

CHAPTER 2

THE COURT SYSTEM

ANSWERS TO CRITICAL ANALYSIS QUESTIONS IN THE FEATURE

MANAGERIAL STRATEGY—BUSINESS QUESTIONS (PAGE 38)

1A. *What are some of the costs of increased litigation delays caused by court budget cuts?* Most attorneys require a retaining fee. The longer this fee is held by the attorney, the higher the present value cost of the litigation. In addition, the opportunity cost of all of the company employees who work on the litigation must be included, too. Also, if there is any negative press during the litigation, that will have an impact on the company's revenues. Uncertainty about the results of the litigation may cause investors to back away. Uncertainty about the outcome of the litigation may also cause managers to forestall new projects.

2A. *In response to budget cuts, many states have increased their filing fees. Is this fair? Why or why not?* Some argue that those businesses that avail themselves of the court system should pay a higher percentage of the actual costs of that court system. Others point out that the higher the costs imposed by the states to those businesses that wish to litigate, the less litigation there will be. And some of that reduced litigation may be meritorious.

ANSWERS TO QUESTIONS AT THE ENDS OF THE CASES

CASE 2.1—LEGAL REASONING QUESTIONS (PAGE 32)

1A. *What is "diversity of citizenship?"* Diversity of citizenship exists when the plaintiff and defendant to a suit are residents of different states (or similar independent political subdivisions, such as territories). When a suit involves multiple parties, they must be completely diverse—no plaintiff may have the same state or territorial citizenship as any defendant. For purposes of diversity, a corporation is a citizen of both the state in which it is incorporated and the state in which its principal place of business is located.

2A. How does the presence—or lack—of diversity of citizenship affect a lawsuit? A federal district court can exercise original jurisdiction over a case involving diversity of citizenship. There is a second requirement to exercise diversity jurisdiction—the dollar amount in controversy must be more than \$75,000. In a case based on diversity, a federal court will apply the relevant state law, which is often the law of the state in which the court sits.

3A. What did the court conclude with respect to the parties’ “diversity of citizenship” in this case? In the *Mala* case, the court concluded that the parties did not have diversity of citizenship. A plaintiff who seeks to bring a suit in a federal district court based on diversity of citizenship has the burden to prove that diversity exists. Mala—the plaintiff in this case—was a citizen of the Virgin Islands. He alleged that Crown Bay admitted to being a citizen of Florida, which would have given the parties diversity. Crown Bay denied the allegation and asserted that it also was a citizen of the Virgin Islands. Mala offered only his allegation and did not provide any evidence that Crown Bay was anything other than a citizen of the Virgin Islands. There was thus no basis for the court to be “left with the definite and firm conviction that Crown Bay was in fact a citizen of Florida.”

4A. How did the court’s conclusion affect the outcome? The court’s conclusion determined the outcome in this case. Mala sought a jury trial on his claim of Crown Bay’s negligence, but he did not have a right to a jury trial unless the parties had diversity of citizenship. Because the court concluded that the parties did not have diversity of citizenship, Mala was determined not to have a jury-trial right.

The outcome very likely would have been different if the court had concluded otherwise. The lower court had empaneled an advisory jury, which recommended a verdict in Mala’s favor. This verdict was rejected, however, and a judgment issued in favor of Crown Bay. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed the lower court’s judgment.

CASE 2.2—QUESTIONS (PAGE 36)

WHAT IF THE FACTS WERE DIFFERENT?

Suppose that Gucci had not presented evidence that Wang Huoqing had made one actual sale through his Web site to a resident (the private investigator) of the court’s district. Would the court still have found that it had personal jurisdiction over Wang Huoqing?

Why or why not? The single sale to a resident of the district, Gucci’s private investigator, helped the plaintiff establish that the defendant’s Web site was interactive and that the defendant used the Web site to sell goods to residents in the court’s district. It is possible that without proof of such a sale, the court would not have found that it had personal jurisdiction over the foreign defendant. The reason is that courts cannot exercise jurisdiction over foreign defendants unless they can show the defendants had minimum contacts with the forum, such as by selling goods within the forum.

THE LEGAL ENVIRONMENT DIMENSION

Is it relevant to the analysis of jurisdiction that Gucci America’s principal place of business is in New York state rather than California? Explain. The fact that Gucci’s headquarters is in New York state was not relevant to the court’s analysis here because Gucci was the plaintiff. Courts look only at the defendant’s location or contacts with the forum in determining whether to exercise personal jurisdiction. The plaintiff’s location is irrelevant to this determination.

