CHAPTER 6

The Court System and Alternative Dispute Resolution

DIGITAL RESOURCES

Chapter 6 Digital Resources at www.pearsonhighered.com/goldman

- Video Case Studies:
  - Meet the Courthouse Team
  - Jury Selection: Potential Juror Challenged for Cause
  - Settlement Conference with Judge
- Chapter Summary • Web Links • Court Opinions • Glossary • Comprehension Quizzes
- Technology Resources
I was never ruined but twice; once when I lost a lawsuit, and once when I won one.”

Voltaire

Paralegals at Work

You have applied for a position as a paralegal at a law firm that specializes in litigation. Most of the law firm’s practice is in the area of tort litigation, particularly representing plaintiffs in negligence cases. The firm has scheduled an interview with you. On the day you arrive for the interview, you are called into the office of Ms. Harriet Green, a senior partner in the firm. Ms. Green wants to determine your knowledge of judicial and nonjudicial dispute resolution. Ms. Green informs you that she will tell you the facts of a case and will ask you several questions about the case.

Ms. Green explains that Ms. Heather Andersen has retained the law firm as the plaintiff to represent her in an accident case. Ms. Green explains that Ms. Andersen was driving her automobile on the main road of your city when Mr. Joseph Burton, driving another automobile, ran a red street light and hit Ms. Andersen’s vehicle, causing her severe physical injuries, as well as pain and suffering. The law firm plans to file a lawsuit for the tort of negligence on behalf of Ms. Andersen, the plaintiff, against Mr. Burton, the defendant. Ms. Andersen is a resident of your state. Mr. Burton is a resident of another state who was visiting your state when the accident occurred.

Ms. Green asks you the following questions: “What is a complaint?” “In what court or courts can our law firm file the complaint on behalf of Ms. Andersen?” “If we lose the case at trial, to what court can our law firm, on behalf of Ms. Andersen, appeal the trial court’s decision?” “After the case is filed in the court, is there any way of resolving the case in favor of Ms. Andersen before the case goes to trial?”

Consider the issues involved in this scenario as you read the chapter.
INTRODUCTION FOR THE PARALEGAL

A paralegal often assists attorneys who represent clients in the courts of this country. The court systems and the procedure to bring and defend a lawsuit are complicated, and a paralegal should be knowledgeable of court systems and how a lawsuit proceeds to trial and is decided in court.

Also, some parties to a dispute will choose to settle a case, or have the case reviewed or determined by a private party rather than by the courts. Thus, a paralegal should be knowledgeable of the manner and procedures for having disputes resolved outside of the court system.

The two major court systems in the United States are: (1) the federal court system, and (2) the court systems of the 50 states and the District of Columbia. Each of these systems has jurisdiction to hear different types of lawsuits. The process of bringing, maintaining, and defending a lawsuit is called litigation. Litigation is a difficult, time-consuming, and costly process that must comply with complex procedural rules. Although it is not required, most parties employ a lawyer to represent them when they are involved in a lawsuit.

Several forms of nonjudicial dispute resolution have developed in response to the expense and difficulty of bringing a lawsuit. These methods, collectively called alternative dispute resolution (ADR), are being used more and more often to resolve commercial disputes.

Paralegals are especially valuable in providing support to lawyers who are engaged in litigation and alternative dispute resolution. Paralegals interview clients, prepare documents submitted to courts, conduct legal research, and assist lawyers during trial and alternative dispute resolution.

This chapter focuses on the various court systems, the jurisdiction of courts to hear and decide cases, the litigation process, and alternative dispute resolution.

The following feature discusses the career opportunities for paralegal professionals in courts and litigation.

State Court Systems

Paralegal professionals should be familiar with the state court system in which he or she could be involved in assisting attorneys who practice before one of these state

CAREER OPPORTUNITIES FOR PARALEGALS IN COURTS AND LITIGATION

Paralegals are an extremely fortunate group of individuals because many of them get to work in a special environment—the court system. Paralegals are often hired by state and federal courts to assist judges in the preparation of trial. Paralegals often assist a judge or justice by conducting research, briefing arguments, preparing documents, and such.

In addition to working for the courts directly, many more paralegals are employed by attorneys who represent clients who are involved in litigation in the courts. These paralegals may work for plaintiffs’ attorneys and defendants’ attorneys in civil litigation lawsuits such as breach of contract, negligence and product liability, business litigation, and other civil lawsuits. These civil lawsuits may be either in state courts or federal courts.

Paralegals are also hired to work for prosecuting attorneys and defense attorneys in the criminal law area. Paralegals assist prosecuting and defense attorneys to prepare for trial and assist the attorney during trial. Criminal law cases are brought both in state and federal courts, depending on the jurisdiction of the court.

