation

1. No authority to make a decision

2. Third party is a go-between to facilitate communication

C. MedArb – party has authority to hear case and suggest resolution to each side

D. Expert panel: a method to focus in on technical issues and singular issues as in construction contracts

E. Reference to third person: case is given to outsider(s) – ordinarily, parties agree that the decision is final

F. Association tribunals

1. These groups have a board or committee to settle disputes

2. The National Association of Home Builders requires arbitration

G. Summary jury trial: a dry run or mock trial to see how the case is perceived

H. Rent-a-Judge: an experienced judge is hired to hear the case

I. Minitrial: heart of dispute is heard; parties agree to limit issues of dispute

J. Contract provisions can set parameters of ADR, type of ADR, etc.

ANSWERS TO QUESTIONS AND CASE PROBLEMS

1. *Trial process.* Steps in litigation:

    1. Complaint by plaintiff
    2. Service of process on defendant
    3. Defendant's answer: deny, counterclaim, admit
    4. Discovery: depositions, interrogatories, requests for production
    5. Motion for summary judgment (if no factual issues)
    6. Trial

        a. Jury selection: voir dire, challenge for cause, peremptory challenge
        b. Opening statements
        c. Plaintiff's case: direct, cross, redirect, recross
        d. Motion for directed verdict
        e. Defendant's case
        f. Summation
        g. Jury instructions
        h. Jury verdict or mistrial (deadlocked)
        i. Motion for new trial or judgment
        j. Recovery: fees, execution, garnishment

2. *Arbitration*. The benefits are, in theory, that alternatives are faster. However, these arbitration methods are now dragging out nearly as much as a trial. ADR allows for no public hearing and all the problems that go along with

the media covering a contract dispute. These methods allow the parties to gain the perspective of an outside party, something that often needs to be done in order to move the parties forward in their negotiations.

3. *Jurisdiction*. Ralph's case will go to federal district court because it is a trial involving a violation of a federal statute.

4. *Trial process.* No. Jerry could be removed for cause. There is a conflict with his independence.

5. A*rbitration*. The danger feared by the three developers is a real one. It would be better for them to agree to submit the matter to arbitration. Persons who were experienced with real estate developments and the law of such developments could be selected as arbitrators; this would eliminate the potential dangers.

6. *Mandatory arbitration clauses.* The U.S. Supreme Court held that the arbitration clause was valid because (1) there was strong federal policy favoring arbitration; and (2) the party challenging the validity of an arbitration clause has the burden of showing that arbitration is an unsuitable method for resolving the dispute. In this case, Mrs. Randolph had alleged that the arbitration costs made pursuit of her remedies too expensive. However, she had not presented evidence to indicate why arbitration would be more expensive than litigation. [*Green Tree Financial Corp. v. Randolph*, 531 U.S. 79]

7. *Expert witnesses; evidence*. The answer can be found in the *Yates* case. When an expert does not disclose evidence that helps to evaluate his or her credibility, there has been a reversible error that is grounds for reversal. This information that the expert has been a defendant in a case and lost goes to their expertise and credibility both.

8. *Types of courts.* (a) Small claims court – original; limited
   (b) U.S. Bankruptcy court – original; limited
   (c) Federal district court – general; original
   (d) U.S. Supreme Court – appellate; original
   (e) Municipal court – limited; original
   (f) Probate court – limited; original
   (g) Federal or U.S. Court of Appeals – appellate

9. *Discovery.* Yes, the Pension Fund would be entitled to have access to determine whether Mr. Ellison had said anything that contradicted his public statements. The court did, in fact, allow the Pension Fund to have access. However, all but 15 of the e-mails had been destroyed. The court did not sanction Mr. Ellison, but it did allow the jury to have an instruction read that allowed them to presume that those e-mails contained information that would have been adverse to Mr. Ellison. [*Nursing Home Pension Fund, Local 144 v. Oracle Corp.,* 380 F.3d 1226 (9th Cir.)]