CASE 2.3—QUESTIONS (PAGE 48)

THE LEGAL ENVIRONMENT DIMENSION

What is the effect of granting a motion to dismiss? Granting a motion to dismiss in a case dismisses all or part of the suit without necessarily resolving the dispute. In this case, for example, the effect of the court’s granting the appellants’ motion to dismiss was a ruling that the venue for any action relating to a controversy under the parties’ agreement “shall be the State of Illinois.” This means that the appropriate forum for resolving the parties’ dispute is a court in Illinois (not in Florida, where this suit was filed). When a court grants a motion to dismiss, the party against whom it is entered is given time to file an amended complaint. Thus, here, the appellees may have an opportunity to amend their complaint. Ultimately, however, it is not likely that this suit will continue in a Florida court.

THE ETHICAL DIMENSION

Why did the appellants in this case file a motion to dismiss? Explain. The appellants in this case filed a motion to dismiss to avoid litigating the dispute in the court in which the related suit was filed. The contract provided that the sole forum for controversies arising under the agreement was Illinois, not Florida, where the suit was filed. The appellees’ vigorous objection to the motion suggests that Illinois was not a convenient location for these parties. This suggests that the appellants may have sought to resolve the dispute through means other than litigation—negotiation, mediation, or some other form of alternative dispute resolution—or to avoid resolving the dispute at all.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

1A. Contingency fee

If the Metzgars lose, the lawyer does not receive pay for work provided. If they win a verdict in court or receive a settlement, the lawyer takes a percentage of that, usually around 30 percent.

2A. Service of process

A copy would be handed to a company representative by a process server or possibly by mail.

3A. Request for summary judgment

No, because even if the facts of the accident are not in dispute, the question of liability is one to be determined at trial. The basic facts may not be in dispute, but there is no clear conclusion to be drawn from the facts. If the toy was properly made and generally safe, then there may be no liability. That is an issue to be determined at trial.

4A. Options after the verdict

The plaintiffs may make a motion for a judgment n.o.v. and, if that is unsuccessful, may appeal the decision reached at trial to the court of appeals.

**ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE
AT THE END OF THE CHAPTER**

Some consumer advocates argue that high attorney contingency fees—sometimes reaching 40 percent—unfairly deprive winning plaintiffs of too much of their awards. Should the government put a cap on contingency fees at, say 20 percent? Why or why not? In theory and in practice, poorer plaintiffs opt for contingency fee contracts with their attorneys because they cannot afford to pay straight hourly legal fees plus all of the related expenses that occur during discovery, before trial, during trial, and after trial. Therefore, empirically, poorer plaintiffs often end up paying the most in contingency fees. If the government capped such fees at a maximum percent, say 20 percent, then winning plaintiffs would keep the lion's share of their awards. This would be fairer.

There are many who do not believe that the contingency-fee arrangements between willing clients of litigation attorneys should be regulated. After all, those seemingly high contingency fees that winning plaintiff attorneys collect are used in part to compensate for the contingency-fee cases that plaintiff attorneys lose. In the latter, they receive nothing. If the government capped such fees, fewer cases would be brought because plaintiff attorneys would only take on the ones that they were more certain they could win. Fewer would-be plaintiffs would be able to find legal representation.

**ANSWERS TO ISSUE SPOTTERS IN THE EXAMPREP FEATURE
AT THE END OF THE CHAPTER**

1A. Sue uses her smartphone to purchase a video security system for her architectural firm from Tipton, Inc., a company that is located in a different state. The system arrives a month after the projected delivery date, is of poor quality, and does not function as advertised. Sue files a suit against Tipton in a state court. Does the court in Sue's state have jurisdiction over Tipton? What factors will the court consider? Yes, the court in Sue's state has jurisdiction over Tipton on the basis of the company's minimum contacts with the state.

Courts look at the following factors in determining whether minimum contacts exist: the quantity of the contacts, the nature and quality of the contacts, the source and connection of the cause of action to the contacts, the interest of the forum state, and the convenience of the parties. Attempting to exercise jurisdiction without sufficient minimum contacts would violate the due process clause. Generally, courts have found that jurisdiction is proper when there is substantial business conducted online (with contracts, sales, and so on). Even when there is only some interactivity through a Web site, courts have sometimes held that jurisdiction is proper. Jurisdiction is not proper when there is merely passive advertising.