A paralegal who works for the courts or litigation attorneys must have a detailed knowledge of the court systems that serve the relevant jurisdiction that he or she works in. Paralegals who work in positions that are not directly involved in supporting lawsuits in court should still have knowledge of the court systems in this country and the jurisdiction of such court systems.
courts. Each state and the District of Columbia have separate court systems. Most state
court systems include:

- Limited-jurisdiction trial courts
- General-jurisdiction trial courts
- Intermediate appellate courts
- Supreme court (or highest state court)

**Limited-Jurisdiction Trial Court**

State **limited-jurisdiction trial courts**, which sometimes are referred to as **inferior trial courts**, hear matters of a specialized or limited nature.

**Examples** Traffic courts, juvenile courts, justice-of-the-peace courts, probate courts, family law courts, and courts that hear misdemeanor criminal law cases and civil cases involving lawsuits of less than a certain dollar amount. Because these courts are trial courts, evidence can be introduced and testimony given. Most limited-jurisdiction courts keep a record of their proceedings. Their decisions usually can be appealed to a general-jurisdiction court or an appellate court.

Many states also have created **small-claims courts** to hear civil cases involving small dollar amounts (e.g., $5,000 or less). Generally, the parties must appear individually and cannot have a lawyer represent them. The decisions of small-claims courts are often appealable to general-jurisdiction trial courts or appellate courts.

**General-Jurisdiction Trial Court**

Every state has a **general-jurisdiction trial court**. These courts often are called **courts of record** because the testimony and evidence at trial are recorded and stored for future reference. These courts hear cases that are not within the jurisdiction of
limited-jurisdiction trial courts, such as felonies, civil cases above a certain dollar amount, and so on. Some states divide their general-jurisdiction courts into two divisions, one for criminal cases and another for civil cases.

General-jurisdiction trial courts hear evidence and testimony. The decisions these courts hand down are appealable to an intermediate appellate court or the state supreme court, depending on the circumstances.

### Intermediate Appellate Court

In many states, intermediate appellate courts (also called appellate courts or courts of appeal) hear appeals from trial courts. These courts review the trial court record to determine any errors at trial that would require reversal or modification of the trial court's decision. Thus, the appellate court reviews either pertinent parts or the entire trial court record from the lower court. No new evidence or testimony is permitted. The parties usually file legal briefs with the appellate court, stating the law and facts that support their positions. Appellate courts usually grant a short oral hearing to the parties.

Appellate court decisions are appealable to the state's highest court. In less populated states that do not have an intermediate appellate court, trial court decisions can be appealed directly to the state's highest court.

### Highest State Court

Each state has a highest state court in its court system. Most states call this highest court supreme court. The function of a state supreme court is to hear appeals from intermediate state courts and certain trial courts. The highest court hears no new evidence or testimony. The parties usually submit pertinent parts of or the entire lower court record for review. The parties also submit legal briefs to the court and typically are granted a brief oral hearing. Decisions of state supreme courts are final, unless a question of law is involved that is appealable to the U.S. Supreme Court.

### Federal Court System

Paralegal professionals are sometimes involved in assisting attorneys who practice before one of the many federal courts. Article III of the U.S. Constitution provides that the federal government's judicial power is vested in one “supreme court.” This court is the U.S. Supreme Court. The Constitution also authorizes Congress to establish “inferior” federal courts in the **federal court system**. Pursuant to this power, Congress has established special federal courts, the U.S. district courts, and the U.S. courts of appeal. Federal judges are appointed for life by the President with the advice and consent of the Senate (except bankruptcy court judges, who are appointed for 14-year terms, and U.S. Magistrate Judges, who are appointed for an 8-year term).

### Special Federal Courts

The **special federal courts** established by Congress have limited jurisdiction. They include:

- **U.S. Tax Court**: Hears cases involving federal tax laws
- **U.S. Court of Federal Claims**: Hears cases brought against the United States
- **U.S. Court of International Trade**: Hears cases involving tariffs and international commercial disputes
- **U.S. Bankruptcy Court**: Hears cases involving federal bankruptcy laws
U.S. District Courts
The U.S. District Courts are the federal court system’s trial courts of general jurisdiction. The District of Columbia and each state have at least one federal district court; the more populated states have more than one. The geographical area that each court serves is referred to as a district. At present there are 94 federal district courts. The federal district courts are empowered to impanel juries, receive evidence, hear testimony, and decide cases. Most federal cases originate in federal district courts.

