

Chapter 02 Dispute Settlement

True / False Questions

1. Mediators make decisions based on the merits of a dispute.

True False

2. The U.S. Supreme Court generally disfavors arbitration as a way to settle disputes.

True False

3. The parties to an arbitration proceeding can select an arbitrator in any way they desire.

True False

4. The losing party in arbitration cannot appeal the arbitrator's decision in a regular court on the basis that the decision was unwise.

True False

5. International trade arbitration agreements are enforced through multilateral treaties.

True False

6. Minitrial is also known as a summary jury trial.

True False

7. When the issue in a case no longer exists or has become pointless, that issue is considered moot.

True False

8. Sally files a lawsuit against Jim in a Tennessee court. Jim does not live in Tennessee nor has he ever visited the state. The Tennessee court may not decide the case unless it can demonstrate that Jim somehow has a close connection with the state.
True False

9. Mr. Smith filed a case in a municipal court against Bob for a minor criminal violation. Dissatisfied with the decision of the court, Mr. Smith can now appeal the case in a court of record.
True False

10. Small claim courts are courts of record.
True False

11. A party who is dissatisfied with the decision of a lower court can always take the case all the way to the U.S. Supreme Court.
True False

12. All opinions of the Supreme Court can be cited as precedents.
True False

13. The adversary system in the United States is based on the idea that the truth will emerge in courtrooms through a "battle of words" between two lawyers.
True False

14. Even if a jury unanimously finds a defendant guilty, the judge can find in the defendant's favor by granting a motion for 'judgment notwithstanding the verdict'.
True False

15. A new trial is required in case where a case is remanded by an appellate court.
True False

Multiple Choice Questions

16. Under the Uniform Arbitration Act, a court:

- A. cannot hold that the dispute was not arbitrable under the agreement of the parties.
- B. will not review the wisdom or decision of the arbitrator.
- C. can only make the arbitration award enforceable.
- D. can publish its arbitration awards.

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

- A. In a minitrial, a six-member mock jury empaneled by the court hears a shortened presentation of the case by the lawyers for each side, and renders an advisory verdict.
- B. If a settlement is not reached in a minitrial, neutral third-party advisor will render a nonbinding opinion regarding how the dispute is likely to be resolved if it goes to trial.
- C. The minitrial is conducted under court guidance.
- D. The minitrial differs from mediation in that the third party to whom the dispute is submitted decides the outcome.

18. In the "private judging" method of dispute resolution:

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

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

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

20. A prisoner seeks injunctive relief to improve prison conditions. However, while the case is still pending, the prisoner's sentence ends and he is released. On the date of deciding the case, the American Federal Court could:

- A. choose not to decide the case stating the case was moot.
- B. ask the ex-prisoner to appeal to the Supreme Court.
- C. ask the prisoner to apply for a new trial.
- D. ask the prisoner to appeal to the court of appeals.

21. Jurisdiction is defined as:

- A. the authority of a court to hear a case and render a binding decision on it.
- B. the unlimited authority of the court.
- C. the process by which cases are decided.
- D. the power an individual appointed within an organization possesses to settle disputes.

22. Mr. Burns filed a case against Mr. Johnson in the court at Ohio. However, Mr. Johnson had never visited Ohio, nor had any personal ties with anyone in Ohio. Mr. Johnson could defend the case on the basis that the court:

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

23. Municipal courts are:

- A. courts of record.
- B. known as superior courts.
- C. known as justice of peace courts in rural areas.
- D. courts that handle civil matters involving a limited amount of money.

24. Trial courts differ from inferior courts in that trial courts:

- A. are courts of limited jurisdiction.
- B. are limited by the amount of civil damages that can be awarded.
- C. are courts of record from which an appeal can be taken.
- D. are called municipal courts in urban areas.

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

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

26. It is seen that Court X hears cases that have been referred to it by trial courts. However, it does not hear any witnesses nor does it review new facts about the case. Court X is a/an:

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

27. A resident of Ohio was convicted of bank robbery of \$90000 in California. In which of the following courts should his case be filed?

- A. Small Claim Court
- B. Trial Court
- C. District Court
- D. Justice of Peace Court

28. District courts:

- A. only review the legal conclusions reached by lower federal courts.
- B. are the intermediate courts of the federal court system.
- C. have both fact-finding (by the judge or jury) and law-finding (by the judge) functions.
- D. are specialized courts in the federal court system.

