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Business Law, 17e **(Langvardt)**
Chapter 2 The Resolution of Private Disputes

1) Minor criminal cases and civil disputes are decided in the appellate courts.

Answer: FALSE
Explanation: Minor criminal cases and civil disputes involving small amounts of money or specialized matters frequently are decided in courts of limited jurisdiction. Appellate courts correct legal errors made by trial judges.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Bloom's: Remember
AACSB: Reflective Thinking
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2) The plaintiff can sue the defendant in whatever court and locale that the plaintiff wishes.

Answer: FALSE
Explanation: The plaintiff in a civil case must chose a court to litigate in that has jurisdiction over the case. Jurisdiction is the court's power to hear a case and issue a decision binding on the parties.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-02 Explain the difference between subject-matter jurisdiction and in personam jurisdiction.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

3) For a state trial court to have the power to decide a civil case, it must have either in personam jurisdiction or in rem jurisdiction.

Answer: TRUE
Explanation: In order to decide a civil case, a state trial court needs to have either in personam or in rem jurisdiction.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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4) Due process requirements are satisfied when a state or federal court asserts in personam jurisdiction over a nonresident defendant when he has been shown to have the requisite "minimum contacts" with the forum state or federal district.

Answer: TRUE
Explanation: The assertion of in personam jurisdiction satisfies federal or state due process guarantees so long as the defendant has sufficient "minimum contacts" with the forum state, such that maintaining an action there comports with "traditional notions of fair play and substantial justice."
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Understand
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5) In rem jurisdiction is based only on the fact that property of the defendant is located within the state.

Answer: TRUE
Explanation: In rem jurisdiction is based on the presence of property within the state and it empowers state courts to determine rights in that property even if the persons whose rights are affected are outside the state's in personam jurisdiction.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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6) Generally, forum selection clauses in form agreements are unenforceable.

Answer: FALSE
Explanation: Courts generally enforce forum selection clauses unless they are shown to be unreasonable in a given set of circumstances.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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7) In general, a court has venue if it is a territorially fair and convenient forum for both parties to litigate the case in that court.

Answer: TRUE
Explanation: A court has venue if it is a territorially fair and convenient forum to hear a case. Venue for state courts is typically set by state statutes.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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8) For federal district court diversity jurisdiction to exist the only requirement is that the amount in controversy must be at least $75,000.

Answer: FALSE
Explanation: Diversity jurisdiction exists when (1) the case is between citizens of different states and (2) the amount in controversy exceeds $75,000.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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9) The doctrine of certiorari jurisdiction makes it mandatory for the U.S. Supreme Court to hear appeals from federal and state courts.

Answer: FALSE
Explanation: The doctrine of certiorari jurisdiction grants the U.S. Supreme Court the discretion to decide whether it wants to hear a case or not. The court hears only a small percentage of the many appeals that come to it.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
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10) Brennan sues Melissa for breach of contract. In her reply, Melissa claims, among other things, that she should not be liable as she only entered the contract because Brennan defrauded her. This assertion is called an affirmative defense.

Answer: TRUE
Explanation: A successful affirmative defense enables the defendant to win the case even if all the allegations in the complaint are true and, by themselves, would have entitled the plaintiff to recover.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Apply
AACSB: Analytical Thinking
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11) The defendant must wait until after the pleadings have been completed before making a motion to dismiss.

Answer: FALSE
Explanation: The motion to dismiss is often made after the filing of a complaint and before the defendant's answer. The pleadings phase of a trial includes the complaint and answer and in some jurisdictions the reply.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

12) Interrogatories are a form of discovery requiring a party to file written answers to questions submitted to that party.

Answer: TRUE
Explanation: Interrogatories are written questions directed by the plaintiff to the defendant, or vice versa. The litigant on whom interrogatories are served must provide written answers, under oath, within a time period prescribed by applicable law.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
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13) As in a criminal case, a defendant in a civil case may not be compelled by the plaintiff to testify.

Answer: FALSE
Explanation: The Fifth Amendment of the U.S. Constitution allows protections that prevent a defendant in a criminal case from being compelled to testify but, in a civil case, a defendant can be compelled to testify.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Analytical Thinking
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14) Normally, a motion for summary judgment requires that a court decide whether there are genuine questions of material fact and questions of law.

Answer: TRUE
Explanation: A summary judgment involves factual determinations. To prevail, the party moving for a summary judgment must show that (1) there is no genuine issue of material (legally significant) fact and (2) she is entitled to judgment as a matter of law.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
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15) The party successful in a civil lawsuit can seek to enforce a judgment by obtaining a writ of execution or by garnishment.

Answer: TRUE
Explanation: A writ of execution and a garnishment are methods by which a party can collect a judgment. A writ of execution allows the sheriff or federal marshal to seize designated property of the defendant and sell it at a judicial sale to help satisfy the judgment. Garnishments allow a party to seize property, money, and wages that belong to the defendant but are in the hands of a third party such as a bank or employer.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
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16) The proceedings in courts of limited jurisdiction may be informal, and parties often argue their own cases.

Answer: TRUE
Explanation: Minor criminal cases and civil disputes involving small amounts of money or specialized matters frequently are decided in courts of limited jurisdiction. Examples include traffic courts, probate courts, and small claims courts. Such courts often handle a large number of cases. In some of these courts, procedures may be informal, and parties often argue their own cases without representation by attorneys.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Bloom's: Remember
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17) The judge, not the jury, always determines the applicable law.

Answer: TRUE
Explanation: Although the trial court's fact-finding function may be handled by the judge or by a jury. Determination of the applicable law, however, is always the judge's responsibility.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Bloom's: Understand
AACSB: Analytical Thinking
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18) A trial court may address venue questions before jurisdiction is established.