U.S. Courts of Appeals
The U.S. Courts of Appeals are the federal court system’s intermediate appellate courts. The federal court system has 13 circuits. Circuit refers to the geographical area served by a court. Eleven are designated by a number, such as the “First Circuit,” “Second Circuit,” and so on. The Twelfth Circuit court is located in Washington, D.C., and is called the District of Columbia Circuit.

As appellate courts, these circuit courts hear appeals from the district courts located in their circuit, as well as from certain special courts and federal administrative agencies. The courts review the record of the lower court or administrative agency proceedings to determine if any error would warrant reversal or modification of the lower court decision. No new evidence or testimony is heard. The parties file legal briefs with the court and are given a short oral hearing. Appeals usually are heard by a three-judge panel. After the panel renders a decision, a petitioner can request a review en banc by the full court.

Web Exploration
Visit the website of the U.S. Court for the Federal Circuit at www.fedcir.gov.
### Exhibit 6.2 Websites for state court systems and jurisdictions

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<th>State</th>
<th>Website</th>
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**Exhibit 6.2**  
**Websites for state court systems and jurisdictions (continued)**

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**Exhibit 6.3**  
**Map of the federal circuit courts**

The Thirteenth Circuit court of appeals was created by Congress in 1982. Called the **Court of Appeals for the Federal Circuit** and located in Washington, D.C., this court has special appellate jurisdiction to review the decisions of the Court of Federal Claims, the Patent and Trademark Office, and the Court of International Trade. This court of appeals was created to provide uniformity in the application of federal law in certain areas, particularly patent law.

The map in Exhibit 6.3 shows the 13 federal circuit courts of appeals. Exhibit 6.4 lists the websites of the 13 U.S. courts of appeals.

**Web Exploration**

Go to [http://www.uscourts.gov/courtlinks/](http://www.uscourts.gov/courtlinks/). Choose and click on “Court of Appeals.” Place the cursor on your state and click. What is the location of the U.S. Court of Appeals closest to you?
Supreme Court of the United States

Paralegals should be familiar with Supreme Court of the United States, its jurisdiction, the types of cases it hears, how cases are determined to be heard by the Supreme Court, and the voting of the Supreme Court justices. The highest court in the land is the Supreme Court of the United States located in Washington, D.C. This court is composed of nine justices who are nominated by the President and confirmed by the
Senate. The President appoints one justice as chief justice, responsible for the administration of the Supreme Court. The other eight justices are associate justices.

The U.S. Supreme Court, which is an appellate court, hears appeals from federal circuit courts of appeals and, under certain circumstances, from federal district courts, special federal courts, and the highest state courts. The Supreme Court hears no evidence or testimony. As with other appellate courts, the lower court record is reviewed to determine whether an error has been committed that warrants a reversal or modification of the decision. Legal briefs are filed, and the parties are granted a brief oral hearing. The Supreme Court’s decision is final.

Exhibit 6.5 illustrates the federal court system.

Petition for Certiorari

A petitioner must file a petition for certiorari asking the Supreme Court to hear the case. If the Court decides to review a case, it will issue a writ of certiorari. Because the Court issues only about 100 opinions each year, writs usually are granted only in cases involving constitutional and other important issues.

The justices meet once a week to discuss what cases merit review. The votes of four justices are necessary to grant an appeal and schedule an oral argument before the Court (“rule of four”). Written opinions by the justices usually are issued many months later.

The U.S. Constitution gives Congress the authority to establish rules for the appellate review of cases by the Supreme Court, except in the rare case where mandatory review is required. Congress has given the Supreme Court discretion to decide what cases it will hear.

Exhibit 6.6 shows a petition for certiorari to the U.S. Supreme Court.
Exhibit 6.6 Petition for certiorari for the case District of Columbia, . . . v. Dick Anthony Heller

No. 07-

IN THE
Supreme Court of the United States

DISTRICT OF COLUMBIA AND
ADRIAN M. FENTY, MAYOR OF THE DISTRICT OF COLUMBIA,

Petitioners,

v.

DICK ANTHONY HELLER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

THOMAS C. GOLDSTEIN
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Washington, DC 20001
(202) 724-6609

Attorneys for Petitioners

QUESTION PRESENTED

Whether the Second Amendment forbids the District of Columbia from banning private possession of handguns while allowing possession of rifles and shotguns.

PARTIES TO THE PROCEEDING

Petitioners District of Columbia and Mayor Adrian M. Fenty were defendants-appellees below. Mayor Fenty was substituted automatically for the previous Mayor, Anthony A. Williams, under Federal Rule of Appellate Procedure 43(b)(2).
Exhibit 6.6 Petition for certiorari for the case District of Columbia, . . . v. Dick Anthony Heller (continued)

Respondent Dick Anthony Heller was the only plaintiff-appellant below held by the court of appeals to have standing. The other plaintiffs-appellants were Shelly Parker, Tom G. Palmer, Gillian St. Lawrence, Tracey Ambeau, and George Lyon.