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

- A. find new facts for the case.
- B. review legal conclusions reached by lower federal courts and administrative agencies.
- C. hear only patent, copyright and trademark appeals.
- D. hear witnesses and determine facts.

30. The primary way a case can be appealed to the Supreme Court is through a:

- A. writ of habeas corpus.
- B. writ of quo warranto.
- C. writ of certiorari.
- D. writ of mandamus.

31. Writ of certiorari (cert.) is given when:

- A. a person does not want to appeal to the Supreme Court.
- B. there have been conflicting decisions in similar cases by different courts of appeal.
- C. the court has too many cases to be heard and has no time to take up a new case.
- D. the loser of the case does not pay the judgment.

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

- A. The adversary system represents the idea that truth is best discovered through the presentation of competing ideas.
- B. The judge, in an adversary system, is actively involved in determining the facts of a case.
- C. In an adversary system the cases are heard by a panel of three judges.
- D. The judges have a duty to direct the search for truth rather than expecting it to emerge from the efforts of the lawyers for the parties.

33. Which of the following concerning 'pleadings' is true?

- A. The first step in starting a lawsuit is the serving of a summons on the defendant.
- B. The case is set for trial on the court calendar once the pleadings have commenced.
- C. They serve three major functions.
- D. The complaint, answer and reply inform the parties of each other's claims and form the basis for a trial.

34. A complaint:

- A. must contain sufficient facts to show that the plaintiff is entitled to some legal relief.
- B. is a rule of law enabling the defendant to win even if all of the plaintiff's allegations are true.
- C. was created to help deal with the increasing congestion of cases in most civil courts.
- D. is a procedural device that is designed to narrow down issues to be proved at trial.

35. A rule of law enabling the defendant to win even if all of plaintiff's allegations are true is a(n):

- A. counterclaim.
- B. affirmative defense.
- C. deposition.
- D. judgment notwithstanding the verdict.

36. A new claim stating that plaintiff owes defendant damages because of harm resulting from the incident alleged in the complaint is a(n):

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

37. A motion to dismiss made by the defendant is granted when:

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

38. Robert files a case against Richard for non payment of dues. Before the trial, Richard is examined under oath in the presence of Robert's attorney. What is this process of examination known as?

- A. Deposition
- B. Discovery
- C. Pretrial conference
- D. Default judgment

39. A procedural device that is designed to narrow issues to be proved at trial or to facilitate a settlement is the:

- A. alternative dispute resolution.
- B. mediation agreement.
- C. judgment notwithstanding the verdict.
- D. pretrial conference.

40. Which of the following statements hold true during the presentation of testimony?

- A. Under direct examination, each witness is sworn and then examined by the defendant's attorney.
- B. The defendant's attorney may cross-examine each witness, trying to raise doubts as to the person's credibility or trustworthiness.
- C. The defendant's attorney may then conduct a redirect examination to clarify the plaintiff's view of the facts.
- D. During a witness's testimony, the opposing attorney may not object to the presentation of certain evidence.

41. In order to enforce a judgment against an unwilling loser of the judgment, a court can issue:

- A. a writ of quo warranto.
- B. a writ of garnishment.
- C. a writ of certiorari.
- D. a writ of mandamus.

42. Which of the following is true with respect to criminal trial?

- A. The defendant bears the burden of proof.
- B. The burden of proof need only have "a preponderance of the evidence".
- C. The burden of proof should be "beyond a reasonable doubt".
- D. The burden of proof for a criminal case is the same as that for a civil case.

43. The term "amicus curiae" means:

- A. "friendly cure" or the amicable resolution to a mediated dispute.
- B. "friend of the court" or a third party allowed to file briefs.
- C. "small courier" or the briefs, originally foot messengers, which are used to communicate between lawyers and the courts.
- D. the name for the conductor of an arbitration, a position originally filled by medieval clergy.

44. In order to appeal a decision:

- A. a party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision.
- B. a party need not have objected to a judge's action at the time the alleged error was made.
- C. a party must prepare for a new fact-finding process.
- D. the defendant must show that the errors made were not material.

45. A record in writing of the entire trial proceedings including the testimony of all the witnesses and any discussions between the judge and the attorneys is called a:

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

Short Answer Questions

46. The employees of a company have been on strike for 30 days which has led to huge losses for the business. The employees complain about the increased accidents in the company and lack of safety measures undertaken by the management. The management in turn blames the employees for negligence. Owing to loss of business and wages, both parties want to settle the dispute but have been unable to negotiate successfully; the main problem being feelings of resentment and distrust. Both parties want to settle out of court but do not want the third party to whom the dispute is submitted to decide the outcome. Which method of dispute settlement is best suited to them? Why?