Answer: FALSE
Explanation: Even if a court has jurisdiction, it may be unable to decide the case because venue requirements have not been met. Venue questions arise only after jurisdiction is established or assumed.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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19) A defendant who participates in a case with inadequate service of process will be deemed to have waived the objection if it is not made promptly.

Answer: TRUE
Explanation: Although inadequate service of process may sometimes defeat the plaintiff's claim, the defendant who participates in the case without making a prompt objection to the manner of service will be deemed to have waived the objection.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
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20) If the defendant's answer contains a counterclaim, that claim can arise out of any matter between the plaintiff and the defendant.

Answer: FALSE
Explanation: A counterclaim is a new claim by the defendant arising from the matters stated in the complaint.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
AACSB: Analytical Thinking
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21) What is a court's power to hear a case and to issue a decision binding on the parties called?
A) Jurisdiction
B) Prerogative
C) Venue
D) Assignment

Answer: A
Explanation: Jurisdiction is a court's power to hear a case and to issue a decision binding on the parties.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-02 Explain the difference between subject-matter jurisdiction and in personam jurisdiction.
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22) A "long-arm" statute allows:
A) criminal courts jurisdiction over civil cases.
B) state courts more power than federal ones.
C) court's jurisdiction over out-of-state defendants.
D) appellate courts to hear new cases.

Answer: C
Explanation: Most states have enacted "long-arm" statutes that give their courts in personam jurisdiction over out-of-state defendants in certain instances. Under these statutes, nonresident individuals and businesses become subject to the jurisdiction of the state's courts by, for example, doing business within the state, contracting to supply goods or services within the state, or committing a tort within the state.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Remember
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23) Calvin, a resident of South Park, Colorado, creates a website called "But Seriously" which acts as an electronic billboard for posting funny stories. Ted, a resident of Northridge, California, posts a story on the website. Stu, another California resident from San Diego, files a lawsuit against Calvin in a federal district court in California, claiming that Calvin had defamed him on his website. Based on these facts, does Calvin have sufficient "minimum contacts" to give the California federal district court in personam jurisdiction over him?
A) No, Ted's posting alone is not enough to create sufficient "minimum contacts."
B) Yes, Ted's posting creates sufficient "minimum contacts."
C) Yes, by creating a website that is accessible in California, Calvin has sufficient "minimum contacts" with that state.
D) Calvin has sufficient "minimum contacts" with California only if Stu's claim is in excess of $75,000.

Answer: A
Explanation: When the parties have a contractual relationship, "minimum contacts" may be shown by the parties' negotiations preceding their agreement, the course of dealing between the parties, the terms of the agreement, and foreseeable future consequences arising out of the agreement. Federal circuit courts have rejected that merely posting defamatory or invasive material to the World Wide Web is enough to create "minimum contacts" for in personam jurisdiction.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
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24) Bubble Wrap Co. (BWC), an Atlanta corporation, has its principal place of business in New York. John, a resident of Florida, asserted on his website that BWC engaged in ongoing criminal activity, scams, and phishing. BWC sued John in the U.S. District Court for the District of New York, alleging defamation and injury to BWC's business in New York. John filed a motion to dismiss the case alleging that neither subject-matter nor in personam jurisdiction existed. The court granted the defendant's motion and dismissed the case because:
A) BWC could not meet its burden of establishing sufficient "minimum contacts."
B) the court did not have subject-matter jurisdiction.
C) the court neither had subject-matter jurisdiction nor in personam jurisdiction.
D) publishing of those statements did not amount to defamation, and thus no injury was caused to BWC's business.

Answer: A
Explanation: When the parties have a contractual relationship, "minimum contacts" may be shown by the parties' negotiations preceding their agreement, the course of dealing between the parties, the terms of the agreement, and foreseeable future consequences arising out of the agreement. In this case, there is no such agreement and hence, it does not apply. Federal circuit courts have rejected that merely posting defamatory or invasive material to the World Wide Web is enough to create "minimum contacts" for in personam jurisdiction.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

25) Jurisdiction based on the presence of property within the state is called _____ jurisdiction.
A) in rem
B) personam
C) *sui iuris*
D) subject-matter

Answer: A
Explanation: In rem jurisdiction is based on the presence of property within the state.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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26) Which of the following is not an example of a court of limited jurisdiction?
A) Traffic court
B) Probate court
C) Trial court
D) Small claims court

Answer: C
Explanation: Minor criminal cases and civil disputes involving small amounts of money or specialized matters frequently are decided in *courts of limited jurisdiction*. Examples include traffic courts, probate courts, and small claims courts.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Bloom's: Understand
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27) In general, a court has _____ if it is a territorially fair and convenient forum in which to hear the case.
A) venue
B) original jurisdiction
C) limited jurisdiction
D) standing

Answer: A
Explanation: A court has venue if it is a territorially fair and convenient forum in which to hear the case. Even if a court has jurisdiction, it may be unable to decide the case because venue requirements have not been met.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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28) Contracts sometimes contain a provision reciting that disputes between the parties regarding matters connected with the contract must be litigated in the courts of a particular state. What is such a provision called?
A) Choice of law clause
B) Forum selection clause
C) Substantive clause
D) Minimum contacts clause

Answer: B
Explanation: Contracts sometimes contain a forum selection clause reciting that disputes between the parties regarding matters connected with the contract must be litigated in the courts of a particular state. Depending on its wording, a forum selection clause may have the effect of addressing both jurisdiction and venue issues.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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29) Bob is a merchant in New York and Betty is a merchant in California. Bob wants to do business with Betty but he is concerned that if a lawsuit should result from their transaction, he might have to travel to California and hire a California lawyer to litigate the dispute. What type of clause should Bob try to include in his contract with Betty that will probably assure him that if litigation ensues, it will take place in New York?
A) Confession of judgment clause
B) Forum selection clause
C) Choice of law clause
D) Substantive clause

Answer: B
Explanation: A forum selection clause may address both jurisdiction and venue issues. Hence, it would be a useful tool for Bob in case any type of litigation takes place in the future.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
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30) Defending against a federal district court suit by Paul, Dan claims that Paul has sued him in the wrong federal district court. Dan has raised a question of:
A) long-arm jurisdiction.
B) in personam jurisdiction.
C) venue.
D) standing.

