

Solution Manual for Business Law 8th Edition by Cheeseman

ISBN 0132890410 9780132890410

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2 COURTS AND JURISDICTION

“I was never ruined but twice: once when I lost a lawsuit, and once when I won one.”

Voltaire

I. Teacher to Teacher Dialogue

Twenty-first century technological advances have provided our students with all kinds of instant access to information. These devices have provided the students with a variety of preconceptions.

Among these is the average undergraduate’s notion of how trials are conducted and the role of attorneys in that process. Invariably these perceptions center on popular television series such as “Law and Order” and “Court TV”. This is not all bad. Current media focus on numerous law-related issues has generated a whole new wave of public interest in the workings of our legal system. The downside is that the media has created many myths on the folklore of law and lawyers. In the world of pop culture, no one knows until the end who really did it until a surprise witness shows up to identify the bad guy. In more modern versions, the attorney first has a business relationship with the client and then proceeds to get him or her acquitted. Regardless of the outcome, the process is always full of glamour and intrigue.

The problem is that a trial rarely resembles the goings on found in the entertainment media. Trials are long, tedious, emotionally and financially draining processes for all parties concerned. In many ways, a trial represents a failure by the parties to reach some sort of satisfactory solution of the issue beforehand. Rarely do the parties actually want to go through a labyrinth of pleadings, motions, and the like, feeling all the while totally dependent on the sometimes questionable competence of their attorneys. Unlike the make-believe world of entertainment, the job of an attorney is to keep his or her client out of court. (This often needs some reinforcement with the student.) The attorney’s professional advice should anticipate and resolve potential legal problems before, rather than after, the fact if at all possible.

It is against this backdrop that we should try to present a more realistic picture of how our system works. We can basically start by discussing how few controversies actually get to the trial stage and how even fewer of those are actually reported in the National Reporter System. Additionally, a fair amount of time should be spent reviewing the growing trend toward alternative dispute resolution (ADR) mechanisms. Personal experience examples might be helpful in illustrating the growing trends toward ADR. To complete the cycle we can then proceed to itemize the key steps used in a court trial in this chapter and in these that follow.

II. Chapter Objectives

Describe state court systems.

Describe the federal court system.

List and describe the types of decisions that are issued by the U.S. Supreme Court. Compare the jurisdiction of state courts with that of federal courts.

Define personal jurisdiction, standing to sue and venue.

III. Key Question Checklist

If the dispute or controversy needs to be resolved in a court of law, which court has jurisdiction?

Once jurisdiction is established, was the proper sequence of pretrial steps taken?

Was the trial sequence properly followed?

After the trial is completed, are any appeals from the decision applicable?

IV. Text Materials

One objective of this chapter is to familiarize students with the role of the major players in those events.

The federal court system and the court systems of the 50 states and the District of Columbia are the two major court systems in the U.S. Litigation is the process of bringing, maintaining, and defending a lawsuit. In addition, there are a number of alternative dispute resolutions that can be used.

State Court Systems

Limited-Jurisdiction Trial Court – Inferior trial like traffic courts, juvenile courts, justice-of-the peace courts, probate courts, family law courts hear specialized matter. Another example of these is the small claim courts that hear limited dollar amount civil cases.

General-Jurisdiction Trial Court – Courts of Record keep a record of the testimony and evidence presented at trial for future reference. These courts hear felony cases, civil cases over a certain dollar amount, and other items.

Intermediate Appellate Court – Courts of Appeal hear appeals from trial courts, reviewing records of trials for errors without hearing any new evidence.

Highest State Court – State supreme courts hear appeals from intermediate state courts and some trial courts, without hearing new evidence.

Contemporary Environment: *Delaware Courts Specialize in Hearing Business Disputes* Delaware has created a special Chancery Court to decide business litigation, with a reputation for handling corporate matters. Delaware's laws also tend to favor corporate management, so together with the Chancery Court, the state has created an environment that encourages incorporation in that state. Other states are beginning to follow suit and create their own variation of Delaware's Chancery Court.

