

Chapter 4

Courts and Alternative Dispute Resolution

Chapter Objectives

By the end of this chapter, you will be able to:

- Differentiate between types of jurisdiction in state and federal courts.
- Define venue and standing.
- Define arbitration, negotiation, and mediation.
- Describe the benefits of alternative dispute resolution.
- Identify the types of claims are best settled by alternative dispute resolution.
- Identify when a mandatory arbitration clause may have you struck down.

Why Do Courts & Alternative Dispute Resolution Matter?

- Society needs an established method for resolving disputes.
- Courts and alternative ways to resolve these disputes provide this for individuals and businesses in the U.S.
- Judicial branch is one of the essential components of the American governmental system.
- Role of judiciary is to interpret and apply the law.
- ADR provides less expensive, and more efficient alternatives to litigation for resolving disputes.

The Judiciary's Role in American Government

Judicial Review

Process where court decides on constitutionality actions taken by other two branches

Origins of Judicial Review in U.S.

“Judicial Review” is not mentioned in the U.S. Constitution

Marbury v. Madison

Landmark in the Law: *Marbury v. Madison*

Judicial Review

- Doctrine of judicial review was established by *Marbury v. Madison*
- Case involved review of executive branch action
- Remains unchallenged, and is exercised by federal and state courts
- Application today
 - Constitutionality of federal statutes could not be challenged in court
 - Statutes would remain in effect unless changed by Congress

Basic Judicial Requirements

- **Jurisdiction**
 - Court's authority to hear and decide a case
- **Venue**
 - Appropriate physical location for a trial
- **Standing to Sue**
 - Plaintiff must have sufficient “stake” in the matter to justify seeking relief in court

Jurisdiction (1 of 5)

- **Jurisdiction over Persons or Property**
 - Authority to decide dispute involving person or business that resides in court's geographic area.
 - Long arm statutes
 - Spotlight Case Example 4.2 – *Ji-Haw Industrial Co. v. Broquet* (2008)
 - Corporations
 - Case Example 4.3 – *State ex rel. Norfolk Southern Railway Co. v. Dolan* (2017)

Jurisdiction (2 of 5)

- **Jurisdiction over Subject Matter**
 - Authority of court to hear and decide certain types of disputes
 - Probate court and bankruptcy court are two examples
 - Trial court's subject matter jurisdiction can be limited by:
 - Subject of lawsuit
 - Sum in controversy
 - If case involves felony or misdemeanor
 - If proceeding is a trial or appeal

Jurisdiction (3 of 5)