Answer: C
Explanation: Even if a court has jurisdiction, it may not be able to decide a case because of venue requirements. A court has venue if it is a territorially fair and convenient forum in which to hear the case.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
AACSB: Analytical Thinking
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31) Infobox Online, an Internet access provider, includes in its "clickwrap" contract a clause stating that California courts have "exclusive jurisdiction" over subscribers' disputes with Infobox Online. This clause will most likely be:
A) unenforceable because it was not the result of bargaining.
B) unenforceable against a subscriber in another state.
C) enforceable if the subscriber does not file a motion to dismiss.
D) enforceable if it is considered reasonable by a court.

Answer: D
Explanation: An Internet access provider (IAP) may include a forum selection clause in a so-called "clickwrap" document that sets forth the terms of its Internet-related services—terms to which the IAP's subscribers are deemed to have agreed by virtue of utilizing the IAP's services. Forum selection clauses, whether expressly bargained for or included in a "clickwrap" agreement, are generally enforced by courts unless they are shown to be unreasonable in a given set of circumstances.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
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32) For federal "diversity" jurisdiction to exist:
A) the case must begin in a federal court of appeals.
B) the amount in controversy must exceed $75,000.
C) both the plaintiff and the defendant must be citizens of the same state.
D) the case must pertain to the Constitution, laws, or treaties of the United States.

Answer: B
Explanation: Diversity jurisdiction arises when the case is (1) between citizens of different states and (2) the amount in controversy exceeds $75,000. Federal question jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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33) In federal courts, a corporation is:
A) a citizen of only the place where is has been incorporated.
B) a citizen of only it principal place of business.
C) a citizen of both the state where it has been incorporated and the state where it has its principal place of business.
D) a citizen of that state which has enacted a "long-arm" statute, and thus has jurisdiction.

Answer: C
Explanation: Under diversity jurisdiction, a corporation is a citizen of both the state where it has been incorporated and the state where it has its principal place of business.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
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34) _____ jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States.
A) Original
B) Federal question
C) Diversity
D) Exclusive

Answer: B
Explanation: Federal question jurisdiction exists when the case arises under the Constitution, laws, or treaties of the United States. The "arises under" requirement normally is met when a right created by federal law is a basic part of the plaintiff's case.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
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35) Patent cases being litigated in the federal system are an example of:
A) concurrent jurisdiction.
B) original jurisdiction.
C) exclusive jurisdiction.
D) certiorari jurisdiction.

Answer: C
Explanation: The federal district courts have exclusive jurisdiction over some matters, such as patents. Patent cases must be litigated in the federal system.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
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36) In a case where concurrent jurisdiction exists, a state court may decide a case involving federal questions if:
A) it is a criminal case.
B) it is a civil case.
C) the plaintiff opts for a state court.
D) the defendant belongs to that state.

Answer: C
Explanation: Sometimes, federal district courts have concurrent jurisdiction with state courts—meaning that both state and federal courts have jurisdiction over the case. State courts may sometimes decide cases involving federal questions if concurrent jurisdiction exists and the plaintiff opts for a state court.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
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37) Today, most appealable decisions from the lower courts fall within the Supreme Court's _____ jurisdiction, under which the Court has discretion whether to hear the appeal.
A) appellate
B) certiorari
C) original
D) exclusive

Answer: B
Explanation: The United States Supreme Court, the highest court in the land, is mainly an appellate court. Therefore, it considers only questions of law when it decides appeals from the federal courts of appeals and the highest state courts. Today, most appealable decisions from these courts fall within the Supreme Court's certiorari jurisdiction, under which the Court has discretion whether to hear the appeal.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
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38) In which of the following cases will the U.S. Supreme Court have original, but not exclusive, jurisdiction?
A) When the validity of any treaty has been questioned.
B) When the validity of a federal statute has been questioned.
C) When there is a controversy between two or more states.
D) When a state proceeds against citizens of another state.

Answer: D
Explanation: The U.S. Supreme Court has original, but not exclusive, jurisdiction over cases involving foreign ambassadors, ministers, and like parties; controversies between the United States and a state; and cases in which a state proceeds against citizens of another state or against aliens. Article III of the Constitution grants the Supreme Court jurisdiction of controversies between individual States and citizens from another state or against aliens. The Supreme Court has original and exclusive jurisdiction over all controversies between two or more states.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
AACSB: Analytical Thinking
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39) Which of the following notifies the defendant that he, she, or it is being sued?
A) Summons
B) Motion to Dismiss
C) Deposition
D) Interrogatories

Answer: A
Explanation: A summons notifies the defendant that he, she, or it is being sued. It typically names the plaintiff and states the time within which the defendant must enter an appearance in court. In most jurisdictions, it is accompanied by a copy of the plaintiff's complaint.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
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40) The _____ are the documents the parties file with the court when they first state their respective claims and defenses.
A) summons
B) pleadings
C) appeals
D) clauses

Answer: B
Explanation: The pleadings are the documents the parties file with the court when they first state their respective claims and defenses. They include the complaint, the answer, and, in some jurisdictions, the reply.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Remember
AACSB: Reflective Thinking
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41) A(n) _____ must state the remedy requested in the case.
A) summons
B) interrogatory
C) affirmative defense
D) complaint

Answer: D
Explanation: The complaint states the plaintiff's claim in separate, numbered paragraphs. The complaint must also state the remedy requested.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
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42) Which of the following may contain an affirmative defense?
A) Summons
B) Interrogatory
C) Complaint
D) Answer

Answer: D
Explanation: A defendant needs to file an answer to the plaintiff's complaint within a designated time after service of the complaint. An answer may include an affirmative defense to the claim asserted in the complaint. A successful affirmative defense enables the defendant to win the case even if all the allegations in the complaint are true and, by themselves, would have entitled the plaintiff to recover.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
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43) A counterclaim differs from an affirmative defense in that, a counterclaim:
A) is a new claim by the plaintiff.
B) does not permit a defendant to claim for damages caused by a fraud.
C) is merely an attack on the plaintiff's claims.
D) is the defendant's attempt to obtain legal relief.