Courts and Jurisdiction

Federal Court System

Special Federal Courts – There are six courts of limited jurisdiction: the U.S. tax court, federal claims court, the Court of International Trade, bankruptcy court, and the courts of appeals for the armed services and for veteran's claims.

U.S. District Courts – These are the federal court system's 94 trial courts of general jurisdiction.

U.S. Courts of Appeal – These are the federal court system’s 13 intermediate appellate courts.

Supreme Court of the United States

The Supreme Court is composed of nine justices who are nominated by the President and confirmed by the Senate. The President appoints one as the chief justice who is responsible for the administration of the Court, while the other eight are considered associate justices.

Contemporary Environment: *The Process of Choosing a U.S. Supreme Court Justice* The President appoints Supreme Court justices, with the advice and consent of the Senate (majority vote). This allows a form of balance of power between the executive and legislative branches of the government.

Jurisdiction of the U.S. Supreme Court – The Supreme Court hears appeals from the federal district courts and from the highest state courts. Legal briefs are filed, oral arguments are made, lower court records are reviewed, but neither new evidence nor testimony is heard. The Supreme Court decision is final.

Decisions by the U.S. Supreme Court – Congress has established the rules for the mandatory appellate review by the Supreme Court, which may also elect to hear cases at its discretion. Petitioners file a petition for certiorari asking for the Supreme Court to review their case. If the court decides to sit on the matter, it issues a writ of certiorari. The court hears about 100 cases per year.

Unanimous Decisions – All the justices voting agree as to both the outcome and the reasoning. These decisions become precedent.

Majority Decision – Decisions by the Supreme Court are considered majority decisions if a majority of the justices agree on the outcome and reasoning. These decisions become precedent.

Plurality Decision – A plurality decision is when the majority of the justices agree on the outcome, but not the reasoning. This settles the case, but does not serve as precedent.

Tie Decision – In this case the winner in the lower court prevails. This does not serve as precedent.

Concurring Opinion – When a justice agrees with the outcome of the majority, but not the reasoning, they will issue a concurring opinion explaining their stand.

Dissenting Opinion – Any justice who does not agree with the decision may state their opinion.

Contemporary Environment: *“I’ll Take You to the U.S. Supreme Court!”*

This discusses the process necessary to win a review by the U.S. Supreme Court.

Jurisdiction of Federal Courts

Federal Question – Federal courts have limited jurisdiction to hear cases involving federal questions with no dollar amount limit.

Diversity of Citizenship – The federal courts have jurisdiction to hear cases involving diversity of citizenship. There must be diversity of state citizenship or the cases must be between a citizen and a subject of a foreign country. The amount in controversy must be over \$75,000.00.

Case 2.1 U.S. SUPREME COURT Diversity of Citizenship: *Hertz Corporation v. Friend*

Facts: Melinda Friend, a California citizen, sued the Hertz Corporation in California state court seeking damages for Hertz’s alleged violation of California’s wage and hour laws. Hertz filed notice to remove the case to federal court, asserting diversity of citizenship of the parties because

the company was incorporated in the state of Delaware and had its headquarters in New Jersey. Friend argued that Hertz was a citizen of California as a large number of its operations were based in the state. The U.S. District Court held that Hertz was a citizen of California and that the case could not be moved to federal court. The U.S. Court of Appeals affirmed this decision. Hertz appealed to the U.S. Supreme Court.

Issue: Is Hertz Corporation a citizen of California?

Decision: The U.S. Supreme Court held that due to a diversity of citizenship between Hertz and Friend the case could be moved to federal court.

Reason: The court held that as the Hertz Corporation headquarters are located in New Jersey, it is a citizen of that state and there is a diversity of citizenship. Hence, the case can be moved to federal court.

Case Questions

Critical Legal Thinking: The federal courts have jurisdiction to hear cases involving diversity of citizenship. There must be diversity of state citizenship or the cases must be between a citizen and a subject of a foreign country. The amount in controversy must be over \$75,000.

Ethics: It was ethical for Hertz to have tried to avoid the trial in California state court. As a nonresident, Hertz probably wanted to prevent state court bias and thus moved the case to the federal court.