10. *Federal Arbitration Act*. Yes. When the seller delivered pursuant to the purchase order, it became bound by the terms of the purchase order, including the arbitration clause of that order. Because the buyer and seller were corporations of different states, the contract between them related to an interstate transaction. The Federal Arbitration Act was therefore applicable, and the arbitration agreement was made binding by the act. Both parties were required to arbitrate the dispute. [*Application of Mostek Corp.,* 502 N.Y. S.2d 181 (App. Div.)]

11. *Arbitration/mandatory clauses*. The presumption that arbitration clauses in contracts (here in a collective bargaining agreement) are valid and enforceable does not extend to those statutory rights that parties to the contract may have. In this situation, the employee had a clear right to pursue remedies under federal statute and by litigation. For that right to be waived and the case to go to arbitration, the contract must expressly provide that these statutory rights are waived. The waiver must be clear and unmistakable and, in this case, the language was not enough to indicate a waiver of right to litigation under the ADA. The arbitration clause in the union collective bargaining agreement is too general to indicate a waiver of rights. The court reversed and remanded the case for trial. Distinguish for the students the difference between these litigation rights and generic statutory protections, such as in the *Green Tree* case, that provide simple remedies and not a specific right of litigation. Also, point out that union, disability and labor issues have an extensive federal statutory scheme with rights, protections and processes that would require more than a generic arbitration clause. [*Wright v. Universal Maritime Service Corp.,* 525 U.S. 70]

12. *Trial; jury selection*. The lawyers can obtain information about prospective jurors through questionnaires as well as the process of *voir dire*. Some of the background questions on *voir dire* are place of employment and whether they know any of the parties in the case. Mr. Guber could be excused because of his relationship with Ms. Ryder. The prosecuting attorney could find this out using *voir dire*, the process of questioning the jury panel for screening them for bias, connection and relationship. The attorney could use a challenge for cause or a peremptory challenge. In the Ryder case, both sides let Mr. Guber remain and he served on the jury after his assurances that he would be impartial. Ms. Ryder was found guilty of theft and burglary. She was sentenced to

community service and probation. [Rick Lyman, “For the Ryder Trial, a Hollywood Script,” *New York Times,* November 3, 2002, SL-1]

13. *Binding arbitration; finality.* Generally arbitration awards are not set aside by courts. Unless there is fraud involved, the decision stands even when it appears that the arbitrator’s decision is very different from expectations. Arbitration is set aside only in rare circumstances (misconduct) of it the parties' agreement/contract allows for an appeal.

14. *Discovery evidence*. Trial. On cross-examination, the lawyer can confront the witness on the business practice.

15. *Arbitration* Arbitration agreements can be enforced under Federal Arbitration Act (FAA) without contravening policies of congressional enactments giving employees specific protection against discrimination prohibited by federal law.

    Section 1 of the Federal Arbitration Act (FAA) excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. All but one of the Courts of Appeals which have addressed the issue interpret this provision as exempting contracts of employment of transportation workers, but not other employment contracts, from the FAA's coverage. A different interpretation has been adopted by the Court of Appeals for the Ninth Circuit, which construes the exemption so that all contracts of employment are beyond the FAA's reach, whether or not the worker is engaged in transportation. It applied that rule to the instant case. The U.S. Supreme Court decided that the Ninth Circuit was wrong and that the better interpretation is to construe the statute, as most of the Courts of Appeals have done, to confine the exemption to transportation workers. Adams is subject to arbitration and such arbitration does not deprive him of his rights under the antidiscrimination laws. [*Circuit City Stores, Inc. v. Adams,* 532 U.S. 105]

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Twomey – Jennings: Anderson's Business Law, 23 e
End of Chapter: CPA Questions and Answers

CORRECT ANSWERS IN BOLDFACE.

Chapter 9: Intellectual Property Rights and the Internet

1. Multicomp Company wishes to protect software it has developed. It is concerned about others copying this software and taking away some of its profits. Which of the following is true concerning the current state of the law?
    a. **Computer software is generally copyrightable.**
    b. To receive protection, the software must have a conspicuous copyright notice.
    c. Software in human readable source code is copyrightable but machine language object code is not.
    d. Software can be copyrighted for a period not to exceed 20 years.