Here, examining all of these factors, particularly the sale of the security system to a resident of the state and the relative inconvenience of the plaintiff to litigate in the defendant's state, the defendant had sufficient minimum contacts with the state to justify the exercise of jurisdiction over the defendant without violating the due process clause.

2A. At the trial, after Sue calls her witnesses, offers her evidence, and otherwise presents her side of the case, Tom has at least two choices between courses of actions. Tom can call his first witness. What else might he do? Tom could file a motion for a directed verdict. This motion asks the judge to direct a verdict for Tom on the ground that Sue presented no evidence that would justify granting Jan relief. The judge grants the motion if there is insufficient evidence to raise an issue of fact.

ANSWERS TO BUSINESS SCENARIOS AND BUSINESS CASE PROBLEMS AT THE END OF THE CHAPTER

2-1A. **Standing** (Chapter 2—Page 36)

This problem concerns standing to sue. As you read in the chapter, to have standing to sue, a party must have a legally protected, tangible interest at stake. The party must show that he or she has been injured, or is likely to be injured, by the actions of the party that he or she seeks to sue. In this problem, the issue is whether the Turtons had been injured, or were likely to be injured, by the county's landfill operations. Clearly, one could argue that the injuries that the Turtons complained of directly resulted from the county's violations of environmental laws while operating the landfill. The Turtons lived directly across from the landfill, and they were experiencing the specific types of harms (fires, scavenger problems, groundwater contamination) that those laws were enacted to address. Thus, the Turtons would have standing to bring their suit.

2-2A. **Jurisdiction** (Chapter 2—Page 29)

Marya can bring suit in all three courts. The trucking firm did business in Florida, and the accident occurred there. Thus, the state of Florida would have jurisdiction over the defendant. Because the firm was headquartered in Georgia and had its principal place of business in that state, Marya could also sue in a Georgia court. Finally, because the amount in controversy

exceeds \$75,000, the suit could be brought in federal court on the basis of diversity of citizenship.

2-3A. Motions

(Chapter 2—Page 48)

(a) After all of the pleadings (the complaint, answer, and any counterclaim and reply) have been filed, either party can file a motion for judgment on the pleadings. This may happen because it is clear from just the pleadings that the plaintiff has failed to state a cause of action. This motion is also appropriate when all the parties agree on the facts, and the only question remaining is how the law applies to those facts. The court may consider only those facts pleaded in the documents and stipulated (agreed to) by the parties. This is the difference between a motion for judgment on the pleadings and a motion for summary judgment (discussed below). In a motion for summary judgment, there may be some facts in dispute and the parties may supplement the pleadings with sworn statements and other materials.

(b) During the trial, at the conclusion of the plaintiff's case, the defendant may move for a directed verdict. If the defendant does this, he or she will argue to the court that the plaintiff presented inadequate evidence that he or she is entitled to the remedy being sought. In considering a motion for a directed verdict (federal courts use the term "motion for a judgment as a matter of law"), the judge looks at the evidence in the light most favorable to the plaintiff and grants the motion only if there is insufficient evidence to raise an issue of fact. These motions are rarely granted at this stage of a trial. At the end of the defendant's case, the parties have another opportunity to move for a directed verdict. This time, either party can seek the motion. The motion will be granted only if there is no reasonable way to find for the party against whom the motion is made. In other words, if, after the defense's case is concluded, the plaintiff asks the court to direct a verdict against the defendant, the court will do so if no reasonable interpretation of the evidence would allow the defendant to win the case.

(c) As noted in part (a) of this answer, a motion for summary judgment is similar to a motion for a judgment on the pleadings in that it asks the court to grant a judgment without a trial. Either party can file a summary judgment motion when the only question is how the law applies to the facts in a case. When a court considers a motion for summary judgment, it can take into account evidence outside the pleadings. The evidence may consist of sworn statements by parties or witnesses as well as documents. The use of this additional evidence distinguishes the motion for summary judgment from the motion for judgment on the pleadings. Summary judgment motions will be granted only when there are no questions of fact that need to be decided and the only question is a question of law, which requires a judge's ruling. These motions can be made before or during a trial.