Would the method change if the parties were ready to accept awards by third parties but were not particular about the reasons of awards?

47. Explain why an appeal can only be taken from a court of record.

48. 'The function of a judge in the United States differs from that in Europe. Explain.

49. Under what conditions can one or more members of a class be sued as representative of a class? What type of lawsuit can their claims be consolidated into?

50. What is the legal standard for granting a motion to dismiss? What purpose does this motion serve?

Chapter 02 Dispute Settlement **Answer Key**

True / False Questions

1. (p. 29) Mediators make decisions based on the merits of a dispute.

FALSE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

2. (p. 31) The U.S. Supreme Court generally disfavors arbitration as a way to settle disputes.

FALSE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

3. (p. 31) The parties to an arbitration proceeding can select an arbitrator in any way they desire.

TRUE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

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4. (p. 31) The losing party in arbitration cannot appeal the arbitrator's decision in a regular court on the basis that the decision was unwise.

TRUE

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Alternative Dispute Resolution

5. (p. 31) International trade arbitration agreements are enforced through multilateral treaties.

TRUE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

6. (p. 32) Minitrial is also known as a summary jury trial.

FALSE

AACSB: Analytic

Bloom's: Understand

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

7. (p. 33) When the issue in a case no longer exists or has become pointless, that issue is considered moot.

TRUE

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: The Courts

8. (p. 34) Sally files a lawsuit against Jim in a Tennessee court. Jim does not live in Tennessee nor has he ever visited the state. The Tennessee court may not decide the case unless it can demonstrate that Jim somehow has a close connection with the state.

TRUE

AACSB: Reflective Thinking

Bloom's: Apply

Difficulty: Hard

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

Topic: Jurisdiction

9. (p. 36) Mr. Smith filed a case in a municipal court against Bob for a minor criminal violation. Dissatisfied with the decision of the court, Mr. Smith can now appeal the case in a court of record.

FALSE

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Inferior Courts

10. (p. 36) Small claim courts are courts of record.

FALSE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Inferior Courts

11. (p. 39) A party who is dissatisfied with the decision of a lower court can always take the case all the way to the U.S. Supreme Court.

FALSE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Supreme Court

12. (p. 39) All opinions of the Supreme Court can be cited as precedents.

FALSE

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: The Supreme Court

13. (p. 39) The adversary system in the United States is based on the idea that the truth will emerge in courtrooms through a "battle of words" between two lawyers.

TRUE

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Adversary System

14. (p. 48) Even if a jury unanimously finds a defendant guilty, the judge can find in the defendant's favor by granting a motion for 'judgment notwithstanding the verdict'.

TRUE

*AACSB: Analytic
Bloom's: Analyze
Difficulty: Medium
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: The Trial*

15. (p. 50) A new trial is required in case where a case is remanded by an appellate court.

TRUE

*AACSB: Analytic
Bloom's: Understand
Difficulty: Medium
Learning Objective: 02-06 Discuss how an appeal works and why most appeals fail.
Topic: Results of Appeal*

Multiple Choice Questions

16. (p. 31) Under the Uniform Arbitration Act, a court:

- A. cannot hold that the dispute was not arbitrable under the agreement of the parties.
- B.** will not review the wisdom or decision of the arbitrator.
- C. can only make the arbitration award enforceable.
- D. can publish its arbitration awards.

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

*AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Alternative Dispute Resolution*

17. (p. 32) Which of the following statements is true about a minitrial?

- A. In a minitrial, a six-member mock jury empaneled by the court hears a shortened presentation of the case by the lawyers for each side, and renders an advisory verdict.
- B.** If a settlement is not reached in a minitrial, neutral third-party advisor will render a nonbinding opinion regarding how the dispute is likely to be resolved if it goes to trial.
- C. The minitrial is conducted under court guidance.
- D. The minitrial differs from mediation in that the third party to whom the dispute is submitted decides the outcome.

The minitrial is designed to refocus the dispute as a business problem. Executives of the disputing companies, who have settlement authority, hear a shortened presentation of the case by the lawyers for each side. The minitrial often involves a neutral third-party advisor. If a settlement is not reached, she or he will render a nonbinding opinion regarding how the dispute is likely to be resolved if it goes to trial, and how the court is likely to rule on factual and evidentiary issues.