2. Which of the following is not correct concerning computer software purchased by Gultch Company from Softtouch Company? Softtouch originally created this software.
    a. Gultch can make backup copies in case of machine failure.
    b. **Softtouch can typically copyright its software for at least 75 years.**
    c. If the software consists of compiled computer databases, it cannot be copyrighted.
    d. Computer programs are generally copyrightable.

3. Using his computer, Professor Bell makes 15 copies (to distribute to his accounting class) of a database in some software he has purchased for his personal research. The creator of this software is claiming copyright. Which of the following is correct?
    a. This is an infringement of copyright, since he bought the software for personal use.
    b. This is not an infringement of copyright, since databases cannot be copyrighted.
    c. This is not an infringement of copyright because the copies were made using a computer.
    d. **This is not an infringement of copyright because of the fair use doctrine.**

4. Intellectual property rights included in software may be protected under which of the following?
    a. Patent law
    b. Copyright law
    c. **Both of the above**
    d. None of the above

Chapter 11: Nature and Classes of Contracts: Contracting on the Internet

1. Kay, an art collector, promised Hammer, an art student, that if Hammer could obtain certain rare artifacts within two weeks, Kay would pay for Hammer's postgraduate education. At considerable effort and expense, Hammer obtained the specified artifacts within the two-week period. When Hammer requested payment, Kay refused. Kay claimed that there was no consideration for the promise. Hammer would prevail against Kay based on:
    a. **Unilateral contract**
    b. Unjust enrichment

c. Public policy
d. Quasi contract

Chapter 12: Formation of Contracts: Offer and Acceptance

1. Able Sofa, Inc., sent Noll a letter offering to sell Noll a custom-made sofa for $5,000. Noll immediately sent a telegram to Able purporting to accept the offer. However, the telegraph company erroneously delivered the telegram to Abel Soda, Inc. Three days later, Able mailed a letter of revocation to Noll, which was received by Noll. Able refused to sell Noll the sofa. Noll sued Able for breach of contract. Able:
    a. Would have been liable under the deposited acceptance rule only if Noll had accepted by mail.
    b. Will avoid liability since it revoked its offer prior to receiving Noll's acceptance.
    c. Will be liable for breach of contract.
    d. Will avoid liability due to the telegraph company's error (Law, #2, 9911).

2. On September 27, Summers sent Fox a letter offering to sell Fox a vacation home for $150,000. On October 2, Fox replied by mail agreeing to buy the home for $145,000. Summers did not reply to Fox. Do Fox and Summers have a binding contract?
    a. No, because Fox failed to sign and return Summers's letter.
    b. No, because Fox's letter was a counteroffer.
    c. Yes, because Summers's offer was validly accepted.
    d. Yes, because Summers's silence is an implied acceptance of Fox's letter (Law, #2, 0462).

3. On June 15, Peters orally offered to sell a used lawn mower to Mason for $125. Peters specified that Mason had until June 20 to accept the offer. On June 16, Peters received an offer to purchase the lawn mower for $150 from Bronson, Mason's neighbor. Peters accepted Bronson's offer. On June 17, Mason saw Bronson using the lawn mower and was told the mower had been sold to Bronson. Mason immediately wrote to Peters to accept the June 15 offer. Which of the following statements is correct?
    a. Mason's acceptance would be effective when received by Peters.
    b. Mason's acceptance would be effective when mailed.
    c. Peters's offer had been revoked and Mason's acceptance was ineffective.
    d. Peters was obligated to keep the June 15 offer open until June 20 (Law, #13, 3095).

Chapter 13: Capacity and Genuine Assent

1. A building subcontractor submitted a bid for construction of a portion of a high-rise office building. The bid contained material computational errors. The general contractor accepted the bid with knowledge of the errors. Which of the following statements best represents the subcontractor's liability?
    a. Not liable, because the contractor knew of the errors.
    b. Not liable, because the errors were a result of gross negligence.
    c. Liable, because the errors were unilateral. Liable, because the errors were material (5/95, Law, #17, 5351).

