Chapter 2

THE COURT SYSTEM AND DISPUTE RESOLUTION

RESTATEMENT

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

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

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

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

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

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

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

STUDENT LEARNING OUTCOMES

LO.1: Explain the federal and state

court systems. LO.2: Describe

court procedures.

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

INSTRUCTOR'S INSIGHTS

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

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

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

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

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

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

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

CHAPTER OUTLINE

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

   A. Types of courts

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

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

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

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

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

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

CASE BRIEF: Yates v. State
171 S.W.3d 215 (Tex. App. 2005)

FACTS: Andrea Yates was charged with capital murder in the drowning deaths of her five young children. Mrs. Yates had been in and out of treatment

facilities, had been taking antidepressants, and was under the care of several experts for her depression. She was also experiencing postpartum depression when she drowned each of her five children in the bath tub at their family home. She then called her husband to ask him to come home because the children were hurt. She also called 9-1-1 and told the operator that she needed a police officer to come to her home.

She entered a "not guilty by reason of insanity" plea and ten psychiatrists and two psychologists testified at the trial about Mrs. Yates's mental condition before, during, and after the deaths of the children.

Dr. Parke Dietz, the psychiatrist for the prosecution, testified that he believed Mrs. Yates knew right from wrong and that she was not insane at the time of the drownings. Dr. Dietz also served as a consultant for the television series "Law and Order," and testified as follows about one of the shows in the series:

> As a matter of fact, there was a show of a woman with postpartum depression who drowned her children in the bathtub and was found insane and it was aired shortly before the crime occurred.

The prosecution used this information about the television show to cross-examine witnesses for Mrs. Yates and also raised its airing in its closing argument to the jury.

The jury found Mrs. Yates guilty. The defense lawyers later discovered that Dr. Dietz was mistaken, that there had been no such "Law and Order" show on postpartum depression. They appealed on the grounds that the evidence was material, prejudiced the jury, and required a new trial.

ISSUE: Is a new trial required because false evidence was used in the original trial?

HOLDING: Yes, the court grants Mrs. Yates a new trial.

REASONING: If the evidence that turned out to be false was not material, then a new trial would not be required. But, with this evidence on the TV show, both sides had to talk about it – the prosecution for its ability to show premeditation and sound mind and the defense to respond to the TV show and its impact on Mrs. Yates. Its continuing presence at the trial showed that it was a critical part of the case and its falsity requires a new trial.

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

1. Federal district court

a. Trial court
b. General jurisdiction

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

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

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

2. U.S. Court of Appeals (See Figure 2-2 in text)

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

3. U.S. Supreme Court

a. Appellate jurisdiction

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

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

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

1. General trial courts: civil and criminal jurisdiction

2. Specialty courts – probate, family

3. City, municipal, and justice courts

4. Small claims courts

5. State appellate courts

6. State supreme courts

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

A. Participants in the court system

1. Plaintiffs – initiates proceeding (criminal case: prosecutor)

2. Defendant – party against whom proceedings are brought

3. Judge – presides over proceedings

4. Jury – citizens sworn to reach a verdict

B. Which law applies – conflicts

1. Law of state in which court is located governs procedural questions

2. Law of state in which contract was made governs

3. Choice of law provisions in contracts govern

C. Initial steps in a lawsuit

1. Complaint – states cause of action – commencement of lawsuit

2. Service of process – notifies defendant

3. The defendant's response and the pleadings

a. Answer and/or counterclaim – also called the pleadings
b. Motion to dismiss – demurrer
c. Deny

4. Discovery – process of learning the evidence that exists prior to trial

a. Deposition – sworn testimony not in court room; can be used to impeach differing recollection or testimony at trial
b. Interrogatories – questions answered under oath
c. Requests for production of documents – obtaining paper evidence

5. Motion for summary judgment – asks for decision when facts are not in dispute

6. Designation of expert witnesses

D. The trial

1. Jury selection

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

2. Opening statements

3. Presentation of evidence

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

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

DISCUSSION POINTS: Ethics & the Law
Injustice, Misconduct, and Senator Stevens

The ethical obligation of all lawyers, whether in civil or criminal cases, is to offer whatever evidence they have, whether favorable or unfavorable. In this case, the lawyers withheld the evidence because the judge was not specific enough in requiring them to make the disclosures. There was no criminal conduct, but a man's life, and his career were ruined when there was evidence that showed he did not intentionally set out to take payments and work from a contractor and that he wanted receipts to pay what was due and to report the increase in value of his home.