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Alternative Dispute Resolution

18. (p. 32) In the "private judging" method of dispute resolution:

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

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Alternative Dispute Resolution

19. (p. 33) An employee appointed within an organization to settle disputes is called a(n):
- A. mediator.
 - B. arbitrator.
 - C. ombudsperson.**
 - D. private judge.

While the ADR systems discussed above are the most commonly used alternatives to trial, especially in business disputes, there are many others. These range from an ombudsperson, who is an individual appointed within an organization to settle disputes, to private panels, to small claims court.

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: Alternative Dispute Resolution

20. (p. 33) A prisoner seeks injunctive relief to improve prison conditions. However, while the case is still pending, the prisoner's sentence ends and he is released. On the date of deciding the case, the American Federal Court could:
- A. choose not to decide the case stating the case was moot.**
 - B. ask the ex-prisoner to appeal to the Supreme Court.
 - C. ask the prisoner to apply for a new trial.
 - D. ask the prisoner to appeal to the court of appeals.

Courts do not decide a case if the issue has become moot. A case is moot when events occurring after the filing of the lawsuit have made a decision beside the point. The case here was moot as the prisoner was released while the case was still pending.

AACSB: Reflective Thinking
Bloom's: Apply
Difficulty: Hard
Learning Objective: 02-01 Describe the various ways to settle disputes.
Topic: The Courts

21. (p. 34) Jurisdiction is defined as:

- A.** the authority of a court to hear a case and render a binding decision on it.
- B. the unlimited authority of the court.
- C. the process by which cases are decided.
- D. the power an individual appointed within an organization possesses to settle disputes.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Jurisdiction

22. (p. 34) Mr. Burns filed a case against Mr. Johnson in the court at Ohio. However, Mr. Johnson had never visited Ohio, nor had any personal ties with anyone in Ohio. Mr. Johnson could defend the case on the basis that the court:

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

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

AACSB: Reflective Thinking

Bloom's: Analyze

Difficulty: Hard

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

Topic: Jurisdiction

23. (p. 36) Municipal courts are:

- A. courts of record.
- B. known as superior courts.
- C.** known as justice of peace courts in rural areas.
- D. courts that handle civil matters involving a limited amount of money.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Inferior Courts

24. (p. 36) Trial courts differ from inferior courts in that trial courts:

- A. are courts of limited jurisdiction.
- B. are limited by the amount of civil damages that can be awarded.
- C.** are courts of record from which an appeal can be taken.
- D. are called municipal courts in urban areas.

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Trial Courts

25. (p. 37) Generally, the role of appellate courts is to:

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

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Appeals Courts

26. (p. 37) It is seen that Court X hears cases that have been referred to it by trial courts.

However, it does not hear any witnesses nor does it review new facts about the case. Court X is a/an:

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

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

AACSB: Reflective Thinking

Bloom's: Analyze

Difficulty: Hard

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

Topic: Appeals Courts

27. (p. 37; 38) A resident of Ohio was convicted of bank robbery of \$90000 in California. In which of the following courts should his case be filed?

- A. Small Claim Court
- B. Trial Court
- C. District Court**
- D. Justice of Peace Court

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

AACSB: Reflective Thinking

Bloom's: Apply

Difficulty: Hard

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

Topic: Federal Courts

28. (p. 38) District courts:

- A. only review the legal conclusions reached by lower federal courts.
- B. are the intermediate courts of the federal court system.
- C. have both fact-finding (by the judge or jury) and law-finding (by the judge) functions.**
- D. are specialized courts in the federal court system.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: District Court

29. (p. 38) A U.S. court of appeals is empowered to:

- A. find new facts for the case.
- B.** review legal conclusions reached by lower federal courts and administrative agencies.
- C. hear only patent, copyright and trademark appeals.
- D. hear witnesses and determine facts.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Court of Appeals

30. (p. 39) The primary way a case can be appealed to the Supreme Court is through a:

- A. writ of habeas corpus.
- B. writ of quo warranto.
- C.** writ of certiorari.
- D. writ of mandamus.

The primary way a case can be appealed to the Supreme Court is through writ of certiorari (cert.).

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Supreme Court

31. (p. 39) Writ of certiorari (cert.) is given when:

- A. a person does not want to appeal to the Supreme Court.
- B.** there have been conflicting decisions in similar cases by different courts of appeal.
- C. the court has too many cases to be heard and has no time to take up a new case.
- D. the loser of the case does not pay the judgment.