ANSWERS TO AICPA QUESTIONS

CHAPTER 9
INTELLECTUAL PROPERTY RIGHTS AND THE INTERNET

1. (a) Computer software is covered under the general copyright laws and is therefore usually copyrightable as an expression of ideas. Answer (b) is incorrect because copyrights in general do not need a copyright notice for works published after March 1, 1989. Answer (c) is incorrect because a recent court ruled that programs in both source codes, which are human readable, and in machine readable object code can be copyrighted. Answer (d) is incorrect because copyrights taken out by corporations or businesses are valid for 100 years from creation of the copyrighted item or 75 years from its publication, whichever is shorter.

2. (c) Computer databases are generally copyrightable as compilations. Answer (a) is not chosen because copies for archival purposes are allowed. Answer (b) is not chosen because in the case of corporations or businesses, the copyright is valid for the shorter of 100 years after the creation of the work or 75 years from its date of publication. Answer (d) is not chosen because computer programs are now generally recognized as copyrightable.

3. (d) Under the fair use doctrine, copyrighted items can be used for teaching, including distributing multiple copies for class use. Answer (a) is incorrect because although he originally purchased this software for personal use, he may still use it for his class, in which case, the fair use doctrine applies. Answer (b) is incorrect because databases can be copyrighted as derivative works. Answer (c) is incorrect because the use of the computer is not the issue, but the fair use doctrine is.

4. (c) Both patent and copyright law are used under modern law to protect computer technology rights. Answer (a) is incorrect because copyright law now also protects software. Answer (b) is incorrect because modern law also protects software as patentable. Answer (d) is incorrect because modern law generally protects intellectual property rights in software under both patent law and copyright law.

CHAPTER 11
NATURE AND CLASSES OF CONTRACTS: CONTRACTING ON THE INTERNET

1. (a) The offeror made a promise for an act. When the act was performed, a unilateral contract was created and the offeror is bound to pay. Answer (b) is incorrect because unjust enrichment is generally considered only if there was no contract and the court wishes to provide an "equitable solution." Answer (c) is incorrect because there are no public policy issues involved. Answer (d) is incorrect because a quasi-contract arises only if there was no contract to begin with and the law implies one to prevent an unjust enrichment. Since there was a unilateral contract, there can be no quasi-contract.

CHAPTER 12
FORMATION OF CONTRACTS: OFFER AND ACCEPTANCE

1. (c) If sent by a mode of communication expressly or impliedly authorized by the offeror (e.g., mail or telegram), acceptance of an offer is normally effective on dispatch, even if subsequently delayed or lost. Noll's telegram was an effective acceptance of the offer by Able. The rule applies to any situation in which acceptance is made

in a manner expressly or impliedly authorized. This can include telegraph or telephone as well as mail in most circumstances. In this situation the acceptance was effective on dispatch, before Able's attempted revocation.

2. (b) Common law applies to this contract because it involves real estate. In this situation, Fox's reply on October 2 is a counteroffer and terminates Summers' original offer made on September 27. The acceptance of an offer must conform exactly to the terms of the offer under common law. By agreeing to purchase the vacation home at a price different from the original offer, Fox is rejecting Summers' offer and is making a counteroffer. Answer (a) is incorrect because the fact that Fox failed to return Summers' letter is irrelevant to the formation of a binding contract. Fox's reply constitutes a counteroffer as Fox did not intend to accept Summers' original offer. Answer (c) is incorrect because Summers' offer was rejected by Fox's counteroffer. Answer (d) is incorrect because with rare exceptions, silence does not constitute acceptance.

3. (c) Peters' offer had been revoked. Since revocation notice can be received either directly or indirectly, Mason, in effect, received the revocation notice when he was told the mower had been sold to Bronson; and therefore, Mason's acceptance was ineffective, even though the specified time of the oral contract had not expired. Peters' offer had been revoked prior to Mason's acceptance. There was no obligation on the part of Peters to keep the offer open, since there was no consideration for him to do so.

CHAPTER 13
CAPACITY AND GENUINE ASSENT

1. (a) Where a mistake is made by only one party (a unilateral mistake), the rule is that the mistaken party is bound by the contract unless the nonmistaken party knew of the mistake or should have known of the mistake. In this question, the nonmistaken party knew of the mistake; thus, the mistaken party is not bound by the contract. Whether the mistake was a result of gross negligence is irrelevant.