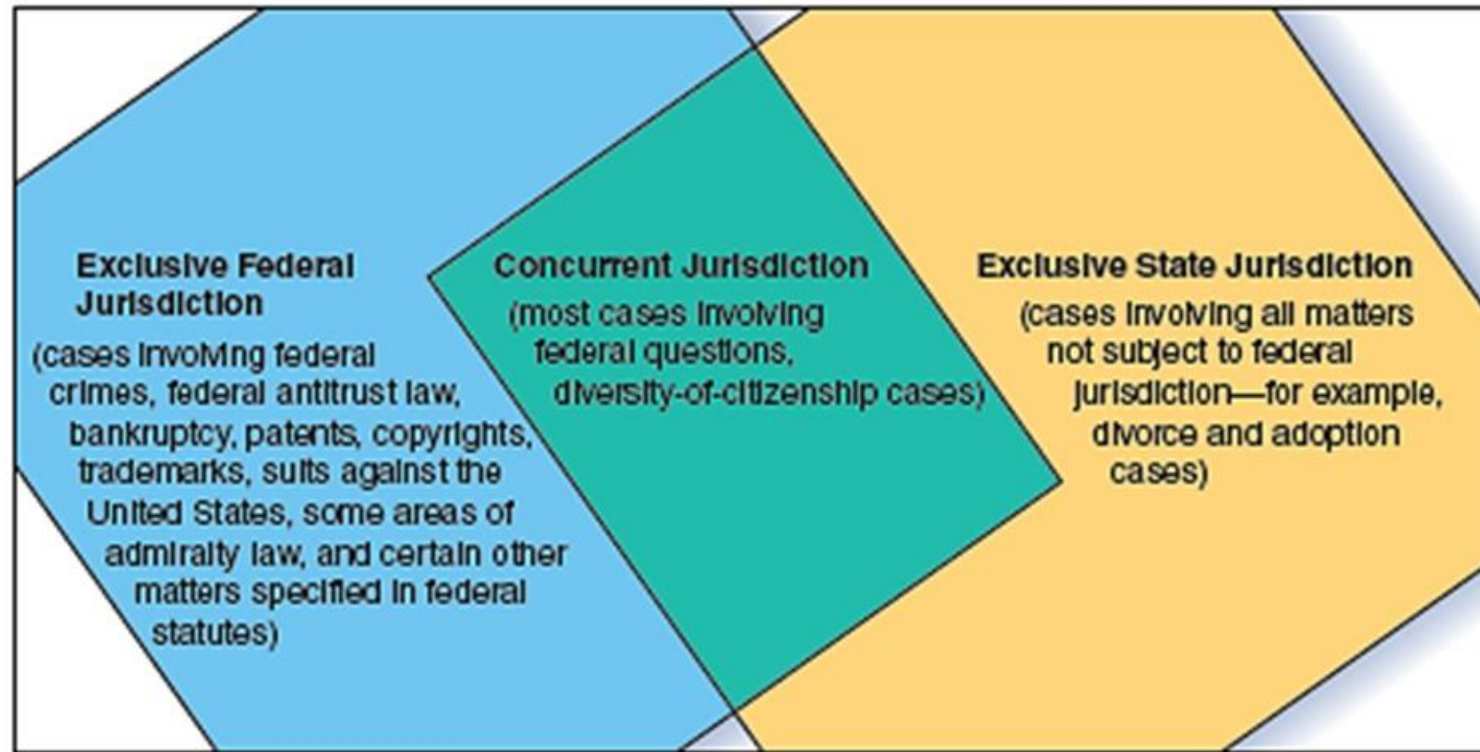
- **Original and Appellate Jurisdiction**
 - Example of original jurisdiction: trial courts or district courts
 - Example of appellate jurisdiction: Court of Appeals reviewing prior decision in same case made by lower court

Jurisdiction (4 of 5)

- **Jurisdiction of Federal Courts**
 - Federal questions
 - Diversity of citizenship
 - Citizens of different states and
 - Greater than \$75,000 amount in controversy
 - Case Example 4.4: *Ratcliff v. Greyhound Bus Lines*, 792 Fed.Appx. 121 (2nd Cir. 2020)

Jurisdiction (5 of 5)

Exhibit 4-1 Exclusive and Concurrent Jurisdiction



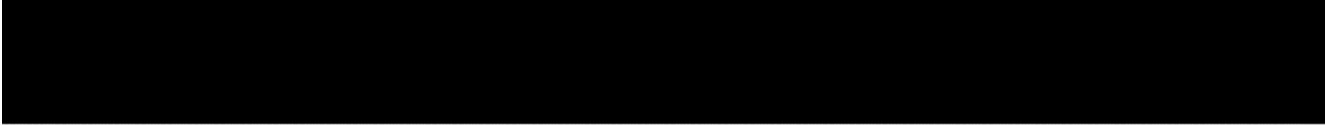
Jurisdiction in Cyberspace (1 of 2)

- **Jurisdiction of Federal Courts**
 - Courts use sliding scale standard
 - Proper to exercise jurisdiction over out-of-state defendant who conducts substantial business on Internet
 - Likely proper to exercise jurisdiction when some interactivity is done through website
 - Case Example 4.5: *Delahoussaye v. Boelter* (2016)
 - Never proper to exercise jurisdiction over defendant engaging in passive online advertising

Jurisdiction in Cyberspace (2 of 2)

- **International Jurisdictional Issues**
 - Use of Internet raises international jurisdictional issues
 - Courts around world developing standard akin to minimum-contacts requirement used in U.S.