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: The Supreme Court

32. (p. 39) Which of the following statements about the adversary system is true?

- A.** The adversary system represents the idea that truth is best discovered through the presentation of competing ideas.
- B. The judge, in an adversary system, is actively involved in determining the facts of a case.
- C. In an adversary system the cases are heard by a panel of three judges.
- D. The judges have a duty to direct the search for truth rather than expecting it to emerge from the efforts of the lawyers for the parties.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Adversary System

33. (p. 40) Which of the following concerning 'pleadings' is true?

- A. The first step in starting a lawsuit is the serving of a summons on the defendant.
- B. The case is set for trial on the court calendar once the pleadings have commenced.
- C. They serve three major functions.
- D.** The complaint, answer and reply inform the parties of each other's claims and form the basis for a trial.

The complaint, answer, and reply, each of which is discussed below, are known as the pleadings. These are the first documents filed with the court, and they start and define the lawsuit. They serve two major functions: They inform the parties of each other's claims, and they form the basis for a trial. Only those matters that are disputed in the pleadings are tried in court.

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Pleadings

34. (p. 41) A complaint:

- A.** must contain sufficient facts to show that the plaintiff is entitled to some legal relief.
- B. is a rule of law enabling the defendant to win even if all of the plaintiff's allegations are true.
- C. was created to help deal with the increasing congestion of cases in most civil courts.
- D. is a procedural device that is designed to narrow down issues to be proved at trial.

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

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Pleadings

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

- A. counterclaim.
- B.** affirmative defense.
- C. deposition.
- D. judgment notwithstanding the verdict.

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

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Pleadings

36. (p. 46) A new claim stating that plaintiff owes defendant damages because of harm resulting from the incident alleged in the complaint is a(n):

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

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

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: Pleadings

37. (p. 46) A motion to dismiss made by the defendant is granted when:

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

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Pleadings

38. (p. 46) Robert files a case against Richard for non payment of dues. Before the trial, Richard is examined under oath in the presence of Robert's attorney. What is this process of examination known as?

- A.** Deposition
- B. Discovery
- C. Pretrial conference
- D. Default judgment

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Discovery

39. (p. 47) A procedural device that is designed to narrow issues to be proved at trial or to facilitate a settlement is the:

- A. alternative dispute resolution.
- B. mediation agreement.
- C. judgment notwithstanding the verdict.
- D. pretrial conference.**

A procedural device that is designed to narrow issues to be proved at trial or to facilitate settlement is the pretrial conference.

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Discovery

40. (p. 47) Which of the following statements hold true during the presentation of testimony?

- A. Under direct examination, each witness is sworn and then examined by the defendant's attorney.
- B. The defendant's attorney may cross-examine each witness, trying to raise doubts as to the person's credibility or trustworthiness.**
- C. The defendant's attorney may then conduct a redirect examination to clarify the plaintiff's view of the facts.
- D. During a witness's testimony, the opposing attorney may not object to the presentation of certain evidence.

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: The Trial

41. (p. 48) In order to enforce a judgment against an unwilling loser of the judgment, a court can issue:

- A. a writ of quo warranto.
- B.** a writ of garnishment.
- C. a writ of certiorari.
- D. a writ of mandamus.

At the conclusion of the trial (or after the appeal, if one is taken), the party who wins a remedy is entitled to receive it. In a civil case, this is usually an award of money damages. If the loser does not pay the judgment, the winner can get the court's help to enforce it through the issuance of a writ of execution or a writ of garnishment.

AACSB: Analytic
Bloom's: Remember
Difficulty: Easy
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: The Trial

42. (p. 48) Which of the following is true with respect to criminal trial?

- A. The defendant bears the burden of proof.
- B. The burden of proof need only have "a preponderance of the evidence".
- C.** The burden of proof should be "beyond a reasonable doubt".
- D. The burden of proof for a criminal case is the same as that for a civil case.

The attorneys then make closing arguments that sum up the case. Normally the defendant's attorney goes first. This gives the plaintiff, who has the burden of proof, the last word. The burden of proof for a criminal case is different from that for a civil case. In a criminal case the state, as plaintiff, must convince the fact finder—jury or judge—beyond a reasonable doubt of the defendant's guilt. In a civil case the plaintiff need only have the preponderance of the evidence on his or her side. This means that the plaintiff must have shown that it is more likely than not that what was alleged is true.