Answer: D
Explanation: A counterclaim is a new claim by the defendant arising from the matters stated in the complaint. Unlike an affirmative defense, it is not merely an attack on the plaintiff's claim, but is the defendant's attempt to obtain legal relief. In addition to using fraud as an affirmative defense to a plaintiff's contract claim, for example, a defendant might counterclaim for damages caused by that fraud.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

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44) Mike sues Randy for "aesthetic pollution." The basis for his suit is Randy's habit of wearing clothes that Mike considers to be ugly. Mike's complaint offers details of Randy's "ugly" clothing in many separate, numbered paragraphs. However, no law requires one to pay damages for wearing clothes that another considers ugly and for causing aesthetic dissatisfaction to some other party. Thus, Randy wants to defeat Mike's claim as fast as possible. The best procedural device for doing so is the:
A) motion to dismiss.
B) motion for summary judgment.
C) motion for judgment notwithstanding the verdict.
D) motion for a directed verdict.

Answer: A
Explanation: Sometimes it is evident from the complaint or the pleadings that the plaintiff does not have a valid claim. In such a situation, it would be wasteful for the litigation to proceed further. The procedural device for ending the case at this early stage is commonly called the motion to dismiss. The most important type of motion to dismiss is the motion to dismiss for failure to state a claim upon which relief can be granted, sometimes called the demurrer. It asserts that the plaintiff cannot recover even if all of his allegations are true because no rule of law entitles him to win on those facts.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Apply
AACSB: Analytical Thinking; Reflective Thinking
Accessibility: Keyboard Navigation

45) The motion to dismiss for failure to state a claim upon which relief can be granted is sometimes called the:
A) deposition.
B) demurrer.
C) interrogatory.
D) directed verdict.

Answer: B
Explanation: The procedural device for ending the case at an early stage is commonly called the motion to dismiss. The most important type of motion to dismiss is the motion to dismiss for failure to state a claim upon which relief can be granted, sometimes called the demurrer.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

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46) The right of _____ is available for information that is not subject to a recognized legal privilege and is relevant to the case or likely to lead to other information that may be relevant.
A) demurrer
B) counterclaim
C) discovery
D) affirmative defense

Answer: C
Explanation: To help litigants obtain the facts and to narrow and clarify the issues for trial, the state and federal court systems permit each party to a civil case to exercise discovery rights. Discovery is available for information that is not subject to a recognized legal privilege and is relevant to the case or likely to lead to other information that may be relevant.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

47) Which of the following characterizes discovery?
A) It begins before the pleadings are completed.
B) Information may be subject to discovery only if it is admissible at trial under the legal rules of evidence.
C) It is an efficient and time-saving remedy for litigants.
D) Interrogatories are a commonly utilized form of discovery.

Answer: D
Explanation: The discovery phase of a lawsuit normally begins when the pleadings have been completed. Information may be subject to discovery even if it would not ultimately be admissible at trial under the legal rules of evidence. Interrogatories are among the commonly utilized forms of discovery. Participation in the discovery process may require significant expenditures of time and effort, not only by the attorneys but also by the parties and their employees.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

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48) What are depositions?
A) Written questions directed to a party, answered in writing, and signed under oath.
B) Documentary evidence introduced at a trial.
C) Oral examinations of a party or a likely witness by the opposing party's attorney.
D) Written statements made during arbitration.

Answer: C
Explanation: In a deposition, one party's attorney conducts an oral examination of the other party or of a likely witness (usually one identified with the other party).
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

49) Discovery generally takes place without a need for court orders or other judicial supervision. Which of the following is an EXCEPTION to this rule?
A) A request for written questions directed at the opponent.
B) Requests for admission directed at the opponent.
C) A request for a physical or mental examination of the opponent.
D) Requests for the production of documents in civil cases.

Answer: C
Explanation: With the exception of a motion for a court order requiring that the opponent undergo a physical or mental examination, discovery generally takes place without a need for court orders or other judicial supervision.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Analytical Thinking
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50) Malcolm has brought a lawsuit against Will. Malcolm feels that there is no genuine issue of material fact in dispute and that he is entitled to win this case as a matter of law. What legal procedure would allow Malcolm to win this case as quickly as possible?
A) Discovery
B) *Voir dire*
C) Jury trial
D) Summary judgment

Answer: D
Explanation: Summary judgment is a device for the speedy disposal of clear cases without a trial. The party that requests a summary judgment must show that (1) there is no genuine issue of material fact and (2) he is entitled to judgment as a matter of law.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Apply
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

51) At a _____, the judge meets informally with the attorneys for both litigants in an attempt to get the attorneys to stipulate, or agree to, a resolution of certain issues in order to simplify the trial.
A) demurrer
B) directed verdict
C) pretrial conference
D) minitrial

Answer: C
Explanation: Depending on the jurisdiction, a pretrial conference is held where the judge meets informally with the attorneys for both litigants. He/she may try to get the attorneys to stipulate, or agree to, the resolution of certain issues in order to simplify the trial.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
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52) The American legal system gives considerable power to the jury; however, it also has devices for limiting that power. The _____ provides a judgment to one party before the jury gets a chance to decide the case.
A) motion to dismiss
B) motion for a new trial
C) motion for summary judgment
D) motion for a directed verdict