Contemporary Business: If a plaintiff brings a diversity of citizenship case in federal court, it remains there. If the plaintiff brings a diversity of citizenship case in state court, it will remain there unless the defendant removes the case to federal court.

Jurisdiction of State Courts – State courts hear cases that the federal courts do not have the jurisdiction to hear.

Federal courts may have concurrent jurisdiction with state courts to hear cases involving diversity of citizenship.

Standing to Sue, Jurisdiction and Venue

Standing to Sue – The plaintiff must have a stake in the outcome of the lawsuit.

In Personam Jurisdiction – In personam jurisdiction over the person is achieved by the plaintiff filing a lawsuit with a court and by serving a summons on the defendant.

If personal service is unavailable, notice of the case by mail or publication in newspapers is allowed.

Defendants disputing the jurisdiction of a court may make a special appearance to argue their case, and cannot be served while making this appearance.

Long-Arm Statute - A court can obtain jurisdiction over persons and businesses located in another state through use of a long-arm statute, provided the defendant has had some minimum contact with the state.

Landmark U.S. Supreme Court Case: *International Shoe Company v. State of Washington*

International Shoe had salespeople that sold shoes door-to-door within the state of Washington, and were paid on a commission basis. They had no office in the state. Washington State determined that they had failed to pay unemployment taxes on International's employees, and serve notice to the organization on one of their Washington sales representatives as well as by mailing the notice to the headquarters in St. Louis. International made a special appearance to argue that it had insufficient contacts within the state to warrant payment of the tax. The unemployment office and appeals board, as well as various courts within the state ruled against International, which appealed to the U.S. Supreme Court.

The Supreme Court ruled that International had neither casual nor irregular contacts within the state, and was, therefore, subject to in personam jurisdiction and service upon one of their agents, based on their "minimum contacts" within the state. The Supreme Court clearly stated that the Due Process Clause permits jurisdiction over a defendant in any state in which the defendant has "certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."

In Rem Jurisdiction- Courts may have jurisdiction over property found within the state, based on in rem (over the thing) jurisdiction.

Quasi In Rem Jurisdiction – Attachment jurisdiction occurs when a plaintiff who has obtained a judgment attempts to satisfy the judgment by attaching property located in another state.

Venue – The court with the jurisdiction that is located closest to where the incident occurred or where the parties live should hear the lawsuit.

Pretrial publicity may prejudice jurors and may lead to a request for a change of venue in order to get a more impartial jury. Forum shopping is the process of looking for a more favorable court without a valid reason, and it is frowned upon by most courts.

Forum-Selection and Choice-of-Law Clauses – Because many business agreements are formed between people from different states and different countries, many contracts have clauses that specifically address the state's or country's laws that will be applied in the case of a dispute, in what are known as choice-of-law clauses. Additionally, they will often agree as to which court will have jurisdiction over any dispute in forum-selection clauses.

Jurisdiction in Cyber Space

Today, with the advent of the Internet and the ability of persons and businesses to reach millions of people in other states electronically, particularly through websites, modern issues arise as to whether courts have jurisdiction in cyberspace. *Zippo Manufacturing Company v. Zippo Dot Com, Inc.* is an important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.

Case 2.2 Jurisdiction over an Internet Seller: *Chanel, Inc. v. Banks*

Facts: Chanel, Inc. filed suit in U.S. District Court in Maryland against defendant Ladawn Banks, a resident of Florida. Chanel alleged that Banks owned and operated the fully interactive website www.lovenamebrands.com, through which she sold handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks. The goods at issue in this case were sold to a resident of Maryland. Chanel sought a default judgment against the defendant, an award of damages, and a permanent injunction against the defendant's further violation of its trademarks. The court first had to address the issue of whether it had personal jurisdiction over the defendant. **Issue:** Does the court have personal jurisdiction over the defendant?

Decision: The U.S. Court of Appeals for Maryland held that defendant Banks was subject to personal jurisdiction of the court.

Reason: Even though Banks is a resident of Florida, she used her website to sell counterfeit goods to a customer in Maryland. Moreover, her website was highly interactive and provided a platform for exchange of information, goods, and funds. Thus, the court has personal jurisdiction over Banks in this matter.