2. (a) Answer (b) is incorrect because a disaffirmance need not be in writing. Answer (c) is incorrect because a minor can disaffirm at any time during minority or for a reasonable time thereafter regardless of payment. Answer (d) is incorrect because a minor need only return whatever consideration he/she has, even if damaged or lost. Answer (a) is correct because it is still a reasonable time after majority.

CHAPTER 15
LEGALITY AND PUBLIC POLICY

1. (d) There are two types of licensing statutes. First, there are licensing statutes intended primarily for revenue raising. Second, there are licensing statutes (regulatory) intended primarily to protect the public against dishonest or incompetent professionals. An individual without a license can collect his total compensation if the primary purpose of the statute was to raise revenue. However, if the purpose was regulatory in nature (intended to protect the public), the individual can collect nothing since the contract is voidable. Thus, an unlicensed individual who enters into a contract to provide regulated services will not be allowed to enforce the contract or recover even the value of the services rendered.

2. (d) Answer (a), (b), and (c) are correct statements because covenants not to compete must be reasonable in time and geographic scope. The answer is (d) because it is an incorrect statement regarding the value of goodwill.

CHAPTER 16
WRITING, ELECTRONIC FORMS, AND INTERPRETATION OF CONTRACTS

1. (d) The contract terms need not appear in a single document so long as the several documents refer to the same transaction. Only the signature of the party against whom enforcement is sought is required. If the performance *could* occur within a one-year period, the contract is not within the statute and need not be written. Only contracts of $500 or more that involve the sale of goods fall under the Statute of Fraud and must be in writing.

2. (c) The Statute of Frauds requires only that the written contract be signed by the party to be charged, not by all parties to the contract. Answer (a) is incorrect because it is not required that the contract be formalized in a single writing. Two or more documents can be combined to create a sufficient writing to satisfy the Statute of Frauds as long as one of the documents refers to the others. Answer (b) is incorrect because the Statute of Frauds does not require consideration to be fair and adequate. Answer (d) is incorrect because while the Statute of Frauds is applicable to the sale of goods only if the purchase price is $500 or more, it is always applicable to the sale of real estate, regardless of purchase price.