Video: The Stages of a Trial



Stages of a Trial



Knowledge Check Video Activity

List and describe the five stages of a trial.

Video Debrief

Discuss some examples of instructions that a judge may give to a jury.

Gucci America, Inc. v. Wang Huoqing (2011)



- Chinese resident, Huoqing, was selling counterfeit Gucci items online.
- Gucci filed a trademark infringement against Huoqing in a California federal district court.
- Legal issue: Can U.S. federal court exercise personal jurisdiction over a Chinese resident whose only contact with U.S. was through an interactive website that advertised and sold counterfeit goods?
- Court held that it did indeed have personal jurisdiction over Huoqing.

Gucci America, Inc. v. Wang Huoqing (2011)

Discussion Question

- What if the facts were different?
 - Assume Gucci had not presented evidence that Huoqing made one actual sale through his website to a resident living in the Northern District of California.
 - Would the court still have found it had personal jurisdiction over Huoqing? Why, or why not?

Venue

- Civil case: typically where defendant resides
- Criminal case: typically where crime occurred
- Pretrial publicity can lead to request of change of venue
- The Internet and 24/7 news reporting has diminished the significance of venue

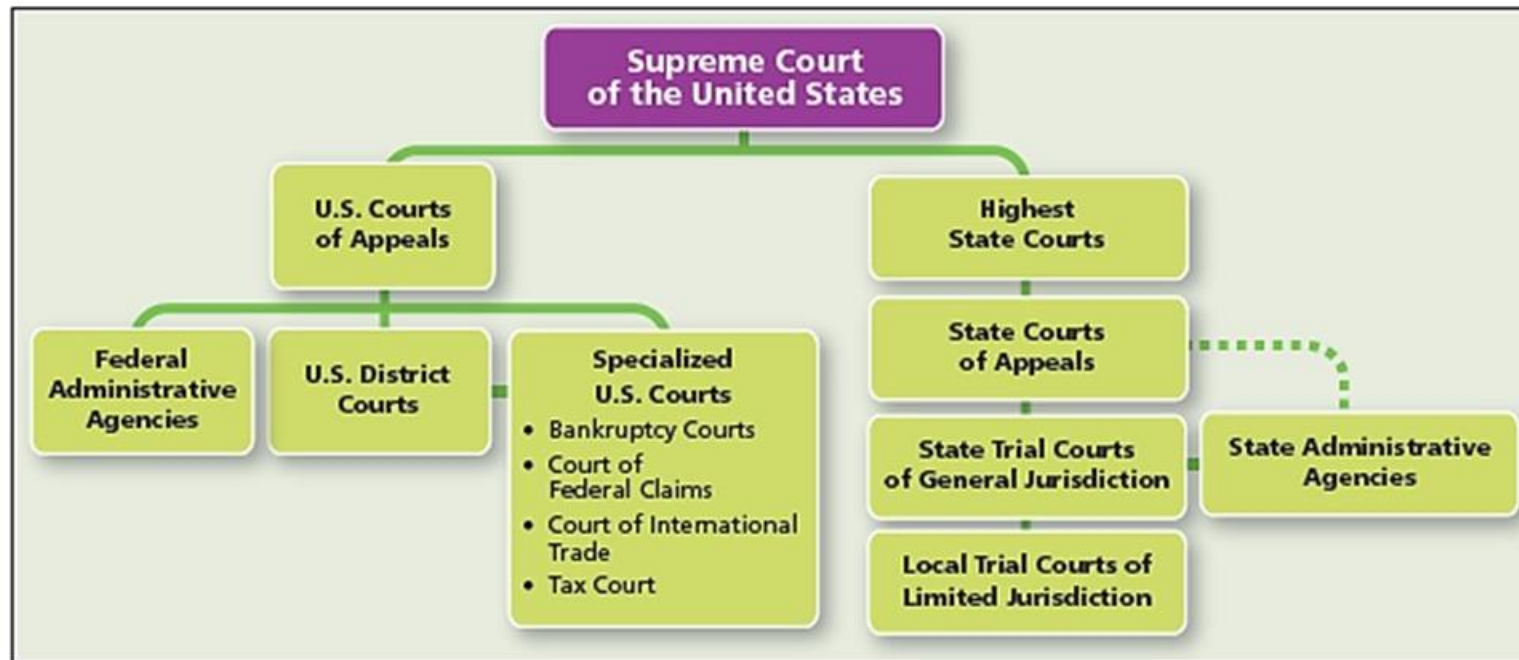
Standing to Sue

- Threshold requirement to bring a lawsuit
- Plaintiff must have sufficient “stake” in the matter
- Suffered a harm—e.g., physical injury or economic loss
- Case Example 4.6: *Wagner v. CitiMortgage, Inc.*, 995 F. Supp. 2d 621 (N.D. Tex. 2014)

State & Federal Court Systems

- Federal Courts and State Courts are Independent Systems

Exhibit 4-2 The State and Federal Court Systems



State Court Systems

- Trial Courts
 - Entry-level court where trials are held and testimony taken
 - Judge or jury makes determination based on facts
- Appellate Courts
 - Reviewing courts that review questions of law, rather than questions of fact
 - Defer to trial court's findings of facts, unless the findings are erroneous
 - State's highest court has final determination on questions of state law

Oxford Tower Apartments, LP v. Frenchie's Hair Boutique (2020) Polling Question

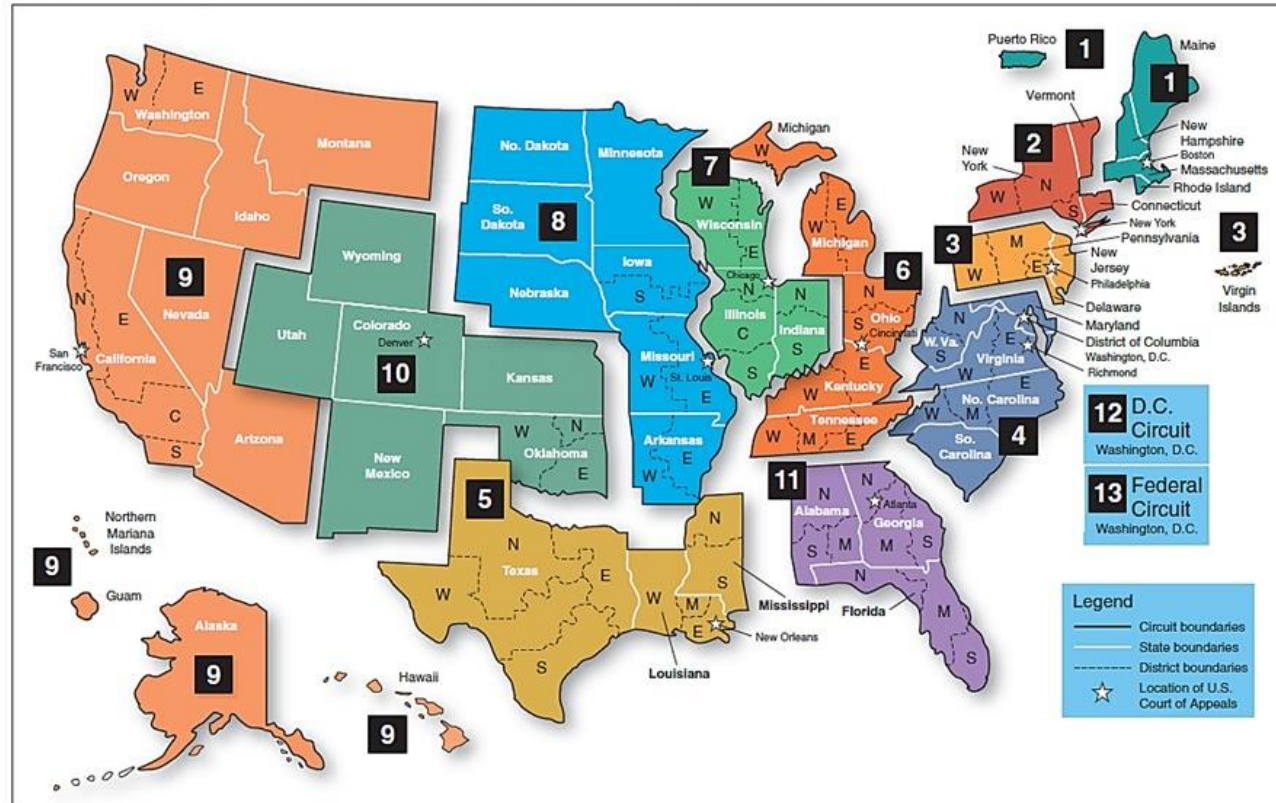
- Should an appellate court's review of the trial court's damage award amount be subject to the principle that limits appellate review of other evidence?
 - Yes
 - No
- Why, or why not? Explain your reasoning to one other person.