(d) If a losing party has previously moved for a directed verdict, that party can make a motion for a judgment *n.o.v.* (notwithstanding the verdict) after the jury issues its verdict. The standards for granting a judgment *n.o.v.* are the same as those for granting a motion to dismiss a case or a motion for a directed verdict. Essentially, the losing party argues that even if the evidence is viewed in the light most favorable to the other party, a reasonable jury could not have found in that party's favor. If the judge finds this contention to be correct or decides that the law requires the opposite result, the motion will be granted.

2-4A. Venue
(Chapter 2—Page 29)

The purpose behind most venue statutes is to ensure that a defendant is not “hailed into a remote district, having no real relationship to the dispute.” The events in dispute have no connection to Minnesota. The Court stated: “Looked at through the lens of practicality—which is, after all, what [the venue statute] is all about—Nestlé’s motion can really be distilled to a simple question: does it make sense to compel litigation in Minnesota when this state bears no relationship to the parties or the underlying events?” The court answered no to this simple question. The plaintiff resides in South Carolina, her daughter’s injuries occurred there, and all of her medical treatment was provided (and continues to be provided) in that state. South Carolina is the appropriate venue for this litigation against Nestlé to proceed.

2-5A. Jury misconduct
(Chapter 2—Page 55)

The Missouri high court reversed the trial court and remanded the case. The fact that the bias was not uncovered during *voir dire* does not matter. “When a juror makes statements evincing ethnic or religious bias or prejudice during deliberations, the juror exposes his mental processes and innermost thoughts. What used to “rest alone in the juror’s breast” has now been exposed to the other jurors. The juror has revealed that he is not fair and impartial. Whether the statements may have had a prejudicial effect on other jurors is not necessary to determine. Such statements evincing ethnic or religious bias or prejudice deny the parties their constitutional rights to a trial by twelve fair and impartial jurors and equal protection of the law.”

2-6A. Service of process
(Chapter 2—Page 44)

No, the Minnesota court should enforce the out-of-state judgment. The parties had agreed to have disputes litigated in Tennessee, and Clint Pharmaceuticals served process on the medical clinic by registered mail. When the clinic owner’s wife opened the letter, the defendant was notified of the lawsuit, even though the wife was not the registered agent of the LLC. The wife was substantially involved in the clinic, she worked there as receptionist, “was prominently displayed” on the clinic’s Web site, and interacted with the public on the clinic’s Facebook page. Therefore, the court in this case found that she was “intertwined” with the clinic and should have known what to do with the papers. Tennessee therefore had jurisdiction over the defendant clinic when it entered the default judgment against it.

2-7A. Minimum contacts
(Chapter 2—Page 29)

No. This statement alone was insufficient to establish that Illinois did not have jurisdiction over the defendant. The court ruled that Med-Express failed to introduce factual evidence proving that the Illinois trial court lacked personal jurisdiction over Med-Express. Med-Express had merely recited that it was a North Carolina corporation and did not have minimum contacts with Illinois. Med-Express sent a letter to this effect to the clerk of Cook County, Illinois, and to the trial court judge. But that was not enough. When a judgment of a court from another state is

challenged on the grounds of personal jurisdiction, there is a presumption that the court issuing the judgment had jurisdiction until the contrary is shown. It was not.

2-8A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—*Discovery*

Yes, the items that were deleted from a Facebook page can be recovered. Normally, a party must hire an expert to recover material in an electronic format, and this can be time consuming and expensive.

Electronic evidence, or e-evidence, consists of all computer-generated or electronically recorded information, such as posts on Facebook and other social media sites. The effect that e-evidence can have in a case depends on its relevance and what it reveals. In the facts presented in this problem, Isaiah should be sanctioned—he should be required to cover Allied’s cost to hire the recovery expert and attorney’s fees to confront the misconduct. In a jury trial, the court might also instruct the jury to presume that any missing items are harmful to Isaiah’s case. If all of the material is retrieved and presented at the trial, any prejudice to Allied’s case might thereby be mitigated. If not, of course, the court might go so far as to order a new trial.

In the actual case on which this problem is based, Allied hired an expert, who determined that Isaiah had in fact removed some photos and other items from his Facebook page. After the expert testified about the missing material, Isaiah provided Allied with all of it, including the photos that he had deleted. Allied sought a retrial, but the court instead reduced the amount of Isaiah’s damages by the amount that it cost Allied to address his “misconduct.”