Answer: D
Explanation: Although the general verdict gives the jury considerable power, the American legal system also has devices for limiting that power. The directed verdict takes the case away from the jury and provides a judgment to one party before the jury gets a chance to decide the case.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

53) Abby gets a state court civil judgment against Casey, but Casey does not pay. Which of the following is one of the tools available to Abby to enforce the judgment against Casey?
A) Mediation
B) Long-arm jurisdiction
C) Writ of execution
D) In rem jurisdiction

Answer: C
Explanation: A writ of execution enables the sheriff to seize designated property of the defendant and sell it at a judicial sale to help satisfy the judgment.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Apply
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54) Harvey is planning to file a case against a petrochemical giant that has a plant in his town. The petrochemical plant is dumping toxic wastes into its surrounding areas. Harvey is mobilizing the residents of the town, all of whom have suffered from various health problems due to the activities of the plant. Which of the following would be of most help to Harvey and the other residents?
A) Demurrer
B) Class action
C) Directed verdict
D) Affirmative defense

Answer: B
Explanation: A class action lawsuit allows one or more persons to sue on behalf of themselves and all others who have suffered similar harm from substantially the same wrong. This type of lawsuit is fairly common in environmental issues.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Apply
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

55) Which of the following helps a plaintiff to seize the property that belongs to the defendant but is in the hands of a third party?
A) Class action
B) Garnishment
C) *Non obstante veredicto*
D) Settlement

Answer: B
Explanation: Garnishments allow a party to seize property, money, and wages that belong to the defendant but are in the hands of a third party such as a bank or employer.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
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56) A party may win a judgment even after the jury has reached a verdict against that party through the procedure of:
A) *mens rea*.
B) *non obstante veredicto*.
C) demurrer.
D) *habeas corpus*.

Answer: B
Explanation: The procedure of *non obstante veredicto*, or judgment notwithstanding the verdict, enables a losing party to win a judgment even when the jury has reached a verdict against it.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
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57) Dillon's, a discount retailer with over 500 employees, includes a clause in its employment application stating that all future employment disputes will be resolved through binding arbitration. This clause most likely:
A) will be considered valid by federal courts.
B) will be considered unenforceable by all courts.
C) will result in employees having to mediate their employment-related claims against Dillon's.
D) will require an employee to mediate employment-related disputes.

Answer: A
Explanation: Arbitration is the submission of a dispute to a neutral, nonjudicial third party (the arbitrator) who issues a binding decision resolving the dispute. Arbitration usually results from the parties' agreement. That agreement normally is made before the dispute arises (most often through an arbitration clause in a contract). The Federal Arbitration Act requires judicial enforcement of a wide range of agreements to arbitrate claims. This means that if a contract contains a clause requiring arbitration of certain claims but one of the parties attempts to litigate such a claim in court, the court is very likely to dismiss the case and compel arbitration of the dispute.
Difficulty: 3 Hard
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Apply
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58) A method of alternative dispute resolution in which a neutral third party helps the parties reach a cooperative resolution of their dispute by facilitating communication between them, clarifying their areas of agreement and disagreement, helping see each other's viewpoints, and suggesting settlement options, but who cannot make decisions that bind the parties, is called:
A) conciliation.
B) mediation.
C) minitrial.
D) arbitration.

Answer: B
Explanation: In mediation, a neutral third party called a mediator helps the parties reach a cooperative resolution of their dispute by facilitating communication between them, clarifying their areas of agreement and disagreement. Mediators, unlike arbitrators, cannot make decisions that bind the parties.
Difficulty: 1 Easy
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

59) In the form of alternative dispute resolution called court-annexed arbitration:
A) a neutral third party is called in to mediate.
B) courts decide on certain types of criminal lawsuits.
C) the losing party has the right to a regular trial.
D) civil lawsuits are sent to the Supreme Court for a hearing.

Answer: C
Explanation: Most often, court-annexed arbitration is mandatory and is ordered by the judge, but some jurisdictions merely offer litigants the option of arbitration. The losing party in a court-annexed arbitration still has the right to a regular trial.
Difficulty: 2 Medium
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Understand
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60) Which of the following is an informal alternative method for promoting settlement of disputes from a formal court trial?
A) Minitrial
B) Summary judgment
C) Directed verdict
D) Peremptory challenges

Answer: A
Explanation: A minitrial is an informal, abbreviated private "trial" that aims to promote settlement of disputes.
Difficulty: 1 Easy
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Remember
AACSB: Reflective Thinking
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61) Which of the following statements is false regarding appellate courts?
A) They gather new evidence to reach the correct conclusion.
B) They review the record of the trial court proceedings.
C) They correct legal errors made by the trial judge.
D) They usually accept the trial court's finding of fact.

Answer: A
Explanation: State appeals (or appellate) courts generally decide only legal questions. Instead of receiving new evidence or otherwise retrying the case, appellate courts review the record of the trial court proceedings. Although appellate courts correct legal errors made by the trial judge, they usually accept the trial court's findings of fact.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-01 Describe the basic structures of state court systems and the federal court system.
Bloom's: Understand
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62) Which of the following is not considered when a court determines if it has in personam jurisdiction over the defendant?
A) Residence
B) Location
C) Property
D) Activities

Answer: C
Explanation: In personam jurisdiction is based on the residence, location, or activities of the defendant.
Difficulty: 1 Easy
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

63) Which of the following circumstances would not give a state court in personam jurisdiction over the defendant?
A) The defendant is a citizen or resident of the state.
B) The defendant previously owned property in the state.
C) The defendant is within the state's borders when process is served on him.
D) The defendant voluntarily appears in court.