Anderson's Business Law and the Legal Environment

Standard Edition, 23e

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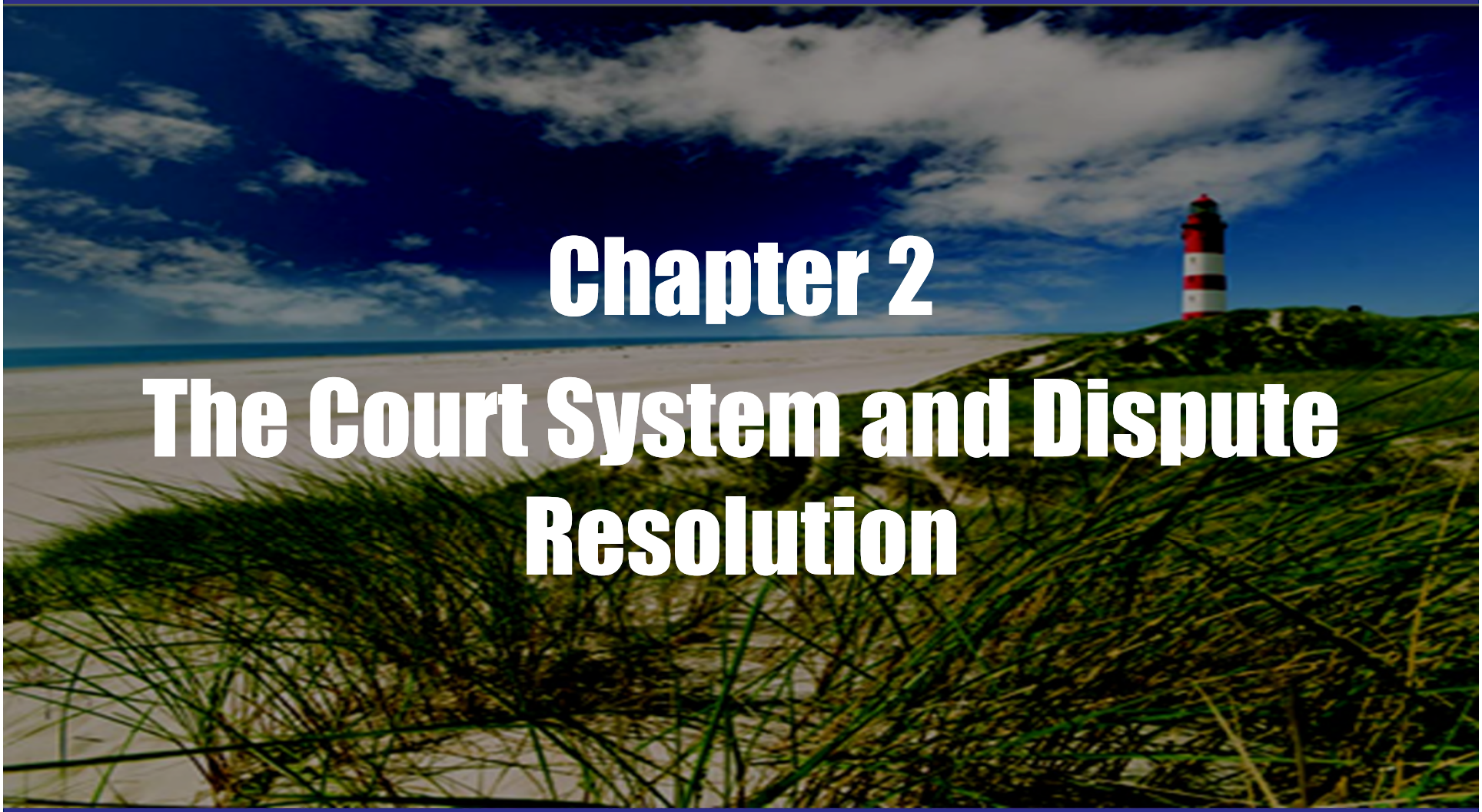


Chapter 2
The Court System and Dispute Resolution

LEARNING OUTCOMES

1. Explain the federal and state court systems
2. Describe court procedures
3. List the forms of alternative dispute resolution and distinguish among them

2-1 The Court System

A court is a tribunal established by the government to:

- Hear evidence and decide cases
- Provide remedies when a crime has been committed
- Prevent possible future wrongs by issuing the equitable remedy of an injunction

2-1 The Court System

2-1a The Types of Courts

- Courts hear and decide evidence according to their jurisdiction
  - Subject matter jurisdiction covers types of proceedings a court may hear.
  - Original jurisdiction conducts 'first findings' in a case.
  - General jurisdiction: broad authority to hear and try a case.

2-1 The Court System

2-1a The Types of Courts, Continued

- Limited or special jurisdiction: Deal with cases of a specific subject matter.
- Appellate jurisdiction: Review the findings of lower courts.
  - On appeal, the court can affirm, reverse, or remand for further proceedings.

2-1 The Court System

2-1b The Federal Court System

- Federal District Courts
  - General trial courts of original jurisdiction for civil and criminal matters
- U.S. Courts of Appeals
  - Appellate courts consist of 13 districts.
  - Most decisions are reviewed by panels of 3 judges.
  - Some decisions are reviewed *en banc*, by the full panel.