2-9A. A QUESTION OF ETHICS—*Service of process*

(a) One reason for the strict construction and application of such procedural requirements as the details imposed on service of process is the seriousness and finality of legal proceedings. Unlike many other events that offer “second chances” or can otherwise be undone, the result of a legal proceeding such as a trial is almost always final.

On the appeal in *Harvestons’* case, the state intermediate appellate court held that there were “no presumptions in favor of valid issuance, service, and return.” The court reasoned that this rule “must be strictly observed because presumptions can neither be confirmed nor rebutted by evidence in an appellate court. Thus, for example, if the [document of service] says an amended petition was attached (which named the defaulted party) and the return says the document served was the original petition (which did not name the defaulted party), an appellate court cannot tell from the record which is true. Similarly, if the petition says the registered agent for service is ‘Henry Bunting, Jr.’ but the [documents of service] and return reflect service on ‘Henry Bunting,’ an appellate court cannot tell whether the two names mean the same or different persons.”

Thus, “[a] default judgment cannot withstand a direct attack by a defendant who shows that it was not served in strict compliance with the rules governing service of process. . . . In the absence of an appearance by the defendant in question, there must be an affirmative showing of due service of process, independent of the recitations in the default judgment.”

(b) The state intermediate appellate court stated that “[i]t is the responsibility of the party requesting service, not the process server, to see that service is properly accomplished.” The court also emphasized that the service’s return “is not a trivial or merely formalistic

document. If any of [its] requirements are not met, the return . . . is fatally defective and will not support a default judgment.”

In this case, “[n]either the return nor any other portion of the record designates Jo Ann Kocerek as an authorized representative of the Commission or indicates that she has the authority to receive service on behalf of Harvestons or the Commissioner. Indeed, it is simply not possible to determine from the record who Jo Ann Kocerek is or whether she is an agent authorized to accept service on behalf of either the Commissioner or Harvestons. Without an indication on the face of the record of her capacity or authority, if any, to receive service, the granting of the default judgment was improper.”

In other words, “Harvestons has established error on the face of the record. Service of process was defective. Therefore, the trial court erred in granting a default judgment against Harvestons.” The appellate court reversed the judgment of the lower court and remanded the case for further proceedings.

The dissent concluded, however, that “the sufficiency of the return of citation showing service on the Commissioner is immaterial” here. “[T]he default judgment record in this case contains a certified copy of a letter . . . from the Securities Commissioner to Harvestons.” The letter “reflects that service of process was received by the Commissioner and forwarded to Harvestons.” The dissent reasoned that “the default judgment record thereby reflects compliance with the rules for service of process Accordingly, I would not reverse the judgment of the trial court for a defective showing of service of process.”

2–10A. LEGAL REASONING GROUP ACTIVITY—*Court procedures*

(a) Rico’s could file a motion claiming that a federal court lacked jurisdiction to hear the dispute, but the motion would likely be denied. Because there appears to be diversity of citizenship in the situation set out here, if the amount in controversy exceeds the jurisdictional amount, a suit can be filed in a federal district court.

(b) Bento’s first option might be to file a motion to set aside the verdict and hold a new trial. This motion will be granted if the judge is convinced, after examining the evidence, that the jury was in error (assuming the trial involved a jury) but does not think it appropriate to issue a judgment for Bento’s side. Bento’s second option would be to appeal the trial court’s judgment, including a denial of the motion for a new trial, to the appropriate court of appeals. An appellate court is most likely to review the case for errors in law, not fact. In any case, the appellate court will not hear new evidence.

(c) Generally, hearsay is not admissible as evidence. Hearsay is testimony someone gives in court about a statement made by someone else who was not under oath at the time of the statement. Literally, it is what someone heard someone else say. In this problem, the manager would be testifying in court concerning what he or she heard others say. This testimony would be hearsay, or secondhand knowledge. Thus, it would not be admissible.

Admitting hearsay into evidence carries many risks because, even though it may be relevant, there is no way to test its reliability. When a witness repeats what another person has said, there is a reasonable likelihood that that he or she might misinterpret the statements. There is no opportunity to verify the accuracy of the statements because the declarant is not present in court to be questioned. These features make the use of hearsay potentially unethical.