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APPENDICES
Vote of the U.S. Supreme Court

Each justice of the Supreme Court, including the chief justice, has an equal vote. The Supreme Court can issue the following types of decisions:

- **Unanimous decision.** If all of the justices voting agree as to the outcome and reasoning used to decide the case, it is a unanimous opinion. Unanimous decisions are precedent for later cases.
  
  **Example** Suppose all nine justices hear a case, and all nine agree to the outcome (the petitioner wins) and the reason why (the Equal Protection Clause of the U.S. Constitution had been violated); this is a unanimous decision.

- **Majority decision.** If a majority of the justices agree to the outcome and reasoning used to decide the case, it is a majority opinion. Majority decisions are precedent for later cases.
  
  **Example** If all nine justices hear a case, and five of them agree as to the outcome (the petitioner wins) and all of these five justices agree to the same reason why (the Equal Protection Clause of the U.S. Constitution has been violated), it is a majority opinion.

- **Plurality decision.** If a majority of the justices agree to the outcome of the case, but not to the reasoning for reaching the outcome, it is a plurality opinion. A plurality decision settles the case but is not precedent for later cases.
  
  **Example** If all nine justices hear a case, and five of them agree as to the outcome (the petitioner wins), but not all of these five agree to the reason why (suppose that three base their vote on a violation of the Equal Protection Clause and two base their vote on a violation of the Freedom of Speech Clause of the U.S. Constitution), this is a plurality decision. Five justices have agreed to the same outcome, but those five have not agreed for the same reason. The petitioner wins his or her case, but the decision is not precedent for later cases.

- **Tie decision.** Sometimes the Supreme Court sits without all nine justices present because of illness or conflict of interest, or because a justice has not been confirmed to fill a vacant seat on the court. In the case of a tie vote, the lower court decision is affirmed. These votes are not precedent for later cases.
  
  **Example** A petitioner won her case at the court of appeals. At the U.S. Supreme Court, only eight justices hear the case. Four justices vote for the petitioner, and four justices vote for the respondent. This is a tie vote. The petitioner remains the winner because she won at the court of appeals. The decision of the Supreme Court sets no precedent for later cases.

A justice who agrees with the outcome of a case but not the reason proffered by other justices can issue a **concurring opinion**, setting forth his or her reasons for deciding the case. A justice who does not agree with a decision can file a **dissenting opinion** that sets forth the reasons for his or her dissent.

Jurisdiction of Federal and State Courts

A federal or state court must have **subject-matter jurisdiction** to hear a case. Article III, Section 2, of the U.S. Constitution sets forth the jurisdiction of federal courts. Federal courts have **limited jurisdiction** to hear cases involving federal questions and cases involving diversity of citizenship. State courts have jurisdiction to hear certain types of cases. Jurisdiction of federal and state courts to hear cases is discussed in the following paragraphs.
Subject-Matter Jurisdiction of Federal Courts

Federal courts have jurisdiction to hear cases based on the subject matter of the case. The federal courts have jurisdiction to hear cases involving “federal questions.” Federal question cases are cases arising under the U.S. Constitution, treaties, and federal statutes and regulations. There is no dollar-amount limit on federal question cases that can be brought in federal court.

Example A lawsuit involving federal securities law concerns a federal question (a federal statute) and will be heard by a U.S. district court.

Subject-Matter Jurisdiction of State Courts

State courts have jurisdiction to hear cases involving subject matters that federal courts do not have jurisdiction to hear. These usually involve state laws.

Examples Real estate law, corporation law, partnership law, limited liability company law, contract law, sales and lease contracts, and negotiable instruments are state law subject matters.

Diversity of Citizenship

A case involving a state court subject matter may be brought in federal court if there is diversity of citizenship. Diversity of citizenship occurs if the lawsuit involves (a) citizens of different states, (b) a citizen of a state and a citizen or subject of a foreign country, and (c) a citizen of a state and a foreign country is the plaintiff. A corporation is considered to be a citizen of the state in which it is incorporated and in which it has its principal place of business. The reason for providing diversity of citizenship jurisdiction was to prevent state court bias against nonresidents. The federal court must apply the appropriate state’s law in deciding the case. The dollar amount of the controversy must exceed $75,000 to be brought in federal court. If this requirement is not met, the action must be brought in the appropriate state court.