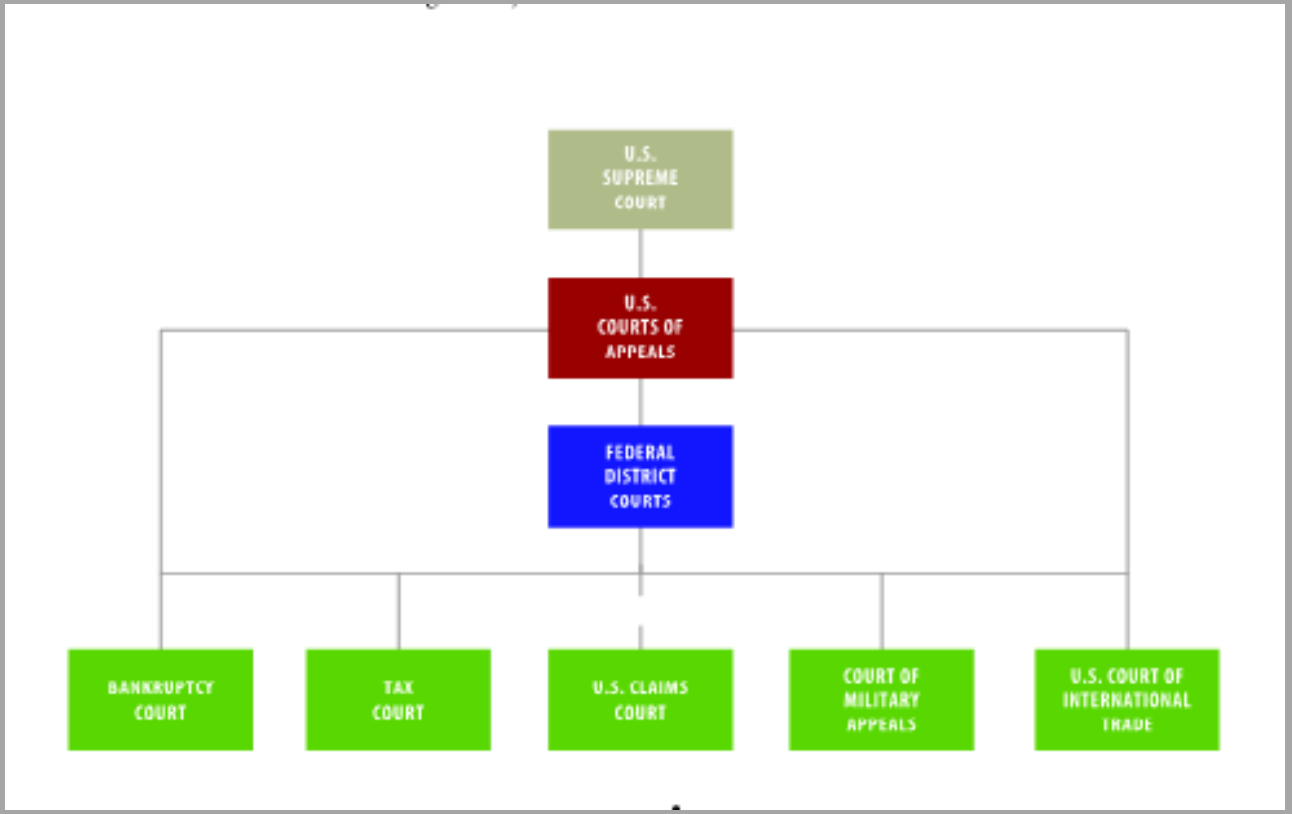
2-1 The Court System

2-1b The Federal Court System, Continued

- U.S. Supreme Court
  - The only court created by the U.S. Constitution
  - The final authority on federal and state cases
  - *Writ of certiorari*: granting review of a lower appellate court's decision.
  - Court of original jurisdiction for ambassadors, public ministers, consuls and lawsuits involving two states

2-1 The Court System

2-1b The Federal Court System



2-1 The Court System

2-1c State Court Systems

- General Trial Courts: Courts of original jurisdiction for civil and criminal courts. May be called superior, circuit, district, or county courts.
- Specialty Courts: Courts of limited jurisdiction
- City, Municipal, and Justice Courts: Lesser courts with limited jurisdiction.

2-1 The Court System

2-1c The State Court System, Continued

- State Appellate Courts: Intermediate level appellate courts
- State Supreme Courts
  - The highest state appellate court in most states
  - Decisions are final, unless the U.S. Supreme Court accepts review because a federal law or the U.S. Constitution is involved.

2-2 Court Procedure

2-2a Participants in the Court System

- Plaintiff: Initiates the court proceeding.
- Defendant: Party against whom the proceeding is brought.
- Judge: The primary officer of the court, manages the case.
- Jury: Citizens sworn to reach a verdict.
- Attorney-client privilege: Confidentiality between counsel and the client.