Case Questions

Critical Legal Thinking: *Zippo Manufacturing Company v. Zippo Dot Com, Inc.* is an important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website. **Ethics:** Student answers may vary. But Banks did not act ethically.

Contemporary Business: Obtaining personal jurisdiction over a defendant in another state has always been difficult for courts. Today, with the advent of the Internet and the ability of persons and businesses to reach millions of people in other states electronically, particularly through websites, modern issues arise as to whether courts have jurisdiction in cyberspace.

International Law: *Judicial System of Japan*

There is very little litigation in Japan when compared to the United States. A primary reason for the difference is cultural because Japan nurtures the attitude that confrontation should be avoided. Other reasons include the high cost that must be borne by plaintiffs who want to file a lawsuit. Even if the plaintiff wins, the damages awarded are low. In the past, a relatively low number of lawyers graduated every year from the few law schools in Japan. But now, due to increasing business and personal disputes, the government is building new law schools and plans to double the number of lawyers by the year 2020.

V. Case Problems

2.1 Standing to Sue: The Court of Appeals of Ohio held that Michigan law applied to the case. The court noted that because the accident took place in Michigan, there is a presumption that Michigan law applies absent any other jurisdiction having more substantial contacts. Plaintiff Bertram, however, contended that Ohio law should apply, because all of the parties were residents of Ohio at the time of the accident and all consequences flowing from his injury occurred in Ohio. The court disagreed. The court stated, "Because the snowmobiling accident took place in Michigan, the place where the conduct causing Bertram's injury occurred in Michigan and Michigan has enacted specific legislation involving the risks of snowmobiling, we find that Michigan law clearly controls in this case. While all parties are residents of and have their relationships in the State of Ohio, we are not persuaded by Bertram's argument that this issue should control." The Court of Appeals of Ohio held that the law of the state of Michigan, where the accident occurred, and not the law of the state of Ohio, the state of the residence of the parties, applied. The court applied the Michigan assumption of the risk statute and granted

2.2 Federal Question: Yes, the federal courts have the jurisdiction to hear Nutrilab's case. Federal courts have limited jurisdiction, granted to them by the Constitution and Congress. Part of this limited jurisdiction is to hear cases involving federal questions. Federal question cases are cases arising under the U.S. Constitution, treaties, and federal statutes and regulations. Federal courts have original jurisdiction to hear federal question cases. Nutrilab was disputing the FDA's application of a federal statute to stop their distribution of Starch Blockers. The Starch Blockers case was therefore one arising under a federal statute, and this gave the federal court original jurisdiction to hear the case. Any lawsuit, such as this one brought by Nutrilab, that involves a federal question must be brought in a federal court. *Nutrilab, Inc. v. Schweiker*, 713 F.2d 335, **Web** 1983 U.S. App. Lexis 25121 (United States Court of Appeals for the Seventh Circuit).

2.3 Forum Selection Clause: Yes, the forum-selection clause contained in the Carnival Cruise Lines ticket is enforceable against Mrs. Shute. Including a reasonable forum clause in a form contract is permissible for several reasons. First, a cruise line has a special interest in limiting the number of jurisdictions in which it could potentially be subject to a lawsuit. Because a cruise ship typically carries passengers from many locales, it is likely that a mishap on a cruise could subject the cruise line to litigation in several different jurisdictions. Second, a clause establishing the forum for dispute resolution dispels any confusion as to where lawsuits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources needed to decide such issues. Finally, passengers who purchase tickets containing a forum-selection clause benefit in reduced fares that reflect the savings that the cruise line enjoys by limiting where it may be sued. The forum-selection clause in the Carnival Cruise Lines ticket was fair and reasonable and therefore enforceable against Mrs. Shute. If Mrs. Shute wishes to sue Carnival Cruise Lines, she must do so in a court in the state of Florida, not in a court in the state of Washington. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622, **Web** 1991 U.S. Lexis 2221 (Supreme Court of the United States)

2.4 Jurisdiction. In this situation, the case was removed to federal court because of the diversity of citizenship and because the claim was greater than \$75,000. Although it is true that both Allison and Tru-Amp (by virtue of its incorporation) were citizens of the state of Mississippi, the manufacturer of the switchboard and breakers was incorporated in Pennsylvania. This produced the needed diversity of citizenship to remove the case from the Mississippi court to federal court. *Allison v. ITE Imperial Corp.* 729 F. Supp. 45, **Web** 1990 U.S. Dist. Lexis 607 (United States District Court for the Southern District of Mississippi).

