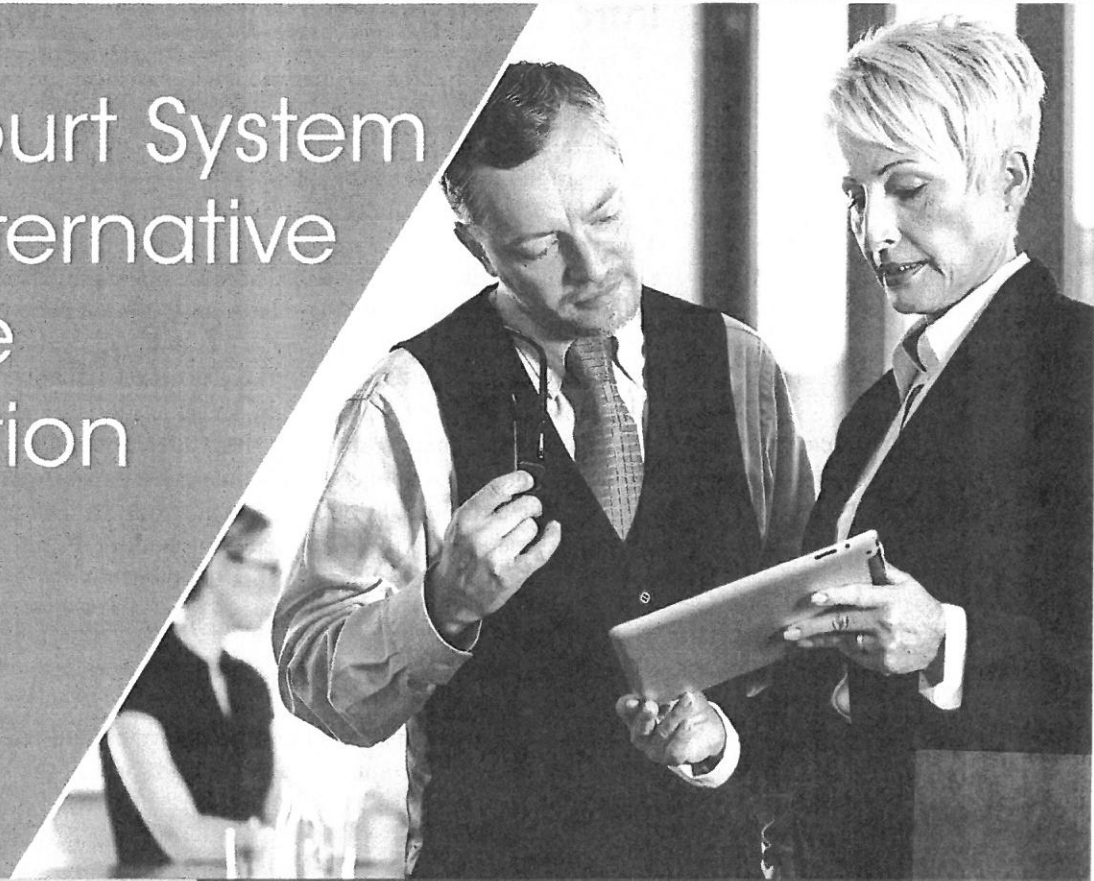


CHAPTER 6

The Court System and Alternative Dispute Resolution



CHAPTER OUTLINE

Introduction
Judicial Requirements
State Court Systems
The Federal Court System
Alternative Dispute Resolution

CHAPTER OBJECTIVES

After completing this chapter, you will know:

- The requirements that must be met before a lawsuit can be brought in a particular court by a particular party.
- The difference between jurisdiction and venue.
- The types of courts that make up a typical state court system and the different functions of trial courts and appellate courts.
- The organization of the federal court system and the relationship between state and federal jurisdiction.
- How cases reach the United States Supreme Court.
- The ways in which disputes can be resolved outside the court system.

Introduction

As explained in Chapter 5, American law is based on the case decisions and legal principles that form the common law, the federal and state constitutions, statutes passed by federal and state legislatures, administrative law, and, in some instances, the laws of other nations and international law.

Paralegals need to understand the different types of courts in the American system. There are fifty-two court systems—one for each of the fifty states, one for the District of Columbia, and the federal system. There are many similarities among these systems, but there are differences as well.

In the first part of this chapter, we examine the structure of the American courts. In addition to the public courts, there is also a system of private dispute resolution mechanisms. Because of the costs, in time and money, and the publicity that can come from court trials, many parties use these alternative methods of dispute resolution to resolve disputes outside of court. In some cases, parties are required by the courts to try to resolve their disputes by one of these methods. In the second part of this chapter, we provide an overview of these alternative methods of dispute resolution and the role that attorneys and paralegals play in facilitating them.

Judicial Requirements

Before a lawsuit can be brought before a court, certain requirements must be met. We begin with these important requirements and some of the key features of the American system of justice.

Standing to Sue

To bring a lawsuit before a court, a party must have **standing to sue**—a sufficient “stake” in a matter to justify seeking relief through the court system. In other words, a party must have a legally protected, genuine interest at stake in the litigation to have standing. The party bringing the lawsuit must have suffered a legally recognized harm as a result of the action about which he or she complained.

EXAMPLE 6-1 Assume that a friend of one of your firm’s clients was injured in a car accident caused by defective brakes. The client’s friend would have standing to sue the automobile manufacturer for damages. Your firm’s client, who feels horrible about the accident and is angry about it, would not have standing because the client was not injured and has no legally recognizable stake in the controversy.

Note that in some cases, a person has standing to sue on behalf of another person.

EXAMPLE 6-2 Suppose that a child suffered serious injuries as a result of a defectively manufactured toy. Because the child is a minor, a lawsuit could be brought on his behalf by the child’s parent or legal guardian.

Standing to sue also requires that the controversy at issue be justiciable. A justiciable¹ controversy is one that is real and substantial, as opposed to hypothetical.

EXAMPLE 6-3 Suppose a child’s parents learned through news reports that a toy they purchased was defective and had injured some children. The parents could not sue on the ground that they feared the toy could cause injury. The issue would become justiciable only if their child had actually been injured due to a defect in the toy. The parents could not ask the court to determine what damages might be obtained if their child were to be injured, because that would be a hypothetical question.

standing to sue

A sufficient stake in a controversy to justify bringing a lawsuit. To have standing to sue, the plaintiff must demonstrate an injury or a threat of injury.

justiciable controversy

A controversy that is real and substantial, as opposed to hypothetical or academic.

Types of Jurisdiction

In Latin, *juris* means “law,” and *diction* means “to speak.” Thus, “the power to speak the law” is the literal meaning of the term **jurisdiction**. Before any court can hear a case, it must have jurisdiction over the person against whom the suit is brought or over the property involved in the suit as well as over the subject matter.

jurisdiction

The authority of a court to hear and decide a specific case.

Jurisdiction over Persons

Generally, a court can exercise personal jurisdiction (*in personam* jurisdiction) over residents of a certain geographic area. A state trial court, for example, normally has jurisdictional authority over residents within the state or within a particular area of the state, such as a county or district. A state’s highest court (often called the state supreme court²) has jurisdictional authority over all residents within the state.