2-2 Court Procedure

2-2b Which Law Applies—Conflicts of Law

- The state where the complaint is filed governs procedural and evidence issues.
- For litigation, courts apply the laws of the state where the contract was formed.
- For performance, courts apply the laws of the state where the contract is to be performed.
- International contracts follow similar rules.

2-2 Court Procedure

2-2c Initial Steps in a Lawsuit

- Commencement of a lawsuit: Filing a complaint (a description of the wrongful conduct and request for damages).
- Service of process
- The defendant's response and pleadings:
  - The defendant is required to answer.
  - May deny the allegations, file a motion to dismiss (a demurrer), or file a counterclaim

2-2 Court Procedure

2-2c Initial Steps in a Lawsuit, Continued

- Discovery: each side discloses potential witnesses and information relevant to the case.
  - Deposition: The out of court testimony of a witness, taken under oath.
  - Interrogatories: Written questions.
  - Requests for production of documents

2-2 Court Procedure

2-2c Initial Steps in a Lawsuit, Continued

- Motion for Summary Judgment: When no material facts are in dispute, the judge may decide the case solely on the law.
- Designation of Expert Witnesses
  - Special expertise which helps explain a standard of care or give value to an injury
  - Expert witnesses are allowed to testify to facts and opinion.

2-2 Court Procedure

2-2d The Trial

- Selecting a jury (*Voir Dire*): Attorneys question potential jurors and may challenge their selection.
- Opening statements
- Presentation of evidence
  - Judge determines admissibility
  - Attorney conducts direct examination of its own witnesses, cross-examination of opposing witnesses

2-2 Court Procedure

2-2d The Trial

- Motion for a Directed Verdict: Asks the motion to grant a verdict due to no basis for recovery.
- Closing Arguments or Summation
- Motion for Mistrial: Based upon misconduct or when jurors cannot reach a verdict.
- Jury Instructions and Verdict

2-2 Court Procedure

2-2d The Trial, Continued

- Motion for New Trial; Motion for Judgment *n.o.v.*: If verdict is clearly wrong as a matter of law.

2-2 Court Procedure

2-2e Post-Trial Procedures

- Recovery of Costs/Attorney Fees: Generally the prevailing party is awarded costs.
- Execution of Judgment: Seizure and sale of the losing party's assets by sheriff. Can also include garnishment.

2-3 Alternative Dispute Resolution (ADR)

2-3a Arbitration

- Neutral parties hear evidence and determine a binding resolution.
- Uniform Arbitration Act: Parties to a contract may agree in advance that disputes will be resolved via arbitration.
- Federal Arbitration Act: Arbitration clauses pertaining to interstate commerce are valid, irrevocable, and enforceable.

2-3 Alternative Dispute Resolution (ADR)

2-3a Arbitration

- Mandatory arbitration is required in some states.
- Finality of arbitration
  - Most arbitration clauses provide that the decision will be final.
  - If arbitration is mandatory by statute, the losing party is generally allowed to appeal to court.

2-3 Alternative Dispute Resolution (ADR)

2-3b Meditation

- A neutral party acts as a go-between between the parties.
- The mediator may suggest a resolution but does not have the power to make binding decisions.

2-3c MedArb

- Newer form of ADR, where the arbitrator acts as mediator on unresolved issues

2-3 Alternative Dispute Resolution (ADR)

2-3d Expert Panel

- Submission of a case to a panel of experts in the field

2-3e Reference to a Third Person

- A third person or committee makes an out-of-court determination of the rights of persons.

2-3 Alternative Dispute Resolution (ADR)

2-3f Association Tribunals

- Courts created by trade associations or groups to arbitrate issues between members

2-3g Summary Jury Trial

- Mock trial where lawyers present evidence to a jury of six people

2-3 Alternative Dispute Resolution (ADR)

2-3h Rent-A-Judge

- The parties hire a judge to hear the case; the decision is binding.

2-3i Minitrial

- A trial heard on portions or certain issues of a case

2-3 Alternative Dispute Resolution (ADR)

2-3j Contract Provisions

- The parties' contract may allow for ADR to resolve future disputes.
- Other provisions may include waiting periods before a lawsuit can be filed and obligations to continue performing while the dispute is resolved.