AACSB: Analytic
Bloom's: Understand
Difficulty: Medium
Learning Objective: 02-05 Identify the different stages of a lawsuit.
Topic: The Trial

43. (p. 49) The term "amicus curiae" means:

- A. "friendly cure" or the amicable resolution to a mediated dispute.
- B.** "friend of the court" or a third party allowed to file briefs.
- C. "small courier" or the briefs, originally foot messengers, which are used to communicate between lawyers and the courts.
- D. the name for the conductor of an arbitration, a position originally filled by medieval clergy.

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

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: The Appeal

44. (p. 49) In order to appeal a decision:

- A.** a party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision.
- B. a party need not have objected to a judge's action at the time the alleged error was made.
- C. a party must prepare for a new fact-finding process.
- D. the defendant must show that the errors made were not material.

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Basis for Appeal; The Appeal

45. (p. 49) A record in writing of the entire trial proceedings including the testimony of all the witnesses and any discussions between the judge and the attorneys is called a:

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

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

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Appeal

Short Answer Questions

46. (p. 29; 30) The employees of a company have been on strike for 30 days which has led to huge losses for the business. The employees complain about the increased accidents in the company and lack of safety measures undertaken by the management. The management in turn blames the employees for negligence. Owing to loss of business and wages, both parties want to settle the dispute but have been unable to negotiate successfully; the main problem being feelings of resentment and distrust. Both parties want to settle out of court but do not want the third party to whom the dispute is submitted to decide the outcome. Which method of dispute settlement is best suited to them? Why?

Would the method change if the parties were ready to accept awards by third parties but were not particular about the reasons of awards?

The method of dispute settlement that is best suited to them is mediation. The various reasons why mediation is best suited method to resolve the dispute in the given case are as follows:

- a. It allows the parties to settle the case outside the courts hence, avoiding further negative publicity.
- b. It allows the parties to settle the case by appointing a mediator who merely facilitates the negotiation by proposing a basis for settlement and does not give awards or opinions on the merits of the dispute.
- c. It is a suitable method when the two parties, here the employees of the company and the management have a continuing relationship.

Mediation could be adopted even in case the parties were ready to accept awards by third parties however, they could also opt for arbitration to settle the case.

AACSB: Reflective Thinking

Bloom's: Analyze

Difficulty: Hard

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

Topic: Alternative Dispute Resolution

47. (p. 36; 49) Explain why an appeal can only be taken from a court of record.

An appeal can only be taken from a court of record because such a court has a transcript or record of what went on at the trial. This transcript can be reviewed by the appellate court to see if the errors that are claimed have occurred and are sufficiently important to justify a reversal.

AACSB: Reflective Thinking

Bloom's: Analyze

Difficulty: Hard

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

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

Topic: Inferior Courts

48. (p. 39) 'The function of a judge in the United States differs from that in Europe. Explain.

The function of a judge in the United States differs from that in Europe' in the following respects:

- a. In Europe, judges have a duty to direct the search for truth but the judges in the United States expect the truth to emerge from the efforts of the lawyers for the parties.
- b. In Europe, judges assume a more active role in directing the proceedings of the courts unlike the judges in the United States, who are merely responsible for the correct application of the law to the facts of the case and instructing the jury regarding the law.

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: The Function of the Judge

49. (p. 41) Under what conditions can one or more members of a class be sued as representative of a class? What type of lawsuit can their claims be consolidated into?

Lawsuits can have more than one plaintiff and/or defendant. Sometimes, when a defendant's actions have injured many plaintiffs, their claims may be consolidated into a class action lawsuit. One or more members of a class may sue or be sued as representative of a class if:

- a. the class is so numerous that joinder of all members is impracticable
- b. there are questions of law or fact common to the class
- c. the claims or defenses of the representative parties are typical of the claims or defenses of the class
- d. the representative parties will fairly and adequately protect the interests of the class

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Pleadings

50. (p. 46) What is the legal standard for granting a motion to dismiss? What purpose does this motion serve?

The legal standard for granting a motion to dismiss is that the facts stated in the plaintiff's complaint are not legally sufficient to state a cause of action; that is, even if the facts alleged can be proved, there is no legal remedy for the type of injury alleged. The purpose that the motion to dismiss serves is that if the plaintiff has no case, it would be wasteful for the case to continue. The court would save time and the defendant would save unnecessary expenses.

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Pleadings