Under the authority of a **long arm statute**, a state court can exercise personal jurisdiction over nonresident defendants based on activities that took place within the state. Before a court can exercise jurisdiction over a nonresident under a long arm statute, though, it must be demonstrated that the nonresident had sufficient contacts (*minimum contacts*) with the state to justify the jurisdiction.

long arm statute

A state statute that permits a state to obtain jurisdiction over nonresidents. The nonresidents must have certain “minimum contacts” with that state for the statute to apply.

EXAMPLE 6-4 If a California citizen caused an injury in a car accident in Arizona, an Arizona state court usually could exercise jurisdiction over the California citizen in a suit by the Arizona victim. Similarly, a state may exercise personal jurisdiction over a nonresident defendant who is sued for breaching a contract that was formed within that state.

For corporations, the minimum-contacts requirement boils down to whether the corporation does business in the state.

EXAMPLE 6-5 A Maine corporation that has a branch office or warehouse in Georgia has sufficient minimum contacts with the state to allow a Georgia court to exercise jurisdiction over the Maine corporation. If, however, someone from Georgia is injured while on a guided fishing trip in Maine and claims that personnel from the Maine fishing company caused the injury, suit could not be brought in a Georgia court if the Maine company does no business in Georgia. A Georgia court could not exercise jurisdiction.

A state court may also be able to exercise jurisdiction over a corporation in another country if it can be demonstrated that the alien (foreign) corporation has met the minimum-contacts test.

EXAMPLE 6-6 A Chinese corporation markets its products through an American distributor. As the corporation knew its products would be distributed throughout the United States, it could be sued in any state by a plaintiff injured by one of the products.

Jurisdiction over Property

A court can also exercise jurisdiction over property that is located within its boundaries even if the parties involved in the suit do not. This kind of jurisdiction is known as *in rem* jurisdiction, or “jurisdiction over the thing.”

EXAMPLE 6-7 A dispute arises over ownership of a boat docked in Fort Lauderdale, Florida. Ownership is claimed by residents of both Ohio and Nebraska. A Florida court normally cannot exercise personal jurisdiction, but in this situation, a lawsuit concerning the boat could be brought in a Florida state court on the basis of the court’s *in rem* jurisdiction.

probate court

A court having jurisdiction over proceedings concerning the settlement of a person's estate.

bankruptcy court

A federal court of limited jurisdiction that hears only bankruptcy proceedings.

original jurisdiction

The power of a court to take a case, try it, and decide it.

trial court

A court in which cases begin and in which questions of fact are examined.

appellate jurisdiction

The power of a court to hear and decide an appeal; the authority of a court to review cases that have already been tried in a lower court and to make decisions about them without holding a trial.

appellate court

A court that reviews decisions made by lower courts, such as trial courts, a court of appeals.

federal question

A question that pertains to the U.S. Constitution, acts of Congress, or treaties. It provides a basis for jurisdiction by the federal courts as authorized by Article III, Section 2, of the Constitution.

Jurisdiction over Subject Matter

Jurisdiction over subject matter is another factor in the cases a certain court can hear, such as civil or criminal cases, or cases involving bankruptcy, probate, or torts. In both the state and federal court systems, there are courts of *general jurisdiction* and courts of *limited jurisdiction*. The basis for the difference is the subject matter of cases heard. A **probate court**—a state court that handles only matters relating to the transfer of a person's assets and obligations on that person's death—is a court with limited subject-matter jurisdiction. An example of a federal court of limited subject-matter jurisdiction is a bankruptcy court. **Bankruptcy courts** handle only proceedings governed by bankruptcy law. In contrast, a court of general jurisdiction can decide a wide array of cases.

The subject-matter jurisdiction of a court is usually defined in the statute creating the court. In both the state and federal court systems, a court's subject-matter jurisdiction can be limited not only by the subject of the lawsuit but also by the amount in controversy, by whether the case is a felony (serious crime) or a misdemeanor (less serious crime), or by whether the proceeding is a trial or an appeal.

Original and Appellate Jurisdiction

The distinction between courts of original jurisdiction and courts of appellate jurisdiction normally lies in whether the case is being heard for the first time or not. Courts having **original jurisdiction** are called courts of the first instance and are usually **trial courts**—that is, courts in which lawsuits begin, trials take place, evidence is presented, and a decision is rendered.

In the federal court system, the *district courts* are trial courts. In a few instances, such as appeals of agency rules, the court of original jurisdiction is a federal court of appeals. There are a few rare instances in which cases begin in the United States Supreme Court. In the state court systems, the trial courts are known by different names for historical reasons. For example, New York's trial courts are confusingly known as the "Supreme Court," and its highest court as the "Court of Appeals."

Courts having **appellate jurisdiction** act as reviewing courts, or **appellate courts** (courts of appeal). In general, cases can be brought to them only on appeal from an order or a judgment of a trial court or other lower court.

Jurisdiction of the Federal Courts

Because the federal government is a government of limited powers, the jurisdiction of the federal courts is also limited. Article III of the U.S. Constitution establishes the boundaries of federal judicial power. Section 2 of Article III states that "the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

Federal Questions

Whenever a plaintiff's cause of action is based, at least in part, on the U.S. Constitution, a treaty, or a federal law, then a **federal question** arises, and the federal courts have subject-matter jurisdiction. Any lawsuit involving a federal question can originate in a federal district (trial) court.

EXAMPLE 6-8 J-H Computers, a California company, sues Ball Computers, a Texas company, for patent infringement. J-H claims that some parts Ball used in its new computers are based on J-H inventions. J-H contends that Ball has used its protected patents without permission. Because patent law is federal law and the federal courts have exclusive jurisdiction over such suits, J-H must file suit against Ball in federal court.

Diversity Jurisdiction

Federal district courts can also exercise original jurisdiction over cases involving diversity of citizenship. Such cases may arise between (1) citizens of different states, (2) a foreign country and citizens of a state or of different states, or (3) citizens of a state and citizens or subjects of a foreign country. The amount in controversy must be more than \$75,000 before a federal court can take jurisdiction in such cases. For purposes of diversity-of-citizenship jurisdiction, a corporation is a citizen of the state in which it is incorporated and of the state in which its principal place of business is located.

EXAMPLE 6-9 Ramirez, a citizen of Florida, was walking near a street in Miami when a box fell off a passing truck and hit and seriously injured her. She incurred medical expenses and could not work for six months. She wants to sue the trucking firm for \$500,000 in damages. The firm's headquarters are in Georgia, although the company does business in Florida. Ramirez could bring suit in a Florida court because she is a resident of Florida, the trucking firm does business in Florida, and that is where the accident occurred. She could also bring suit in a Georgia court, because a Georgia court could exercise jurisdiction over the trucking firm, which is headquartered in that state. She could also sue in a federal court because the requirements of diversity jurisdiction have been met—the lawsuit involves parties from different states, and the amount in controversy (the damages Ramirez is seeking) exceeds \$75,000.

When a case is based on a federal question, a federal court will apply federal law. In a case based on diversity of citizenship, however, a federal court will normally apply state law. This is because cases based on diversity of citizenship generally do not involve claims based on federal law.