Example Henry, a resident of the state of Idaho, is driving his automobile in the state of Idaho when he negligently hits Mary, a pedestrian. Mary is a resident of the state of New York. There is no federal question involved in this case; it is an automobile accident that involves state negligence law. However, there is diversity of citizenship in this case: Henry is from the state of Idaho, while Mary is from another state, the state of New York. Usually the case must be brought in the state in which the automobile accident occurred because this is where most of the witnesses and evidence will be from. In this case, Mary, the plaintiff, may bring her lawsuit in federal court in Idaho, and if she does so the case will remain in federal court. If Mary brings the case in Idaho state court it will remain in Idaho state court if Henry agrees; however, Henry can move the case to federal court.

Exclusive and Concurrent Jurisdiction

Federal courts have exclusive jurisdiction to hear cases involving federal crimes, antitrust, bankruptcy, patent and copyright cases, suits against the United States, and most admiralty cases. State courts cannot hear these cases.

State and federal courts have concurrent jurisdiction to hear cases involving diversity of citizenship and federal questions over which federal courts do not have exclusive jurisdiction (e.g., cases involving federal securities laws). If a plaintiff brings a case involving concurrent jurisdiction in state court, the defendant can remove the case to federal court. If a case does not qualify to be brought in federal court, it must be brought in the appropriate state court.

The following feature discusses a paralegal’s duty to investigate in what court a particular action should be brought.
In personam (personal) jurisdiction is jurisdiction over the parties to a lawsuit.

In Personam Jurisdiction

Jurisdiction over a person is called in personam jurisdiction, or personal jurisdiction. A plaintiff, by filing a lawsuit with a court, gives the court in personam jurisdiction over himself or herself. The court must also have in personam jurisdiction over the defendant, which is usually obtained by having a summons served to that person within the territorial boundaries of the state (i.e., service of process). Service of process is usually accomplished by personal service of the summons and complaint on the defendant.
If personal service is not possible, alternative forms of notice, such as mailing of the summons or publication of a notice in a newspaper, may be permitted. A corporation is subject to personal jurisdiction in the state in which it is incorporated, has its principal office, and is doing business.

A party who disputes the jurisdiction of a court can make a *special appearance* in that court to argue against imposition of jurisdiction. Service of process is not permitted during such an appearance.

**In Rem Jurisdiction**

A court may have jurisdiction to hear and decide a case because it has jurisdiction over the property of the lawsuit: This is called *in rem jurisdiction* (“jurisdiction over the thing”).

**Example** A state court would have jurisdiction to hear a dispute over the ownership of a piece of real estate located within the state. This is so even if one or more of the disputing parties lives in another state or states.

**Quasi in Rem Jurisdiction**

Sometimes a plaintiff who obtains a judgment against a defendant in one state will try to collect the judgment by attaching property of the defendant that is located in another state. This is permitted under *quasi in rem jurisdiction*, or *attachment jurisdiction*.

**Example** If a plaintiff wins a monetary judgment against a defendant in a Florida state court, but the defendant’s only property to satisfy the judgment is located in Idaho, the Idaho state court has *quasi in rem jurisdiction* to order the attachment of the defendant’s property in Idaho to satisfy the Florida court judgment.

**Long-Arm Statutes**

In most states, a state court can obtain jurisdiction over persons and businesses located in another state or country through the state’s *long-arm statute*. These statutes extend a state’s jurisdiction to nonresidents who were not served a summons within the state. The nonresident must have had some *minimum contact* with the state ([*International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, 1945 U.S. Lexis 1447 (1945)]. In addition, maintenance of the suit must uphold the traditional notions of fair play and substantial justice.

The exercise of long-arm jurisdiction is generally permitted over nonresidents who have (1) committed torts within the state (e.g., caused an automobile accident in the state), (2) entered into a contract either in the state or that affects the state (and allegedly breached the contract), or (3) transacted other business in the state that allegedly caused injury to another person.

**Venue**

*Venue* requires lawsuits to be heard by the court with jurisdiction nearest the location in which the incident occurred or where the parties reside.

**Example** Harry, a Georgia resident, commits a felony crime in Los Angeles County, California. The California Superior Court, located in Los Angeles, is the proper venue because the crime was committed in Los Angeles County and the witnesses are probably from the area, and so on.

Occasionally, pretrial publicity may prejudice jurors located in the proper venue. In these cases, a *change of venue* may be requested so a more impartial jury can be found. The courts generally frown upon *forum shopping* (i.e., looking for a favorable court without a valid reason).
Forum-Selection and Choice-of-Law Clauses

Parties sometimes agree in their contract as to what state’s courts, federal courts, or country’s court will have jurisdiction to hear a legal dispute should one arise. Such clauses in contracts are called forum-selection clauses.