VI. Ethics Cases

2.5 Ethics: No. Based on the *de minimis* theory, i.e., "the law disregards trifles," the trial court was correct in dismissing the case. Justice King believed that this lawsuit is an absurd waste of the resources of the courts and of the taxpayers' money. The courts are already too heavily burdened to be used to punish advertisers who use junk mail. The students should question how the failure to deliver an inexpensive calculator watch to a three year old who cannot tell time

could ever be worth \$15M in punitive damages. *Harris v. Time*, 191 Cal. App.3d 449, 237 Cal. Rptr. 584, **Web** 1987 Cal. App. Lexis 1619 (Court of Appeal of California)

2.6 Ethics: Yes, the defendants are subject to suit in California. The U.S. Supreme Court held that jurisdiction of the California court over the petitioners, who were residents of Florida, was proper because of their intentional conduct in Florida that was allegedly calculated to cause injury to plaintiff Shirley Jones in California. The Supreme Court applied the rule of *International Shoe Co. v. Washington*, 326 U.S. 310, that the Due Process Clause permits jurisdiction over a defendant in any state in which the defendant has “certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” The Court applied this rule to the case at hand and found that California was the focal point both of the article that appeared in the *National Enquirer* and of the distress suffered. The Court noted that the magazine has its largest circulation in California, that the defendant knew that plaintiff Shirley Jones, a professional entertainer and television personality, lived and worked in California, and that the article would have its greatest impact in California. The Supreme Court concluded that the defendants, as Florida residents, must “reasonably anticipate being hauled into court” in California to answer for the truth of the statements made in the article. Thus, the minimum contacts rule and the Due Process Clause were not violated. *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L.Ed.2d 804, **Web** 1984 U.S. Lexis 4 (Supreme Court of the United States).

VIII. Terms

- Article III of the U.S. Constitution— It provides that the federal government’s judicial power is vested in one “Supreme Court.” This court is the U.S. Supreme Court.
- Associate Justices of the U.S. Supreme Court—The eight other justices apart from the Chief Justice of the U.S. Supreme Court.
- Change of Venue—In certain circumstances, when pretrial publicity may prejudice jurors, a change of venue may be requested so that a more impartial jury can be found.
- Chief Justice of the U.S. Supreme Court—Appointed by the president and responsible for administration of the U.S. Supreme Court.
- Choice-of-law clause— A contract provision that designates a certain state’s law or country’s law that will be applied in any dispute concerning nonperformance of the contract.
- Circuit— The geographical area served by each U.S. court of appeals.
- Concurrent jurisdiction—Jurisdiction shared by two or more courts.
- Concurring opinion—An opinion that can be issued by a justice of the Supreme Court who agrees with the outcome of a case but not the reason proffered by the other justices.
- Court of Appeals for the Federal Circuit—A court of appeals in Washington, D.C., that has special appellate jurisdiction to review the decisions of the Claims Court, the Patent and Trademark Office, and the Court of International Trade.
- Delaware Court of Chancery—A special court which decides cases involving corporate governance, fiduciary duties of corporate officers and directors, mergers and acquisitions, and other business issues.
- Dissenting opinion—An opinion which sets forth the reason why a justice of the Supreme Court does not agree with a decision.
- District—The geographical area served by a U.S. district court.
- District of Columbia Circuit—The 12th circuit court, located in Washington, DC.
- Diversity of citizenship—A case between (1) citizens of different states and (2) a citizen of a state and a citizen or subject of a foreign country.
- En banc* review—A review that can be requested by a petitioner in the U.S. court of appeals after a decision is rendered by a three-judge panel.
- Exclusive jurisdiction—Jurisdiction held by only one court.
- Federal question case—A case arising under the U.S. Constitution, treaties, and federal statutes and regulations.
- Forum shopping—Looking for a favorable court without a valid reason.
- Forum-selection clause—Contract provision that designates a certain court to hear any dispute concerning nonperformance of the contract.
- Full Faith and Credit Clause—A clause of the U.S. Constitution under which a judgment of a court of one state must be given “full faith and credit” by the courts of another state.