Exclusive versus Concurrent Jurisdiction

When both federal and state courts have the power to hear a case, as is true in suits involving diversity of citizenship (such as Ramirez's case described in *Example 6-9*), concurrent jurisdiction exists. When cases can be tried only in one or the other, exclusive jurisdiction exists. Federal courts have exclusive jurisdiction in cases involving federal crimes, bankruptcy, patents, trademarks, and copyrights; in most class-action lawsuits;³ and in suits against the United States. States also have exclusive jurisdiction in certain subject matters—for example, in divorce and adoptions.

The concepts of concurrent and exclusive jurisdiction are illustrated in Exhibit 6.1 on the following page. Some matters, such as bankruptcy law, are under the exclusive jurisdiction of the federal courts. Other matters, such as banking regulation, can fall under state or federal jurisdiction, whereas corporate law falls under state jurisdiction.

When concurrent jurisdiction exists, a party has a choice of whether to bring a suit in a federal or a state court. As described in *Developing Paralegal Skills* on page 151, the party's lawyer will consider several factors in counseling the party. The lawyer may prefer to litigate the case in a state court, perhaps because of familiarity with the state court's procedures, or in federal court because the docket is known to be less crowded. Other considerations include the law in an available jurisdiction, how that law has been applied in the jurisdiction's courts, and what the results have been in that jurisdiction.

Jurisdiction in Cyberspace

The Internet makes it easier to interact with people in other jurisdictions. As discussed, for a court to compel a defendant to come before it, there must be at least minimum contacts with the jurisdiction within which the court sits—such as the presence of a company's salesperson within the state. Are there sufficient minimum contacts if the only connection to a jurisdiction is an ad on the Web originating from a remote location?

diversity of citizenship

Under the Constitution, a basis for federal district court jurisdiction over a lawsuit between (1) citizens of different states, (2) a foreign country and citizens of a state or states, or (3) citizens of a state and citizens of a foreign country. The amount in controversy must be more than \$75,000 before a federal court can exercise jurisdiction in such cases.

concurrent jurisdiction

Jurisdiction that exists when two different courts have the power to hear a case. For example, some cases can be heard in either a federal or a state court.

exclusive jurisdiction

Jurisdiction that exists when a case can be heard only in a particular court, such as a federal court.

docket

The list of cases entered on the court's calendar and scheduled to be heard by the court.

Judicial Procedures

From beginning to end, litigation follows specifically designated procedural rules. As the *Technology and Today's Paralegal* feature on page 154 discusses, courts are increasingly moving to fulfill procedure via electronic processes.

The general procedural rules for federal civil court cases are set forth in the Federal Rules of Civil Procedure. For criminal cases they are in the Federal Rules of Criminal Procedure. Each federal court also has its own local rules. State rules, which are often similar to the federal rules, vary from state to state, and even from court to court within a given state. Rules of procedure also differ in criminal and civil cases. Paralegals who work for trial lawyers need to be familiar with the procedural rules of the relevant courts (this includes complying with deadlines—see the *In the Office* feature below). Because judicial procedures will be examined in detail in Chapters 10 through 13, we do not discuss them here.

State Court Systems

Each state has its own system of courts, and no two state systems are the same. As Exhibit 6.2 on the facing page indicates, there may be several levels, or tiers, of courts within a state court system: (1) state trial courts of general jurisdiction and limited jurisdiction, (2) appellate courts, and (3) the state's highest court (often called the state supreme court). Judges in the state court system are sometimes elected by the voters for a specified term; in other states they are appointed.

Generally, any person who is a party to a lawsuit has the opportunity to plead the case before a trial court and then, if she loses, appeal to at least one level of appellate court. Finally, if a federal statute or federal constitutional issue is involved in the decision of a state supreme court, that decision may be further appealed to the United States Supreme Court.

Trial Courts

Trial courts are what their name implies—courts in which trials are held and testimony taken. You will read about trial procedures in Chapter 12, where we follow a hypothetical

IN THE OFFICE

WATCH THOSE DEADLINES!

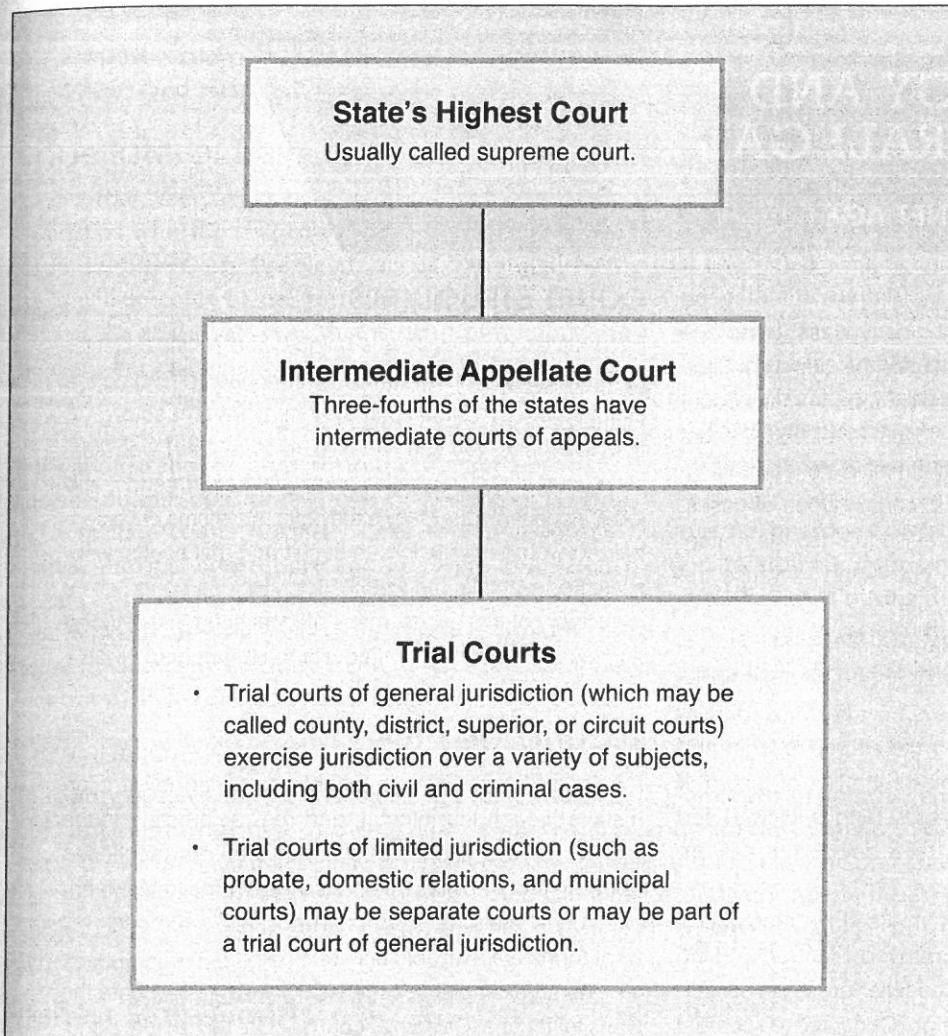
One of the paralegal's most important responsibilities is making sure that court deadlines are met. Suppose that your supervising attorney asks you to file with the court a motion to dismiss, which is a document requesting the court to dismiss a lawsuit for a specific reason. You know that the deadline for filing the motion is in three days. After you prepare the document and have it reviewed by your attorney, you put it in the client's file. You plan to deliver the motion to the court the next day.