Answer: B
Explanation: A state court has in personam jurisdiction over defendants who are citizens or residents of the state (even if situated out-of-state), who are within the state's borders when process is served on them (even if nonresidents), or who consent to the court's authority (for instance, by entering the state to defend against the plaintiff's claim).
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Understand
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64) John lives and works in State A. While driving through State B, he negligently collided his car with another vehicle driven by Barbra, a resident of State B. If Barbra sues John in a State B trial court for injuries she sustained as a result of the accident, how might the court have personal jurisdiction over John?
A) Through the state's long-arm statute because John committed a tort outside of State B that nonetheless produced harm within the state.
B) Through the state's long-arm statute because John committed a tort within the state.
C) In rem jurisdiction
D) State B does not have personal jurisdiction over John.

Answer: B
Explanation: Most states have enacted "long-arm" statutes that give their courts in personam jurisdiction over out-of-state defendants in certain instances. Under these statutes, nonresident individuals and businesses become subject to the jurisdiction of the state's courts by, for example, doing business within the state, contracting to supply goods or services within the state, or committing a tort within the state. In this example, State B has personal jurisdiction over John because a committed a tort while in State B, namely negligently colliding his car with Barbra's vehicle.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

65) Which of the following situations would not satisfy a state's long-arm statute?
A) The defendant committed a tort while in the state.
B) The defendant wrote a defamatory statement about one of the state's residents on a website.
C) The defendant committed a tort outside of the state that nonetheless caused harm to the state.
D) A business buys and sells good within the state.

Answer: B
Explanation: Most states have enacted "long-arm" statutes that give their courts in personam jurisdiction over out-of-state defendants in certain instances. Under these statutes, nonresident individuals and businesses become subject to the jurisdiction of the state's courts by, for example, doing business within the state, contracting to supply goods or services within the state, or committing a tort within the state. Federal circuit courts have rejected that merely posting defamatory or invasive material to the World Wide Web is enough to create personal jurisdiction because it fails the "minimum contacts" test to satisfy the long-arm statute.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Understand
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66) What was the court's holding in the case in the text *Abdouch v. Lopez*?
A) The plaintiff's complaint adequately pleaded facts that demonstrated the defendants expressly aimed their tortious conduct at Nebraska.
B) The plaintiff's complaint failed to plead facts to demonstrate defendants knew their conduct would reach Nebraska.
C) The plaintiff's complaint adequately pleaded facts that demonstrated the defendants had sufficient "minimum contacts" with Nebraska to create personal jurisdiction.
D) The plaintiff's complaint failed to plead facts to demonstrate that the defendants had sufficient "minimum contacts" with Nebraska to create personal jurisdiction.

Answer: D
Explanation: The court concluded that Abdouch's complaint failed to plead facts to demonstrate that the defendants had sufficient "minimum contacts" with Nebraska. Although the website used to post the advertisement was interactive, the contacts created by the website were unrelated to Abdouch's cause of action. Further, the pleadings fail to establish that the defendants expressly aimed their tortious conduct at Nebraska. For these reasons, the defendants could not have anticipated being haled into a Nebraska court for their online advertisement.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Analyze
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67) In the case in the text *Daimler AG v. Bauman*, why did the Court conclude the district court did not have jurisdiction over the defendant?
A) The defendant received inadequate service of process under the rules for foreign defendants.
B) The defendant only sold products and services in California but was not incorporated there.
C) The defendant's affiliations with California were not so continuous and systematic as to render it essentially at home.
D) Based on the allegations in the plaintiffs' complaint, the defendant did not harm any citizen in California.

Answer: C
Explanation: The Court held the relevant inquiry under *International Shoe* and *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense "continuous and systematic," it is whether that corporation's "affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State." Here, neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Analyze
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

68) The case in the text *Hertz Corp. v. Friend*, is an example of when a defendant can have a case removed from state court to federal court based on what kind of jurisdiction?
A) Exclusive jurisdiction
B) General jurisdiction
C) Specific jurisdiction
D) Concurrent jurisdiction

Answer: D
Explanation: The *Hertz* decision provides an example of a defendant's ability to have a case removed from state court to federal court in an instance of concurrent jurisdiction. The Court reached this conclusion because Hertz's center of direction, control, and coordination, its "nerve center," and its corporate headquarters are one and the same, and they are located in New Jersey, not in California.
Difficulty: 3 Hard
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Analyze
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69) Where concurrent jurisdiction exists and the plaintiff opts for a state court, the defendant has the option to _____ the case to an appropriate federal district court.
A) redirect
B) remove
C) dismiss
D) dissolve

Answer: B
Explanation: Where concurrent jurisdiction exists and the plaintiff opts for a state court, the defendant has the option to remove the case to an appropriate federal district court, assuming the defendant acts promptly.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

70) Which of the following is not an example of a specialized federal court?
A) Bankruptcy court
B) District court
C) Court of federal claims
D) Tax court

Answer: B
Explanation: The federal court system includes certain specialized federal courts, including the Court of Federal Claims (which hears claims against the United States), the Court of International Trade (which is concerned with tariff, customs, import, and other trade matters), the Bankruptcy Courts (which operate as adjuncts of the district courts), and the Tax Court (which reviews certain IRS determinations).
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
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71) The federal court system consists of _____ circuit courts of appeals.
A) 11
B) 13
C) 9
D) 10

Answer: B
Explanation: There are 13 circuit courts of appeals: 11 numbered circuits covering several states each; a District of Columbia circuit; and a separate federal circuit.
Difficulty: 1 Easy
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

72) When the U.S. Supreme Court has _____ it acts as a trial court.
A) exclusive jurisdiction
B) original jurisdiction
C) limited jurisdiction
D) concurrent jurisdiction

Answer: B
Explanation: In certain rare situations, the U.S. Supreme Court has original jurisdiction, which means that it acts as a trial court. It has original, but not exclusive, jurisdiction over cases involving foreign ambassadors, ministers, and like parties; controversies between the United States and a state; and cases in which a state proceeds against citizens of another state or against aliens.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
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73) Which of the following situations gives the U.S. Supreme court both original and exclusive jurisdiction?
A) A controversy between the United States and a state.
B) A controversy between two or more states.
C) A controversy involving a foreign ambassador.
D) A controversy between a state and a citizen of another state.