Federal Court System (1 of 2)

- U.S. District Courts
 - Entry-level courts equivalent to state trial courts of general jurisdiction
- U.S. Courts of Appeals
 - 13 U.S. Courts of Appeals (Circuit Courts)
- U.S. Supreme Court
 - 9 Justices
 - Review any case decided by federal courts of appeals
 - Appellate authority over some state court decisions
 - “Rule of Four”

Federal Court System (2 of 2)

Exhibit 4-3 Boundaries of the U.S. Courts of Appeals and U.S. District Courts



Source: Administrative Office of the United States Courts.

Following a State Court Case

- The pleadings
- Complaint
- Service of process
- Default judgment
- Defendant's answer
 - Counterclaim
- Reply

Pretrial Motions

- Motion to dismiss
- Motion for judgment on the pleadings
- Motion for summary judgment

Discovery (1 of 4)

- Method by which opposing parties obtain information from each other
- Various methods used to obtain information
- Information used to prepare for trial

Discovery (2 of 4)

- Depositions
- Interrogatories
- Case Example 4.10 *Construction Laborers Trust Funds for Southern California Administrative Co. v. Montalvo*

Discovery (3 of 4)

- Requests for Information
 - Admission of truth
 - Documents and other items
 - Entry upon land

Discovery (4 of 4)

- Electronic discovery
- E-Discovery procedures

Pretrial Conference

- It's an informal discussion between judge and lawyers.
- The purpose is to explore possibilities of a settlement, identifying the real issues in dispute, and planning the course of the trial.

Jury Selection

- Trials can be with or without a jury (bench trial).
- Seventh Amendment guarantees the right to jury trial in federal cases, that is if the amount in controversy exceeds \$20.
- *Voir dire* is the process of jury selection.

At the Trial

- Closing Arguments and Awards
 - After the defense concludes presentation, both sides present their closing arguments.
 - Judge instructs the jury in the law that applies to the case.
 - Jury retires to the jury room to deliberate a verdict.
 - If jury finds for the plaintiff, it will also decide on amount of the award.

Posttrial Motions

- Motion for judgment n.o.v.
- Motion for new trial

The Appeal (1 of 2)

- Filing the Appeal
 - Lawyers argue case on appeal using briefs (written summaries explaining each side's case) and oral argument.
- Appellate Review
 - Affirm the trial court's decision
 - Reverse the court's judgment
 - Remand (send back) the case to trial court
 - Partly affirm or reverse a decision
 - Modify the lower court's decision

The Appeal (2 of 2)

- Appeal to Higher Appellate Court
 - Losing party may appeal intermediate appellate court's ruling to the jurisdiction's supreme court equivalent
 - New round of briefing and oral arguments occur

Enforcing the Judgment

- Plaintiff who wins damage award has no guarantee of collecting it from defendant.