As soon as you get to work the next morning, you are called to help with a rush matter on another case. Busy

with that, you forget about the motion to dismiss until the next week. Too late! Court deadlines are hard rules. To prevent such things from happening, *always* enter every deadline on the office calendaring system, and *always* check your calendar several times a day no matter what else is happening. Missed deadlines can be the basis for malpractice suits by clients against attorneys. If you are using electronic filing, as some courts now require, be sure to allow time for technical difficulties and have a backup plan ready if computer problems occur.

EXHIBIT 6.2

Levels in a State Court System



case through the various stages of a trial. (The *Technology and Today's Paralegal* feature on the following page explains some of the changes occurring in the courts as they adapt to Web-based tools.)

Briefly, a trial court is presided over by a judge, who controls the proceedings and issues a decision on the matter before the court. If the trial is a jury trial (many are held without juries), the jury decides the outcome of factual disputes, and the judge issues a judgment based on the jury's conclusion. During the trial, the attorney for each side introduces evidence (such as relevant documents, exhibits, and testimony of witnesses) in support of his or her client's position. Each attorney is given an opportunity to cross-examine witnesses and challenge evidence offered by the opposing party.

General Jurisdiction Courts

State trial courts have either general or limited jurisdiction. Trial courts that have general jurisdiction as to subject matter may be called county, district, superior, or circuit courts.⁵ State trial courts of general jurisdiction have jurisdiction over a wide variety of subjects, including both civil disputes (such as landlord-tenant matters or contract claims) and criminal prosecutions. In some states, trial courts of general jurisdiction may hear appeals from courts of limited jurisdiction.

TECHNOLOGY AND TODAY'S PARALEGAL

COURTS IN THE INTERNET AGE

Courts are increasingly adopting e-filing systems, accepting and serving documents in many cases over the Internet. For example, New York uses the New York State Courts Electronic Filing System (NYSCEF) in many counties. Cases can be initiated or documents filed 24 hours a day. The system provides an e-mailed notice of filing. Some counties require e-filing in certain types of cases. Attorneys must consent to use e-filing in non-mandatory cases. Only parties who have consented may use the system.

Once a party agrees to the use of the e-filing system for a case, hard copies may not be filed except in unusual circumstances. Attorneys may authorize paralegals to e-file a document using the attorney's login and password, but the attorney remains the filer of record. If the system breaks down, hard copy filing is allowed and many deadlines are extended by a day. Filing fees are paid by credit card.

Texas has a different system. Its eFiling for Courts system requires use of an approved Electronic Filing Service Provider (such as CaseFileXpress). The service provider e-mails a receipt. Once the document is accepted by a court, a confirmation message and file-stamped copy are e-mailed to the filing attorney. Texas also allows "eService" of documents for cases in which parties have consented to it. Unlike in New York, both the state website and the service providers charge fees in Texas. The average cost is about \$10 per document.

Systems such as those used in Texas and New York are becoming increasingly common as courts move to more efficient document-handling procedures. Paralegals need to become familiar with software such as Adobe Acrobat that produces PDF files suitable for e-filing.

COURT STRUCTURES

Each state's court system is unique. The National Center for State Courts (NCSC) presents flowcharts depicting the structure of each state court system at www.ncsc.org. At the NCSC site, you can find links to state court websites, state court statistics, articles about state court trends, and job announcements. Many state judicial systems have centralized websites with links to circuit and trial courts' websites. For example, the website for Michigan courts offers a directory of trial courts, maps of local court jurisdictions, and local trial court links at courts.michigan.gov.

TECHNOLOGY TIP

Paralegals should be comfortable gathering court information through the Internet, and regular practice is the way to achieve such comfort. Use the links mentioned above to find websites for courts in your area, review various courts' rules, examine court dockets, and check out what forms are available online.

As an example, use the NCSC website to locate the website for the California courts. (On the home page, select "Information & Resources," then "Browse by State," then "Court Web Sites.") At the California site, browse the docket for the California Supreme Court. A paralegal should be comfortable finding, filling out, and submitting court forms online. Click on "Forms & Rules" from the menu at the top of the California Courts home page at www.courts.ca.gov, read the instructions, choose a form from the list, and fill out the form. Then search the website, to locate the specific procedures that are required for filing the documents with the court. You will find valuable court information through such exercises and be on the road to becoming the technology expert of your legal team.

Limited Jurisdiction Courts

Courts with limited subject-matter jurisdiction are often called "inferior" trial courts or minor courts. Courts of limited jurisdiction include:

- Small claims courts that hear only civil cases involving claims of less than a certain amount, such as \$5,000;
- Domestic relations courts that handle only divorce actions, paternity suits, and child-custody and support cases;

- Municipal courts that mainly handle traffic violations; and
- Probate courts that handle the administration of wills, estate-settlement problems, and related matters.

Appellate, or Reviewing, Courts

After a trial, the parties have the right to file an appeal to a higher court if they are unsatisfied with the trial court's ruling. Practically speaking, parties are unlikely to file an appeal unless a reversible error was committed by the trial court that would cause the appellate court to overturn the trial court's decision. A **reversible error** is a legal error at the trial court level that is significant enough to have affected the outcome of the case. For example, the judge may have given improper instructions about the law to the jury. Usually, appellate courts do not look at questions of *fact* (such as whether a party did, in fact, commit a certain action) but at questions of *law* (whether the trial judge applied the law properly to the facts established at trial). Only a judge, not a jury, can rule on questions of law.

reversible error

A legal error at the trial court level that is significant enough to have affected the outcome of the case. It is grounds for reversal of the judgment on appeal.

Appellate courts normally defer to a trial court's findings on questions of fact because the trial court judge and jury were in a better position to evaluate testimony by directly observing witnesses' gestures, demeanor, and nonverbal behavior during the trial. When a case is appealed, an appellate panel of three or more judges reviews the record (including the written transcript of the trial) of the case on appeal, but the record does not include such nonverbal elements.

Intermediate Appellate Courts

A majority of states have intermediate appellate courts (IAC), or courts of appeals. The subject-matter jurisdiction of these courts is limited to hearing appeals. Usually, IACs review the records, read appellate briefs filed by the parties, and listen to the oral arguments presented by the parties' attorneys. Then the panel of judges renders (issues) a decision. If a party is unsatisfied with the IAC's ruling, that party can appeal to the highest state court.

Highest State Courts

The highest appellate court in a state is usually called the supreme court but may be called by some other name. For example, both Maryland and New York, as previously mentioned, refer to the highest state court as the court of appeals. Texas and Oklahoma have two high courts, one for civil cases and one for criminal cases. The decisions of each state's highest court on all questions of state law are final. Only when issues of federal law are involved can a decision made by a state's highest court be reviewed by the United States Supreme Court.