Answer: B
Explanation: The Supreme Court has original and exclusive jurisdiction over all controversies between two or more states. It has original, but not exclusive, jurisdiction over cases involving foreign ambassadors, ministers, and like parties; controversies between the United States and a state; and cases in which a state proceeds against citizens of another state or against aliens.
Difficulty: 2 Medium
Topic: Federal Courts and Their Jurisdiction
Learning Objective: 02-04 Explain what is necessary in order for a federal court to have subject-matter jurisdiction over a civil case.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

74) The set of legal rules establishing how a civil lawsuit proceedings from beginning to end is called _____.
A) discovery
B) jurisdiction
C) civil procedure
D) procedural due process

Answer: C
Explanation: Civil procedure is the set of legal rules establishing how a civil lawsuit proceeds from beginning to end.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Remember
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75) Which of the following is the standard of proof in a civil case?
A) Substantial evidence
B) Clear and convincing
C) Beyond a reasonable doubt
D) Preponderance of the evidence

Answer: D
Explanation: To win a civil case, the plaintiff must prove each element of his, her, or its claim by a preponderance of the evidence. This standard of proof requires the plaintiff to show that the greater weight of the evidence—by credibility, not quantity—supports the existence of each element.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

76) Which of the following does not set standards for the proper service of the summons?
A) Treaties
B) Statutes
C) Court rules
D) Constitutional due process guarantees

Answer: A
Explanation: To ensure that the defendant is properly notified, statutes, court rules, and constitutional due process guarantees set standards for proper service of the summons.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
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77) Why have most courts significantly relaxed their pleading rules?
A) Because they define the issues for trial.
B) Because the purpose of pleading rules is to give the parties general notice of each other's claims and defenses.
C) Because courts are less concerned with procedural rules and more concerned with substantive law.
D) Because courts believe this is within the professional responsibility of the attorneys involved.

Answer: B
Explanation: Although many jurisdictions retain some of these rules, most have relaxed them significantly. The main reason is the modern view of the purpose of pleading rules: that their aim is less to define the issues for trial than to give the parties general notice of each other's claims and defenses.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

78) Which of the following is not a requirement of a complaint?
A) It must be accompanied by an affidavit.
B) It must allege sufficient facts to show that the plaintiff would be entitled to legal relief.
C) It must give the defendant reasonable notice of the nature of the plaintiff's claim.
D) It must state the remedy requested.

Answer: A
Explanation: The complaint states the plaintiff's claim in separate, numbered paragraphs. It must allege sufficient facts to show that the plaintiff would be entitled to legal relief and to give the defendant reasonable notice of the nature of the plaintiff's claim. The complaint also must state the remedy requested.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
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79) A(n) _____ is the plaintiff's point-by-point response to the allegations in the answer or counterclaim.
A) affirmative defense
B) interrogatory
C) motion to dismiss
D) reply

Answer: D
Explanation: In some jurisdictions, the plaintiff is allowed or required to respond to an affirmative defense or a counterclaim by making a reply. The reply is the plaintiff's point-by-point response to the allegations in the answer or counterclaim. In jurisdictions that do not allow a reply to an answer, the defendant's new allegations are automatically denied. Usually, however, a plaintiff who wishes to contest a counterclaim must file a reply to it.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-05 Identify the major steps in a civil lawsuit's progression from beginning to end.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

80) _____ are one party's written demand that the other party admit or deny, in writing, certain statements of supposed fact or of the application of law to fact.
A) Demurrers
B) Interrogatories
C) Requests for admissions
D) Depositions

Answer: C
Explanation: Requests for admissions are one party's written demand that the other party admit or deny, in writing, certain statements of supposed fact or of the application of law to fact, within a time period prescribed by law (30 days again being typical). The other party's failure to respond with an admission or denial during the legal time period is deemed an admission of the statements' truth or accuracy.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

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81) Which of the following would be subject to e-discovery?
A) Any relevant electronic material even if it is highly burdensome.
B) Electronic business records that are relevant to the litigation and easily accessible.
C) Electronic communication protected by the attorney-client privilege.
D) Electronic business records that are not relevant to the litigation.

Answer: B
Explanation: Discovery regarding electronically stored information (ESI) occurs in largely the same manner as discovery regarding conventional documents. The party seeking discovery of ESI serves a specific request for production on the other. The served party must provide the requested ESI if it is relevant, is not protected by a legal privilege (e.g., the attorney–client privilege), and is reasonably accessible. Court involvement becomes necessary only if the party from whom discovery is sought fails to comply or objects on lack of relevance, privilege, or burdensomeness grounds.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

82) _____ refers to the pretrial jury screening process when biased potential jurors may be removed for cause.
A) Pretrial conference
B) Minitrial
C) *Voir dire*
D) Summary judgment

Answer: C
Explanation: During a pretrial jury screening process known as *voir dire*, biased potential jurors may be removed for cause. In addition, the attorney for each party is allowed a limited number of peremptory challenges, which allow him to remove potential jurors without having to show bias or other cause.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
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83) A _____ is when the jury makes specific, written findings of fact in response to questions posed by the trial judge.
A) directed verdict
B) general verdict
C) special verdict
D) judgment notwithstanding the verdict

Answer: C
Explanation: When a special verdict is employed, the jury makes specific, written findings of fact in response to questions posed by the trial judge. The judge then applies the law to those findings. Whether a special verdict is utilized is a matter largely within the discretion of the trial judge. The special verdict is not as frequently employed, however, as the general verdict.
Difficulty: 1 Easy
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Remember
AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

84) What was the Court's holding in the case in the text *Tyson Foods, Inc. v. Bouaphakeo*?
A) The granting of class certification was improper because the class members waited too long to bring their complaint.
B) The granting of class certification was improper because the class members did not perform similar work and their complaints did not arise out of the same matter.
C) The granting of class certification was proper because the class members worked for the defendant for a similar period of time and all were refused overtime.
D) The granting of class certification was proper because the class members worked in the same facility, did similar work, and were paid under the same policy.