The general rule is disclosure. When in doubt, disclose and then supplement as new information comes to light.

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

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

5. Closing argument or summation

6. Motion for mistrial

DISCUSSION POINTS: E-Commerce & Cyberlaw
The Googling Juror

Discuss the importance of jurors using only the evidence presented. Discuss importance of following the Judges' cautions and being forthright.

7. Jury instructions

8. Jury verdict or mistrial if deadlocked

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

E. Posttrial procedures: Recovery

1. Costs

2. Attorney fees

3. Execution of judgment and suit

4. Writ of execution or writ of garnishment

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

A. Arbitration

1. Means of avoiding expensive legal costs

2. Federal Arbitration Act and Uniform Arbitration Act govern

3. Arbitration can be mandatory or elective

4. Scope of arbitration: as broad as possible

5. Finality of arbitration

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

B. Mediation

1. No authority to make a decision

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

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

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

E. Association tribunals

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

2. The National Association of Home Builders requires arbitration

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

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

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

I. Judicial triage: cases are sent to judge for immediate evaluation to see if the cases should be dismissed or expedited for trial

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

ANSWERS TO QUESTIONS AND CASE PROBLEMS

1. Trial process. Steps in litigation:

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

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

j. Recovery: fees, execution, garnishment

2. Arbitration. The benefits are, in theory, that alternatives are faster. However, these arbitration methods are now dragging out nearly as much as a trial. ADR allows for no public hearing and all the problems that go along with the media covering a contract dispute. These methods allow the parties to gain the perspective of an outside part y, something that often needs to be done in order to move the parties forward in their negotiations.

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

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

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

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

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

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

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

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

11. Arbitration/mandatory clauses. The presumption that arbitration clauses in contracts (here in a collective bargaining agreement) are valid and enforceable does not extend to those statutory rights that parties to the contract may have. In

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

12. Trial; jury selection. The lawyers can obtain information about prospective jurors through questionnaires as well as the process of voir dire. Some of the background questions on voir dire are place of employment and whether they know any of the parties in the case. Mr. Guber could be excused because of his relationship with Ms. Ryder. The prosecuting attorney could find this out using voir dire, the process of questioning the jury panel for screening them for bias, connection and relationship. The attorney could use a challenge for cause or a peremptory challenge. In the Ryder case, both sides let Mr. Guber remain and he served on the jury after his assurances that he would be impartial. Ms. Ryder was found guilty of theft and burglary. She was sentenced to community service and probation. [Rick Lyman, "For the Ryder Trial, a Hollywood Script," New York Times, November 3, 2002, SL-1]

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

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

15. Discovery evidence. Withholding evidence carries serious implications for the other party – sometimes a case turns on that evidence. For example, Wal-Mart had to pay sanctions when it withheld evidence about a security study and recommendations it had on safety in its store parking lots in a case in which a customer was robbed and assaulted in one of the store parking lots. To be sure evidence is not withheld, each side must be careful in drafting production

requests and with interrogatories as well as with questions in depositions so that every aspect of the case is explored.

LAWFLIX

Class Action (1991) (R)

Good movie to illustrate discovery and the ethics of withholding documents in production of evidence/paperwork.

Twelve Angry Men (1957) (G)

A movie that shows the jury process, rights of parties in court, jury instructions, and group think, all wrapped up in terrific dialogue.

To access additional videos that illustrate business law concepts, visit **www.cengage.com/blaw/dvl.**