The Federal Court System

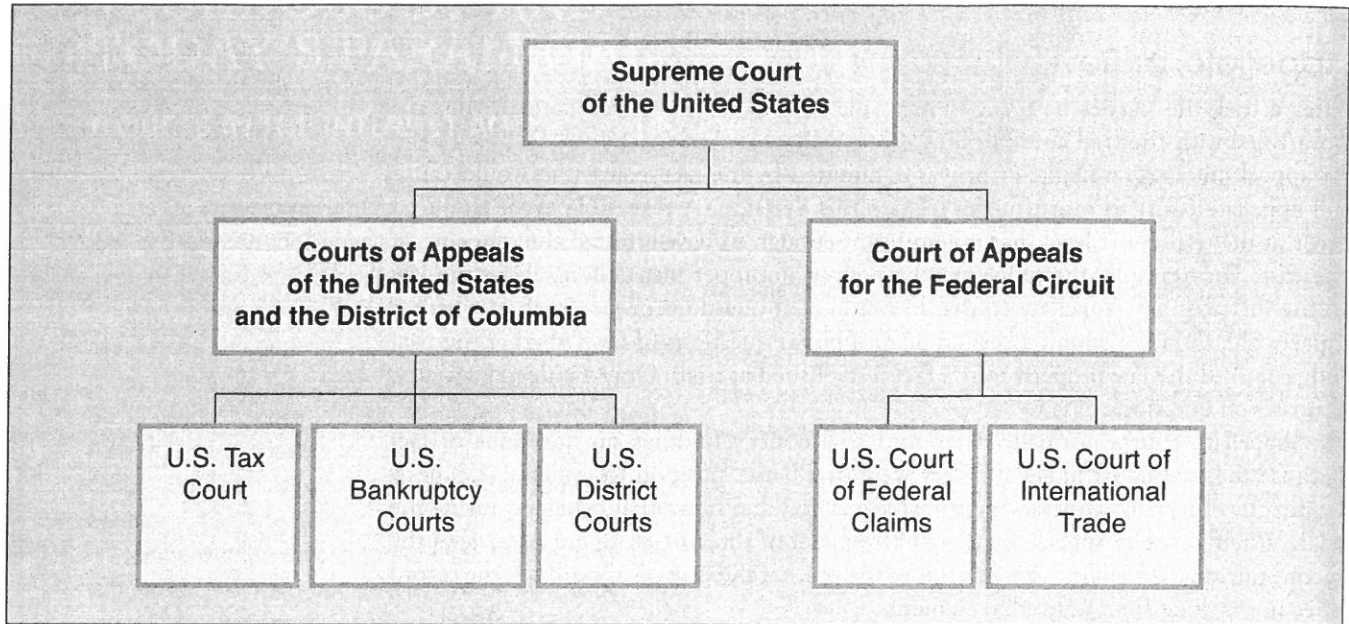
The federal court system is basically a three-level model consisting of (1) U.S. district courts (trial courts of general jurisdiction) and various courts of limited jurisdiction, (2) U.S. courts of appeals (intermediate courts of appeals), and (3) the United States Supreme Court. Exhibit 6.3 on the next page shows the organization of the federal court system.

According to Article III of the U.S. Constitution, there is only one national Supreme Court. All other courts in the federal system are considered "inferior." Congress has the power to create inferior courts. The courts that Congress has created include the district courts and courts of limited jurisdiction, as well as the U.S. courts of appeals.

Unlike state court judges, who are often elected, federal court judges—including the justices of the United States Supreme Court—are appointed by the president of the United States and confirmed by the U.S. Senate. Federal judges receive lifetime appointments (because under Article III they "hold their Offices during good Behavior").

EXHIBIT 6.3

The Organization of the Federal Court System

**U.S. District Courts**

At the federal level, the trial court of general jurisdiction is the district court. There is at least one federal district court in every state. The number of judicial districts varies over time, owing to population changes and caseloads. Currently, there are ninety-four judicial districts.

U.S. district courts have original jurisdiction in matters of federal law. There are other trial courts with original but special (or limited) jurisdiction, such as the federal bankruptcy courts and others shown in Exhibit 6.3 above. The *Developing Paralegal Skills* feature on page 158 discusses some considerations in federal jurisdiction.

U.S. Courts of Appeals

As seen in Exhibit 6.4 on the facing page, in the federal court system, there are thirteen U.S. courts of appeals—also referred to as U.S. circuit courts of appeals. The federal courts of appeals for twelve of the circuits (including the District of Columbia Circuit) hear appeals from the federal district courts located within their respective judicial circuits. The court of appeals for the thirteenth circuit, called the Federal Circuit, has national appellate jurisdiction over certain types of cases, such as cases involving patent law and cases involving contract claims against the U.S. government.

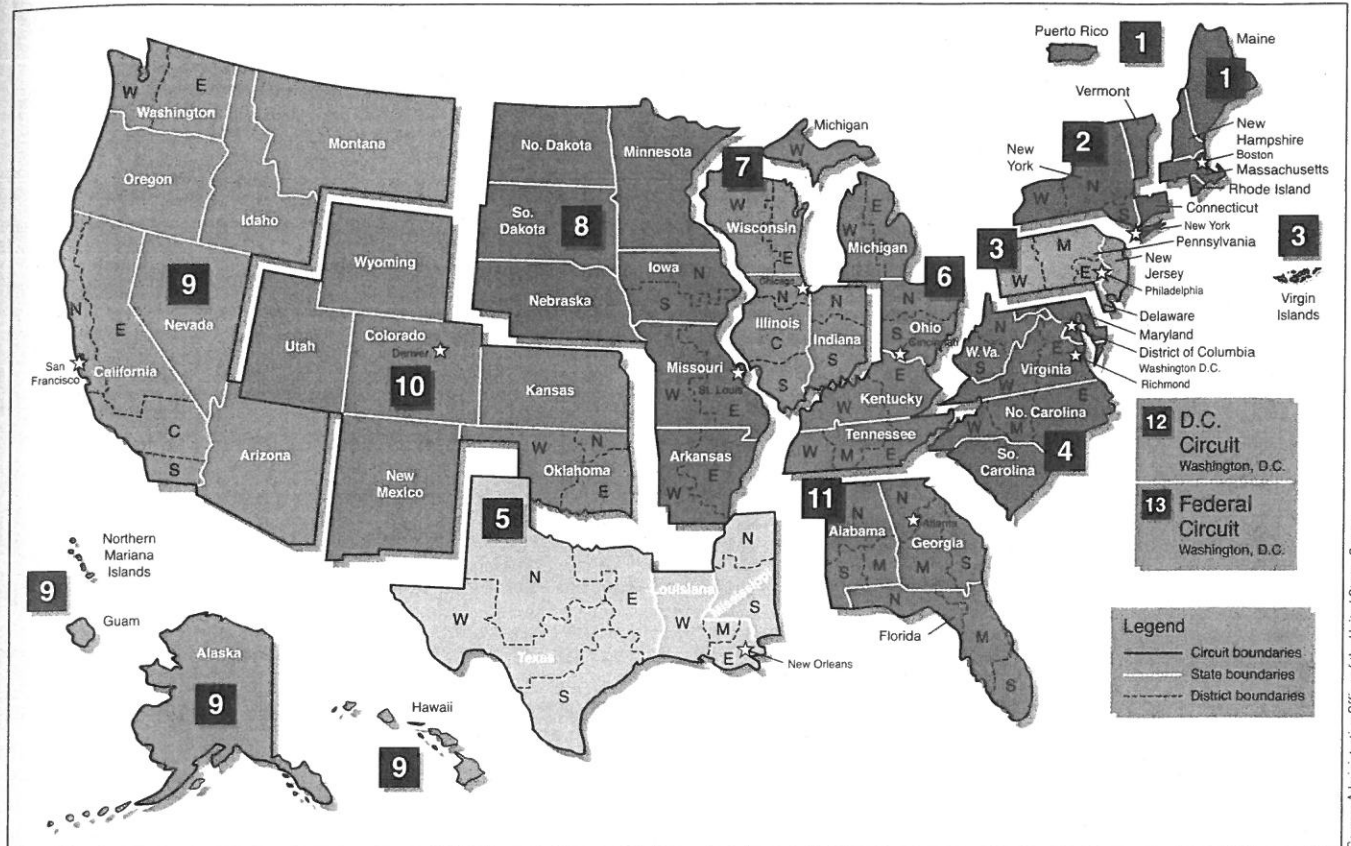
A party who is dissatisfied with a federal district court's decision on an issue may appeal that decision to the relevant federal circuit court of appeals. The judges on the court review decisions made by trial courts for any errors of law. The judges generally defer to a district court's findings of fact. The decisions of the circuit courts of appeals are final in most cases, but review by the United States Supreme Court is possible.