Answer: D
Explanation: The Court concluded the granting of class certification was proper because each employee worked in the same facility, did similar work, and was paid under the same policy. Based on these circumstances, the experiences of a subset of employees can be probative as to the experiences of all of them.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Analyze
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

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85) In the text case *AT&T Mobility LLC v. Concepcion*, why did the U.S. Supreme Court majority believe that the case was subject to arbitration?
A) Disputes involving such nominal amounts, such as the $30.22 the plaintiffs claimed, are better suited for arbitration.
B) Contract provisions requiring arbitration of claims on an individual basis are both permissible and enforceable under the Federal Arbitration Act, which takes priority over any conflicting state law.
C) The applicable state law and the Federal Arbitration Act required the plaintiffs arbitrate their claims, despite any provision stated in the contract.
D) The plaintiffs' claim did not meet joinder requirements to join the class action.

Answer: B
Explanation: The U.S. Supreme Court held that contract provisions requiring arbitration of claims on an individual basis—and prohibiting joinder of those claims with others in a class action–type arbitration—are both permissible and enforceable under the FAA, notwithstanding any state law to the contrary.
Difficulty: 3 Hard
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Analyze
AACSB: Analytical Thinking
Accessibility: Keyboard Navigation

86) What two kinds of jurisdiction are necessary for a state court to have jurisdiction over a case? Describe each briefly.

Answer: A state must have subject-matter jurisdiction and either in personam or in rem jurisdiction. Subject-matter jurisdiction concerns the court's power to decide the type of dispute involved in the case (criminal, tax, etc.). In personam jurisdiction is based on the residence, location, or activities of the defendant. A state court has in personam jurisdiction over defendants who are citizens or residents of the state (even if situated out-of-state), who are within the state's borders when process is served on them (even if nonresidents), or who consent to the court's authority (for instance, by entering the state to defend against the plaintiff's claim). In rem jurisdiction is based on the presence of property within the state. It empowers state courts to determine rights in that property even if the persons whose rights are affected are outside the state's in personam jurisdiction.
Difficulty: 2 Medium
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-02 Explain the difference between subject-matter jurisdiction and in personam jurisdiction.; 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Understand
AACSB: Analytical Thinking

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87) Greg sues Ned in an effort to obtain title to some land claimed by Ned and located inside the state of Texas. Ned has never been to Texas in his life, has never had any contacts of any kind with the state, and refuses to appear in Texas to defend against Greg's suit. Later, after Greg wins a default judgment against Ned, Ned shows up in Texas to claim that the judgment was invalid because he was totally outside Texas, hence Texas courts had no jurisdiction over him, and for this reason they could not affect his rights to the land. Is Ned right? Why or why not? Assume that subject-matter jurisdiction exists.

Answer: Ned is wrong. Although the utter absence of contacts with Texas would prevent Texas from having in personam jurisdiction over Ned, Texas courts still would have in rem jurisdiction over him. In rem jurisdiction is based on the presence of property within a state, and Ned's land was located inside Texas.
Difficulty: 3 Hard
Topic: State Courts and Their Jurisdiction
Learning Objective: 02-03 Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
Bloom's: Apply
AACSB: Analytical Thinking

88) Dee sues Gerry for defamation. Dee thinks that the facts clearly are not as stated in Gerry's complaint and that, given Dee's version of the facts, Gerry cannot recover for defamation. What motion gives Gerry the best chance of winning the case early? What does it involve?

Answer: The motion for summary judgment is a device for disposing of relatively clear cases without a trial. Under that motion, Dee and Gerry will present factual "evidence" such as pleadings, depositions, and affidavits to demonstrate their versions of the facts, and also will make legal arguments. If there is no genuine issue of material fact, and if (given those facts) the law directs that one party wins, that party gets a judgment.
Difficulty: 3 Hard
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Apply
AACSB: Analytical Thinking

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89) What are the consequences of document alteration or destruction that interferes with legitimate discovery requests?

Answer: As Arthur Andersen discovered in 2002, the potential legal consequences of document alteration or destruction that interferes with legitimate discovery requests include criminal prosecution for obstruction of justice. Additionally, courts have broad discretionary authority to impose appropriate sanctions for such conduct. These sanctions may include court orders prohibiting the party from raising certain claims or defenses in the civil action, jury instructions regarding the wrongful destruction of documents, and court orders for the party to pay certain attorney's fees to the opposing party. Of course, the long-term effect on the reputation of the party who destroys or alters documents in this manner can be severely adverse to the party's interests.
Difficulty: 2 Medium
Topic: Civil Procedure
Learning Objective: 02-06 Describe the different forms of discovery available to parties in civil cases.
Bloom's: Understand
AACSB: Ethics; Analytical Thinking

90) Does the Federal Arbitration Act override a state law vesting initial decision-making authority to a court or administrative agency?

Answer: The Supreme Court in the case of *Preston v. Ferrer*, held that when parties have agreed to arbitrate disputes, the Federal Arbitration Act controls and the dispute must therefore be submitted to arbitration even if otherwise applicable state law appears to give initial decision-making authority to a court or an administrative agency.
Difficulty: 3 Hard
Topic: Alternative Dispute Resolution
Learning Objective: 02-07 Explain the differences among the major forms of alternative dispute resolution.
Bloom's: Analyze
AACSB: Analytical Thinking

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