In addition to agreeing to a forum, the parties also often agree in contracts as to what state’s law or country’s law will apply in resolving a dispute. These clauses are called choice-of-law clauses.

Alternative Dispute Resolution (ADR)

The use of the court system to resolve business and other disputes can take years and cost thousands, if not millions, of dollars in legal fees and expenses. In commercial litigation, the normal business operations of the parties are often disrupted. To avoid or lessen these problems, businesses are increasingly turning to methods of alternative dispute resolution (ADR) and other aids to resolving disputes. The most common form of ADR is arbitration. Other forms of ADR are negotiation, mediation, conciliation, minitrial, fact-finding, and using a judicial referee.

The following feature discusses the career opportunities for paralegal professionals in alternative dispute resolution.

Negotiation

The simplest form of alternative dispute resolution is engaging in negotiation between the parties to try to settle a dispute. Negotiation is a procedure in which the parties to a dispute engage in discussions to try to reach a voluntary settlement of their dispute.

Negotiation may take place either before a lawsuit is filed, after a lawsuit is filed, or before other forms of alternative dispute resolution are engaged in.

In a negotiation, the parties, who often are represented by attorneys, negotiate with each other to try to reach an agreeable solution to their dispute. During

CAREER OPPORTUNITIES FOR PARALEGALS IN ALTERNATIVE DISPUTE RESOLUTION

The growth in using alternative dispute resolution to solve disputes has been phenomenal. Alternative dispute resolution is just that—an alternative to using the litigation process and court systems to resolve disputes.

The major form of alternative dispute resolution is arbitration. The United States Supreme Court has upheld the use of arbitration in many types of disputes. Arbitration is used particularly in contract disputes, because many contracts contain arbitration clauses—that is, the parties to the contract have agreed in their contract not to use the court systems to solve their disputes. Instead, they have expressly agreed that an arbitrator, and not a jury, will resolve their dispute.

Most major companies have placed arbitration agreements in their contracts.

Examples Arbitration clauses appear in contracts to purchase goods, to lease automobiles, to employ services, and in other types of contracts. Also, arbitration clauses are included by employers in many employment contracts. Thus, if an employee has a dispute with his or her employer, the dispute goes to arbitration for resolution because the employee has given up his or her right to use the court system by agreeing to the arbitration clause.

Mediation also has become an indispensable method of helping to solve disputes. In mediation, the mediator does not act as a decision-maker but, instead, acts as a facilitator to try to help the disputing parties reach a settlement of their dispute. Mediation often is used in family law matters, particularly in helping reach a settlement in divorce cases.

Paralegals who work for lawyers in business law-related matters, contract disputes, and family law matters should have a thorough understanding of alternative dispute resolution. Paralegals often are called upon to help attorneys prepare for arbitration, mediation, and other forms of alternative dispute resolution. This chapter addresses the major forms of alternative dispute resolution.
negotiation proceedings, the parties usually make offers and counteroffers to one another. The parties or their attorneys also may provide information to the other side that would assist the other side in reaching an amicable settlement.

Many courts require that the parties to a lawsuit engage in settlement discussions prior to trial to try to negotiate a settlement of the case. The judge must be assured that a settlement of the case is not possible before he or she permits the case to go to trial. Judges often convince the parties to engage in further negotiations if the judge determines that the parties are not too far apart in the negotiations of a settlement.

If a settlement of the dispute is reached through negotiation, a settlement agreement is drafted that contains the terms of the agreement. A settlement agreement is an agreement that is voluntarily entered into by the parties to a dispute that settles the dispute. Each side must sign the settlement agreement for it to be effective. The settlement agreement usually is submitted to the court, and the case will be dismissed based on execution of the settlement agreement.

**Arbitration**

Paralegals working in many areas of the law—litigation, contract law, business law, and such—will encounter arbitration clauses in some of the cases that they are working on. In arbitration, the parties choose an impartial third party to hear and decide the dispute. This neutral party is called the arbitrator. Arbitrators usually are selected from members of the American Arbitration Association (AAA) or another arbitration association.

Labor union agreements, franchise agreements, leases, and other commercial contracts often contain arbitration clauses that require disputes arising out of the contract to be submitted to arbitration. If there is no arbitration clause, the parties can enter into a submission agreement, whereby they agree to submit a dispute to arbitration after the dispute arises.

The benefits of arbitration are that it is less expensive than litigation, is completed faster than a lawsuit, and is decided by a person who is knowledgeable in the area of law that is in dispute. Some consumers and employees who are subject to arbitration agreements argue that arbitration unfairly favors businesses and employers over them.