The United States Supreme Court

The highest level of the federal court system is the United States Supreme Court, composed of nine justices. Although the Supreme Court has original, or trial, jurisdiction in rare instances (set forth in Article III, Section 2, of the Constitution—see Appendix I), most of its work is as an appeals court. The Supreme Court can review any case decided

EXHIBIT 6.4

Boundaries of the U.S. Courts of Appeals and U.S. District Courts



Source: Administrative Office of the United States Courts

by any of the federal courts of appeals, and it also has appellate authority over some cases decided in the state courts.

How Cases Reach the Supreme Court

There is no absolute right of appeal to the United States Supreme Court. Thousands of cases are filed with the Supreme Court each year, but it hears only about eighty cases each year.

To bring a case before the Supreme Court, a party requests the Court to issue a writ of *certiorari*. A writ of *certiorari*⁶ is an order issued by the Supreme Court to a lower court requiring it to send the record of the case for review. The Court will issue a writ only if at least four of the nine justices vote to do so. The vast majority of petitions for writs are denied. A denial is not a decision on the merits of a case, nor does it indicate agreement with the lower court's opinion. It simply means that the Supreme Court declines to grant the request (petition) for appeal.

writ of certiorari

A writ from a higher court asking a lower court to send it the record of a case for review. The United States Supreme Court uses *certiorari* to review most of the cases it decides to hear.

Types of Cases Reviewed by the Supreme Court

Typically, petitions are granted by the Court in cases that raise constitutional questions or where lower court decisions conflict with other state or federal courts' decisions. Similarly, if federal appellate courts issue inconsistent opinions on an issue, the Supreme Court may review a case involving that issue and generate a decision to settle the issue.

EXAMPLE 6-13 Suppose an employer fires an employee who refuses to work on Saturdays for religious reasons. The fired employee applies for unemployment

DEVELOPING PARALEGAL SKILLS

FEDERAL COURT JURISDICTION

Mona, a new client, comes to the law offices of Henry, Jacobs & Miller in Detroit, Michigan. She wants to file suit against a New York hospital where she had emergency gallbladder surgery. Mona contracted an infection after the surgery and nearly died. She was so sick that she missed several months of work and lost wages of \$18,000. She also has medical expenses exceeding \$60,000. Jane Doyle, a paralegal, is asked to review the case to determine if it can be filed in federal court.

CHECKLIST FOR DETERMINING FEDERAL COURT JURISDICTION

- Is the case based, at least in part, on the U.S. Constitution, a treaty, or other question of federal law?

• If the case does not involve a question of federal law, does it involve more than \$75,000 and one of the following:

1. Citizens of different states?
2. A foreign country and citizens of a state or different states?
3. Citizens of a state and citizens or subjects of a foreign country?

If the case involves a combination of more than \$75,000 and one of the citizenship requirements above, then diversity jurisdiction exists.

benefits from the state unemployment agency, and the agency, concluding that the employer had good reason to fire the employee, denies unemployment benefits. The fired employee sues the state unemployment agency on the ground that the employee's right to freely exercise her religion—a constitutional right—was violated. The case is ultimately appealed to a state supreme court, which decides the issue in a way contrary to several recent federal appellate courts' interpretations of freedom of religion in the employment context. If the losing party petitions the Supreme Court for a writ of *certiorari*, the Court is more likely to grant the petition and review the case than if all lower court decisions were consistent.

Alternative Dispute Resolution

Litigation is expensive, adversarial, and time consuming. For these and other reasons, more and more individuals are turning to alternative dispute resolution (ADR) as a means of settling their disputes.

Methods of ADR range from neighbors sitting down over a cup of coffee in an attempt to work out their differences to multinational corporations agreeing to resolve a dispute through a formal hearing before a panel of experts. The great advantage of ADR is its flexibility. Normally, the parties themselves decide the method that will be used to settle the dispute, what procedures will be used, and whether the decision reached (either by themselves or by a neutral third party) will be legally binding or not.

About 95 percent of cases are settled before trial, often through some form of ADR. Indeed, over half of the states either require or encourage parties to undertake ADR (usually mediation) prior to trial. Several federal courts have instituted ADR programs as well. Here, we examine various forms of ADR. Keep in mind that new methods of ADR—and variations of existing methods—are being devised. Additionally, ADR services are now being offered via the Internet. Paralegals who develop expertise in the area of ADR can expand their career opportunities (by becoming mediators, for example). Paralegals can

alternative dispute resolution (ADR)

The resolution of disputes in ways other than those involved in the traditional judicial process. Negotiation, mediation, and arbitration are forms of ADR.

ETHICS WATCH

POTENTIAL ARBITRATION PROBLEMS

When individuals and businesses prefer to arbitrate disputes rather than take them to court, they include arbitration clauses in their contracts. These clauses specify who or what organization will arbitrate the dispute, where the arbitration will take place, and what law will apply. To safeguard a client's interests when drafting and reviewing arbitration clauses in contracts, the careful paralegal will be alert to the possibility that those who arbitrate the dispute might not be truly neutral or that the designated place of arbitration may pose a great inconvenience and expense for the client. The paralegal should call any such problems to his or her supervising attorney's attention. The attorney can then discuss the problem with the client and help the client negotiate a more favorable arbitration clause.

This level of care is necessary to be consistent with the NFPA *Model Code of Ethics and Professional Responsibility*, Section 1.6(a): "A paralegal shall act within the bounds of the law, solely for the benefit of the client." It is also consistent with the ABA *Model Guidelines for the Utilization of Paralegal Services*. The *Guidelines* state that lawyers may assign legal work to paralegals, but the lawyers remain responsible for the work product. Hence, paralegals should be sure their work is reviewed by supervising attorneys. Paralegals may not perform work for attorneys that may only be performed by licensed attorneys by the rules of a court, the bar association, a statute, or other controlling authority.

access to the online forum site is made available. Fees are generally low (often 2 to 4 percent, or less, of the disputed amount). The parties can drop the negotiations at any time. For example, the Web-based firm Smartsettle offers a unique blind-bidding system to help resolve disputes. Given the rapid advances in online services, more creative, lower-cost dispute resolution methods will be devised.