General-jurisdiction trial court—A court that hears cases of a general nature that are not within the jurisdiction of limited-jurisdiction trial courts. Testimony and evidence at trial are recorded and stored for future reference.

Highest state court— The highest court in a state court system; it hears appeals from intermediate appellate state courts and certain trial courts.

In personam jurisdiction—Jurisdiction over the parties to a lawsuit.

In rem jurisdiction—Jurisdiction to hear a case because of jurisdiction over the property of the lawsuit.

Intermediate appellate court—An intermediate court that hears appeals from trial courts.

International Shoe Company v. State of Washington— A landmark U.S. Supreme Court case that established the minimum contacts standard.

Limited-jurisdiction trial court—A court that hears matters of a specialized or limited nature.

Long-arm statute—A statute that extends a state’s jurisdiction to nonresidents who were not served a summons within the state.

Majority decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome and reasoning used to decide a case.

Minimum contact— A nonresident defendant in a civil lawsuit must have had some minimum contact with the state such that the maintenance of that lawsuit in that state does not offend traditional notions of fair play and substantial justice.

Petition for certiorari—A petition asking the Supreme Court to hear one’s case.

Plurality decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome of a case but not as to the reasoning for reaching the outcome.

Quasi in rem jurisdiction—Jurisdiction allowed a plaintiff who obtains a judgment in one state to try to collect the judgment by attaching property of the defendant located in another state.

Rule of four— The votes of four justices are necessary to grant an appeal and schedule an oral argument before the Supreme Court.

Service of process—A summons is served on the defendant to obtain personal jurisdiction over him or her.

Small claims court—A court that hears civil cases involving a small dollar amounts.

Special federal courts—Federal courts that hear matters of specialized or limited jurisdiction.

Standing to sue—The plaintiff must have some stake in the outcome of the lawsuit.

State courts—A separate court system that is present in each state, Washington, DC and each territory of the United States. It includes limited-jurisdiction trial courts, general-jurisdiction trial courts, intermediate appellate courts, and a supreme court.

State supreme court—The highest court in a state court system; it hears appeals from intermediate state courts and certain trial courts.

Supreme Court of the United States— The highest court in the land located in Washington, DC.

 Tie decision—A Supreme court decision where the number of votes cast by the justices leads to a tie and the decision of the lower court is affirmed. It occurs when all nine judges are not present.

 Unanimous decision— A Supreme court decision where all the justices voting agree as to the outcome and reasoning used to decide a case.

 U.S. Bankruptcy Court—Special federal court that hears cases involving federal bankruptcy laws.

 U.S. Courts of Appeals—The federal court system’s intermediate appellate court.

 U.S. Court of Appeals for the Armed Forces—Special federal court that exercises appellate jurisdiction over members of the armed services.

 U.S. Court of Appeals for Veterans Claims—Special federal court that exercises jurisdiction over decisions of the Department of Veterans Affairs.

 U.S. Court of Federal Claims—Special federal court that hears cases brought against the United States.

 U.S. Court of International Trade—Special federal court that handles cases that involve tariffs and international trade disputes.

 U.S. district courts—The federal court system’s trial courts of general jurisdiction.

U.S. Tax Court—Special federal court that hears cases that involve federal tax laws.

Venue—A concept that requires lawsuits to be heard by the court with jurisdiction that is nearest the location in which the incident occurred or where the parties reside.

Writ of certiorari—An official notice that the Supreme Court will review one's case. *Zippo*

Manufacturing Company v. Zippo Dot Com, Inc.—An important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.