In the past, some courts were reluctant to permit arbitration of a dispute or found that arbitration agreements were illegal. However, in a series of cases the U.S. Supreme Court upheld the validity of many types of arbitration clauses or agreements.

Exhibit 6.7 is the form for a Demand for Arbitration.

**Federal Arbitration Act**

The Federal Arbitration Act (FAA) was originally enacted by Congress in 1925 to reverse the longstanding judicial hostility to arbitration agreements that had existed as English common law and had been adopted by American courts [9 U.S.C. Sections 1 et. seq.]. The Act provides that arbitration agreements involving commerce are valid, irrevocable, and enforceable contracts, unless some grounds exist at law or equity (e.g., fraud, duress) to revoke them. The FAA permits one party to obtain a court order to compel arbitration if the other party has failed, neglected, or refused to comply with an arbitration agreement.

About half of the states have adopted the Uniform Arbitration Act, which promotes the arbitration of disputes at the state level. Many federal and state courts have instituted programs to refer legal disputes to arbitration or another form of alternative dispute resolution.

**ADR Providers**

ADR services usually are provided by private organizations or individuals who qualify to hear and decide certain disputes. For example, the American Arbitration Association (AAA) is the largest private provider of ADR services. The AAA employs persons
who are qualified in special areas of the law to provide mediation and arbitration services in those areas. These persons are called **neutrals**.

For example, if parties have a contract dispute involving an employment contract, a construction contract, an Internet contract, or other commercial contract or business dispute, the AAA has a special group of neutrals that can hear and decide these cases. Other mediation and arbitration associations are located throughout the United States and internationally.
**ADR Procedure**

An arbitration agreement often describes the specific procedures that must be followed for a case to proceed to and through arbitration. If one party seeks to enforce an arbitration clause, that party must give notice to the other party. The parties then select an arbitration association or arbitrator as provided in the agreement. The parties usually agree on the date, time, and place of the arbitration. This can be at the arbitrator's offices, at a law office, or at any other agreed-upon location.

At the arbitration, the parties can call witnesses to give testimony, and introduce evidence to support their case and refute the other side’s case. Rules similar to those followed by federal courts usually are adhered to at the arbitration. Often, each party pays a filing fee and other fees for the arbitration. Sometimes the agreement provides that one party will pay all of the costs of the arbitration. Arbitrators are paid by the hour or day, or other agreed-upon method of compensation.

**Decision and Award**

After the hearing is complete, the arbitrator reaches a decision and issues an award. The parties often agree in advance to be bound by an arbitrator’s decision and remedy. This is called binding arbitration. In this situation, the decision and award of the arbitrator cannot be appealed to the courts. If the arbitration is not binding, the decision and award of the arbitrator can be appealed to the courts. This is called non-binding arbitration. Courts usually give great deference to an arbitrator’s decision and award.

If a decision and award has been rendered by an arbitrator but a party refuses to abide by the arbitrator's decision, the other party may file an action in court to have the arbitrator's decision enforced.

**Example**  Assume that there has been a contract dispute between NorthWest Corporation and SouthEast Corporation that goes to binding arbitration. The arbitrator issues a decision that awards SouthEast Corporation $5 million against NorthWest Corporation. If NorthWest Corporation fails to pay the award, SouthEast Corporation can file an action in court to have the award enforced by the court.

**Other Forms of ADR**

As mentioned, in addition to arbitration and negotiation, the other forms of ADR are mediation, conciliation, minitrial, fact-finding, and using a judicial referee. These forms of ADR are discussed in the following paragraphs.

**Mediation**

Mediation is a form of negotiation in which a neutral third party assists the disputing parties in reaching a settlement of their dispute. The neutral third party is called a mediator. The mediator usually is a person who is an expert in the area of the dispute, or a lawyer or retired judge. The mediator is selected by the parties as provided in their agreement, or as otherwise selected by the parties. Unlike an arbitrator, however, a mediator does not make a decision or an award.

A mediator's role is to assist the parties in reaching a settlement. The mediator usually acts as an intermediary between the parties. In many cases the mediator will meet with the two parties at an agreed-upon location, often the mediator's office or one of the offices of the parties. The mediator then will meet with both parties, usually separately, to discuss their side of the case.

After discussing the facts of the case with both sides, the mediator will encourage settlement of the dispute and will transmit settlement offers from one side to the other. In doing so, the mediator points out the strengths and weaknesses of each party's case and gives his or her opinion to each side why they should decrease or increase their settlement offers. The mediator's job is to facilitate settlement of the case.
**Paralegals in Practice**

**PARALEGAL PROFILE**

*Kathleen A. Stradley*

Kathleen A. Stradley is a Certified Arbitrator and Certified Mediator with 26 years of paralegal experience. She also is an Advanced Certified Paralegal and Civil Litigation Specialist. Since 1998, Kathleen has worked as an independent contractor of litigation support and consulting services in North Dakota and Minnesota. She assists trial attorneys and corporations with case management and trial preparation. She also serves as a private arbitrator and mediator in legal disputes.