KEY TERMS AND CONCEPTS

- | | | |
|--|-----------------------------------|-------------------------------------|
| alternative dispute resolution (ADR) 158 | diversity of citizenship 149 | online dispute resolution (ODR) 167 |
| American Arbitration Association (AAA) 167 | docket 149 | original jurisdiction 148 |
| appellate court 148 | early neutral case evaluation 166 | probate court 148 |
| appellate jurisdiction 148 | exclusive jurisdiction 149 | reversible error 155 |
| arbitration 162 | federal question 148 | settlement agreement 160 |
| arbitration clause 164 | jurisdiction 147 | standing to sue 146 |
| award 165 | justiciable controversy 146 | submission agreement 164 |
| bankruptcy court 148 | long arm statute 147 | summary jury trial (SJT) 167 |
| binding mediation 166 | mediation 161 | trial court 148 |
| concurrent jurisdiction 149 | mini-trial 166 | venue 151 |
| | negotiation 159 | writ of <i>certiorari</i> 157 |

Chapter Summary

The Court System and Alternative Dispute Resolution

JUDICIAL REQUIREMENTS

1. *Standing to sue*—A legally protected and real interest in a matter sufficient to justify seeking relief through the court system. The controversy at issue must also be a justiciable controversy—one that is real and substantial, not hypothetical.
2. *Types of jurisdiction*—Before a court can hear a case, it must have jurisdiction over the person against whom the suit is brought (*in personam* jurisdiction) or the property involved in the suit (*in rem* jurisdiction), as well as jurisdiction over the subject matter.
 - a. **JURISDICTION OVER PERSONS AND PROPERTY**—Courts have jurisdiction over persons, including businesses, who reside in the geographic area of the court. Businesses that have a certain level of minimum contacts in a state will be subject to court jurisdiction under a long arm statute. Courts also have jurisdiction over property located within the boundaries of the court.
 - b. **JURISDICTION OVER SUBJECT MATTER**—Limited jurisdiction exists when a court is limited to a specific subject matter, such as probate or divorce. General jurisdiction exists when a court can hear any kind of case. State and federal statutes often define the power of courts to hear matters relating to statutory law.
 - c. **ORIGINAL AND APPELLATE JURISDICTION**—Courts that have authority to hear a case for the first time (trial courts) have original jurisdiction. Courts of appeals, or reviewing courts, have appellate jurisdiction; generally, these courts do not have original jurisdiction.
3. *Jurisdiction of federal courts*—Is limited to powers of the national government that arise from the Constitution.
 - a. **FEDERAL QUESTIONS**—Jurisdiction exists in federal court when a federal question is involved (when the plaintiff's cause of action is based, at least in part, on the U.S. Constitution, a treaty, or a federal law).
 - b. **DIVERSITY JURISDICTION**—May arise for a federal court when a case involves diversity of citizenship (as in disputes between citizens of different states, between a foreign country and citizens of a state or states, or between citizens of a state and citizens of a foreign country) and the amount in controversy exceeds \$75,000.
 - c. **EXCLUSIVE VERSUS CONCURRENT JURISDICTION**—Concurrent jurisdiction exists when two different courts have authority to hear the same case. Exclusive jurisdiction exists when only state courts or only federal courts have authority to hear a case.
4. *Jurisdiction in cyberspace*—Because the Internet does not have physical boundaries, traditional jurisdictional concepts are applied to develop standards to determine when jurisdiction over a website owner or operator in another state is proper.
5. *Venue*—Venue has to do with the most appropriate location for a trial, which is usually the geographic area where the event leading to the dispute took place or where the parties reside.
6. *Judicial procedures*—Rules of procedure prescribe the way in which disputes are handled in the courts. The Federal Rules of Civil Procedure govern all civil litigation in federal courts. Each state has its own procedural rules (often similar to the federal rules), and each court within a state has specific court rules that must be followed.

STATE COURT SYSTEMS

1. *Trial courts*—Courts of original jurisdiction, in which legal actions are initiated. State trial courts have either general jurisdiction or limited jurisdiction.
2. *Appellate, or reviewing, courts*—After a trial there is a right of appeal in the federal and state court systems. The focus on appeal is for reversible errors in law at trial.
 - a. **INTERMEDIATE APPELLATE COURTS**—Many states have intermediate appellate courts that review the proceedings of the trial courts; generally, these courts do not have original jurisdiction. Appellate courts ordinarily examine questions of law and procedure while deferring to the trial court's findings of fact.
 - b. **HIGHEST STATE COURTS**—Each state has a supreme court, although it may be called by some other name. Decisions of the state's highest court are final on all questions of state law. If a federal question is at issue, the case may be appealed to the United States Supreme Court.

THE FEDERAL COURT SYSTEM

1. *U.S. district courts*—The federal district court is the equivalent of the state trial court. The district court exercises general jurisdiction over claims arising under federal law or based on diversity of citizenship. Federal courts of limited jurisdiction include the U.S. Tax Court, the U.S. Bankruptcy Court, and the U.S. Court of Federal Claims.
2. *U.S. courts of appeals*—There are thirteen intermediate courts of appeals (or circuit courts of appeals) in the federal court system. Twelve of the courts hear appeals from the district courts within their circuits. The thirteenth court has national appellate jurisdiction over certain cases, such as patent law and those in which the U.S. government is a defendant.
3. *United States Supreme Court*—The United States Supreme Court is the highest court in the land and the

final arbiter of the Constitution and federal law. There is no absolute right of appeal to the Supreme Court, and only a fraction of the cases filed with the Court each year are heard.

- a. **HOW CASES REACH THE SUPREME COURT**—The Supreme Court has original jurisdiction in a few cases, but it functions primarily as an appellate court. It accepts a tiny fraction of the appeals made to it when at least four justices agree to issue a *writ of certiorari* requiring the lower court to send it the record of the case for review.
- b. **TYPES OF CASES REVIEWED**—As a rule, only petitions that raise constitutional questions are granted. The Court may also review matters where the lower courts are split in their interpretation of a legal issue.

ALTERNATIVE DISPUTE RESOLUTION

The costs and time-consuming character of litigation, as well as the public nature of court proceedings, have caused many to turn to various forms of alternative dispute resolution (ADR) for settling disagreements. The methods of ADR include the following:

1. *Negotiation*—The simplest form of ADR, in which the parties come together, with or without attorneys to represent them, and try to reach a settlement without the involvement of a third party.
2. *Mediation*—A form of ADR in which the parties reach an agreement with the help of a neutral third party, called a mediator, who proposes solutions and emphasizes areas of agreement.
3. *Arbitration*—The most formal method of ADR, in which the parties submit their dispute to a neutral third party, the arbitrator (or panel of arbitrators), who issues a decision. The decision may or may not be legally binding, depending on the circumstances.
 - a. **ARBITRATION CLAUSES AND STATUTES**—Arbitration clauses that are agreed on in contracts require the parties to resolve their disputes in arbitration (rather than in court). Federal and state laws encourage the courts to uphold arbitration agreements.
 - b. **THE ARBITRATION PROCESS**—A submission agreement is given to the arbiter to outline the dispute. A hearing is held before a single arbiter or a panel so both sides may present facts and arguments. After proceedings less formal than in a court, an award is issued to declare the results of the matter.
 - c. **ROLE OF THE COURTS IN PREARBITRATION**—A court may be asked to determine if a matter is, in fact, subject to arbitration rather than a court proceeding.

- d. **POSTARBITRATION ROLE OF THE COURTS**—Awards, even when binding, may be appealed to the courts for review. The court's review is much more restricted than an appellate court's review of a trial court record.