Courts Online and Electronic Filing

- Courts today have websites that contain information for the public
- In some states, court clerks offer information about the court's docket
- Many offer searchable databases online
- Many state and federal courts allow parties to file legal documents electronically with the court
- Federal Court System's electronic filing system (CM/ECF) is accessed through PACER (Public Access to Court Electronic Records)

Cyber Courts & Proceedings

- Litigants may be able to use cyber courts where judicial proceedings take place online
- Electronic courtroom projects have already been developed in some federal and state courts
- COVID-19 pandemic forced several courts to hold proceedings remotely

Alternative Dispute Resolution

- Resolution of disputes in ways other than those involved in the traditional judicial process.
 - Unless court-ordered, ADR has no record, an important factor for companies in commercial litigation trying to keep trade secrets hidden.
 - Most common forms of ADR: negotiation, mediation, and arbitration.

Negotiation

- Simplest form of ADR
- Used in variety of ways to attempt to settle dispute informally
- Parties without attorneys can negotiate
- Attorneys representing each side can negotiate
- Purpose is to avoid additional cost of litigation

Mediation

- ADR method uses neutral third party to mediate dispute.
- Mediators propose a solution, but it is not binding on parties.
- Case Example 4.12: Business partners

Arbitration (1 of 4)

- The most formal ADR method, it uses an arbitrator to hear and decide on the dispute.
- Binding or nonbinding
- Resembles trial:
 - Parties present opening arguments
 - Parties ask for specific remedies
 - Present evidence, may call and examine witnesses
 - However, procedural rules are much less restrictive than in litigation



Arbitration (2 of 4)

- **Arbitration Decision**
 - Award reached can be appealed, but will be set aside only if:
 - Arbitrator's conduct or "bad faith" substantially prejudiced the rights of one of the parties
 - Award violates an established public policy
 - Arbitrator arbitrated issues parties did not agree to arbitrate

Arbitration (3 of 4)

- **Arbitration clauses:** several disputes arise under an arbitration contract clause
- **Arbitration statutes:** state statutes based on Uniform Arbitration Act
- **Case Example 4.13:** *In re Cox Enterprises, Inc. Set-top Cable Television Box Antitrust Litigation (2016)*

Arbitration (4 of 4)

- **Mandatory Arbitration in Employment Context**
 - U.S. Supreme Court has held that mandatory arbitration clauses in employment contracts are generally enforceable
- **Case Example 4.14: *Gilmer v. Interstate/Johnson Lane Corp.***

Basic Differences in the Traditional Forms of ADR

Exhibit 4-4 Basic Differences in the Traditional Forms of ADR

	Type of ADR		
	Negotiation	Mediation	Arbitration
Description	Parties meet informally with or without their attorneys and attempt to agree on a resolution. This is the simplest and least expensive method of ADR.	A neutral third party meets with the parties and emphasizes points of agreement to bring them toward resolution of their dispute, reducing hostility between the parties.	The parties present their arguments and evidence before an arbitrator at a formal hearing. The arbitrator renders a decision to resolve the parties' dispute.
Neutral Third Party Present?	No	Yes	Yes
Who Decides the Resolution?	The parties themselves reach a resolution.	The parties, but the mediator may suggest or propose a resolution.	The arbitrator imposes a resolution on the parties that may be either binding or nonbinding.

Other Types of ADR

- **Early neutral case evaluation**
- **Mini-trial**
- **Summary jury trial (SJT)**

Providers of ADR Services

- **Arbitration Providers**
 - American Arbitration Association (AAA) (nonprofit association)
 - ADR Firms (for-profit companies)
 - Retired judges often conduct arbitration hearings, or help parties settle dispute

Online Dispute Resolution (ODR)

- **ODR**
 - Growing method for resolving disputes in online forums
 - Often used to resolve Internet-based disputes
 - Often apply general, universal legal principles rather than law of any specific jurisdiction
 - Suited well for resolving small- to medium-sized business' liability claims
- **Case Example 4.15: New York City and Cybersettle.com**

Summary

Now that the lesson has ended, you have learned:

- Differentiate between types of jurisdiction in state and federal courts.
- Define venue and standing.
- Define arbitration, negotiation, and mediation.
- Describe the benefits of alternative dispute resolution.
- Identify the types of claims are best settled by alternative dispute resolution.
- Identify when a mandatory arbitration clause may have you struck down.