4. *Other ADR forms*—These include binding mediation, mediation arbitration, early neutral case evaluation, mini-trials; generally, these are forms of "assisted negotiation."
5. *Collaborative law*—A form of ADR in which both parties, their attorneys, and any professionals working with the parties meet to resolve their issues without litigation. The lawyers act as negotiators and communication moderators while advising their clients about their legal rights, entitlements, and obligations. If either party seeks court intervention, both attorneys must withdraw from representation.
6. *Court-referred ADR*—In some jurisdictions, courts require parties to undergo some form of ADR so as to help resolve disputes prior to trial. One form for more complicated matters is the summary jury trial, where a jury hears a shortened form of a full trial and issues a nonbinding verdict.
7. *Providers of ADR services*—The leading nonprofit provider of ADR services is the American Arbitration Association. Many for-profit firms also provide ADR services domestically and internationally.
8. *Online dispute resolution*—A number of organizations and firms offer negotiation and arbitration services through online forums. These forums have been a practical alternative for the resolution of disputes over the right to use a certain website address or the quality of goods purchased over the Internet.

QUESTIONS FOR REVIEW

1. Define *jurisdiction*. Define *venue*. What is the difference between personal jurisdiction and subject-matter jurisdiction? What is a long arm statute?
2. Describe the types of cases over which federal courts exercise jurisdiction.
3. How do original and appellate jurisdictions differ? The relationship between state and federal jurisdiction is an example of what type of jurisdiction?
4. How do the functions of a trial court differ from the functions of an appellate court?
5. Describe the procedure for cases to reach the United States Supreme Court.
6. Describe the various methods of alternative dispute resolution.

ETHICS QUESTION

Aaron is a paralegal with a law firm that specializes in intellectual property law. Aaron's supervising attorney asks him to e-mail a letter to the client that the attorney has prepared. The letter and its attachments discuss a patent application and contain drawings and plans for a heated steering wheel that the client plans to sell to automobile manufacturers. Aaron does so without encrypting the letter or the

attachments, which contain confidential information. A temporary employee working at the client's office accesses the unencrypted e-mail and steals the information. Have any ethical rules been violated by Aaron or by his supervising attorney? If so, which rules? What could Aaron and his supervising attorney have done differently to better protect the client's interests?

PRACTICE QUESTIONS AND ASSIGNMENTS

1. Identify each of the following courts. If not indicated, specify whether it is a state or federal court.
 - a. This state court has general jurisdiction over civil and criminal cases and takes testimony from witnesses and receives evidence.
 - b. This court has appellate jurisdiction and is part of a court system that is divided into geographic units called *circuits*.
 - c. This state court only hears issues related to divorce and custody matters. It has original jurisdiction.
 - d. This court can exercise federal question and diversity-of-citizenship jurisdiction, and receives testimony and other evidence.
 - e. The decisions of this state court are usually final. It is the highest appellate court within its court system.
 - f. This federal court has nine justices. It has original jurisdiction over several types of cases but functions primarily as an appellate court. There is no automatic right to appeal to this court.
2. Look at Exhibit 6.4 on page 157 and answer these questions:
 - How many federal circuits are there?
 - In which federal circuit is your state located?
 - How many federal judicial districts are located in your state? In which federal district is your community located?
3. Marcella, who is from Toledo, Ohio, drives to Troy, Michigan, and shops at a popular mall. When leaving the parking lot, Marcella runs a red light while texting and causes an accident resulting in personal injuries to the driver of the other vehicle. On what basis could a Michigan court obtain jurisdiction over Marcella? If the damages in the lawsuit exceed \$75,000, could a federal court in Michigan have jurisdiction over this case? On what jurisdictional basis? What type of jurisdiction would exist if both the courts of the state of Michigan and the federal court have jurisdiction over this case? Discuss the other types of jurisdiction the court may have in this case (such as *in personam* jurisdiction, *in rem* jurisdiction, subject-matter jurisdiction, limited jurisdiction, general jurisdiction, original jurisdiction, appellate jurisdiction, concurrent jurisdiction, and exclusive jurisdiction).
4. Using the materials presented in the chapter, identify the following methods of alternative dispute resolution:
 - a. The parties to a divorce meet with a neutral third party who emphasizes points of agreement and proposes solutions to resolve their dispute. After several hours, the parties reach a compromise.
 - b. The parties to a contract dispute submit it to a neutral third party for a legally binding resolution. The neutral third party is not a court.
 - c. The plaintiff and defense attorneys in a personal-injury case propose settlement figures to one another

and their clients in an effort to resolve the lawsuit voluntarily.

- d. The attorneys from the personal-injury example above are able to reach an acceptable settlement figure of \$100,000. They draft an agreement whereby the plaintiff gives up her right to sue in exchange for a payment of \$100,000 by the defendant.

- e. A commercial dispute involving \$95,000 in damages is filed in a federal court. The judge requires the parties' attorneys to present their arguments and supporting evidence, excluding witnesses, to the jury. The jury then renders a nonbinding verdict. Once the nonbinding verdict is rendered, the parties reach a settlement.

GROUP PROJECT

As a group, diagram your state court system by going to the National Center for State Courts website at: <http://www.ncsc.org/Information-and-Resources/Browse-by-State.aspx>. Under "Browse by State," click on "Court Web Sites" and select your state.

Students one and two will locate the state's trial courts and describe the jurisdiction of each one. Courts of limited jurisdiction, such as probate and divorce courts, should be included along with the trial courts of general jurisdiction. Students will create a document with a diagram showing the various levels of trial courts, as well as the subject matter jurisdiction of each one.

Student three will describe the state's intermediate appellate court and the types of appeals it hears. This information should be added to the diagram created by students one and two.

Student four will research the state's highest appellate court, list the types of appeals it accepts, and outline the basic procedure for filing an appeal with this court. This information should be added to the diagram created by the other students.

Each group will submit its court diagram to the instructor.

INTERNET PROJECT

1. The American Arbitration Association (AAA) is the largest provider of alternative dispute resolution services in the country. To learn more about ADR procedures, go to www.adr.org, the home page for the American Arbitration Association. Browse through the site's offerings and find the answers to the following questions:
 - a. What types of services does the AAA offer? Does the AAA engage in arbitration outside the United States?

- b. Describe the steps in filing a case online.
- c. Locate the form for filing a consumer demand for a non-California arbitration. Make a list of the different categories of information that the form requires. Attach a copy of the form to your assignment.
- d. What are the fees to file a consumer case with the AAA? Which party pays more in a consumer arbitration, a consumer or a business?

END NOTES

1. Pronounced *jus-tish-a-bul*.
2. A state's highest court is often referred to as the state supreme court, but there are exceptions. For example, in New York, what is called the supreme court is a trial court.
3. Under the Class Action Fairness Act (CAFA) of 2005, it is likely that most class-action lawsuits will not qualify for state court jurisdiction.
4. Pronounced *ven-yoo*.
5. The name in Ohio is Court of Common Pleas; the name in New York is Supreme Court; the name in Florida, Illinois, and Missouri is Circuit Court.
6. Pronounced *sur-shee-uh-rah-ree*.
7. As discussed later in the chapter, the American Arbitration Association is a leading provider of arbitration services in the United States.