Becoming involved in alternative dispute resolution (ADR) has been an interesting process. Before starting my own business, I worked for several law firms and a corporation in Ohio and North Dakota. During that time, I was aware that ADR could save a lot of time and money. However, I did not know much about putting ADR into practice. So, I enrolled in an intense course that allowed me to obtain my mediator certification after 40 hours of training.

A short time later, I trained for a new binding arbitration program for the North Dakota Workers’ Compensation Bureau. This program provided employees and employers with the option of binding arbitration rather than a formal administrative hearing or judicial solution. Instead, a hearing was held in front of three arbitrators, one from each of three societal areas: labor, industry, and the public. For about a year, I served as a public sector arbitrator and chairperson for the panel. After the panel was reduced to one person, I continued to serve as an arbitrator for Workers’ Compensation hearings.

Later, I served as an arbitrator and mediator through the American Arbitration Association (AAA) for family, commercial, personal injury, employment/workplace, and construction industry claims. In 1997, after a terrible flood destroyed my hometown of Grand Forks, North Dakota, I mediated in many disaster-related commercial and construction disputes, as well as family law cases. In more recent years, I spoke with a number of disaster victims who experienced an ADR process. Most of them agreed that ADR was a valuable course of action that helped them rebuild their homes and lives.

Due to mandatory arbitration provisions in most contracts, and the trend of court ordered dispute resolution proceedings, I think there will be fewer trials in the future. Instead, I believe more and more lawsuits will be resolved with alternative methods. Cases using ADR proceedings typically involve fewer documents. However, these documents need to be prepared much earlier, and in greater detail than cases that are tried in court with a jury. In mediation, each party submits their statement of the case and its value to the mediator in advance of the mediation. In arbitration, the evidence is submitted to the arbitrator in advance of the arbitration. ADR proceedings usually occur after discovery is completed and well in advance of the scheduled trial.


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**Conciliation**

A form of dispute resolution in which a conciliator transmits offers and counteroffers between the disputing parties in helping to reach a settlement of their dispute.

A third party in a conciliation proceeding who assists the disputing parties in reaching a settlement of their dispute. The conciliator cannot make a decision or an award.

**Conciliation**

Conciliation is another form of alternative dispute resolution. In conciliation, a party named a conciliator helps the parties to try to reach a resolution of their dispute. Conciliation often is used when the parties refuse to face each other in an adversarial setting. The conciliator schedules meetings and appointments during which information can be transferred between the parties. A conciliator usually carries offers and counteroffers for a settlement back and forth between the disputing parties. A conciliator cannot make a decision or an award.

Although the role of a conciliator is not to propose a settlement of the case, many often do. In many cases, conciliators are neutral third parties, although in some
circumstances the parties may select an interested third party to act as the conciliator. If the parties reach a settlement of their dispute through the use of conciliation, a settlement agreement is drafted and executed by the parties.

**Minitrial**

A minitrial is a voluntary private proceeding in which the lawyers for each side present a shortened version of their case to the representatives of the other side. The representatives of each side who attend the minitrial have the authority to settle the
dispute. In many cases, the parties also hire a neutral third party, often someone who is an expert in the field concerning the disputed matter or a legal expert, who presides over the minitrial. After hearing the case, the neutral third party often is called upon to render an opinion as to how the court would most likely decide the case.

During a minitrial, the parties get to see the strengths and weaknesses of their own position and that of the opposing side. Once the strengths and weaknesses of both sides are exposed, the parties to a minitrial often settle the case. The parties also often settle a minitrial based on the opinion rendered by the neutral third party. If the parties settle their dispute after a minitrial, they will enter into a settlement agreement setting forth their agreement.

Minitrials serve a useful purpose in that they act as a substitute for the real trial, but they are much briefer and not as complex and expensive to prepare for. By exposing the strengths and weaknesses of both sides’ cases, the parties usually are more realistic regarding their own position and the merits of settling the case prior to an expensive, and often more risky, trial.

Fact-Finding

In some situations, called fact-finding, the parties to a dispute will employ a neutral third party to act as a fact-finder to investigate the dispute. The fact-finder is authorized to investigate the dispute, gather evidence, prepare demonstrative evidence, and prepare reports of his or her findings.

A fact-finder is not authorized to make a decision or award. In some cases, a fact-finder will recommend settlement of the case. The fact-finder presents the evidence and findings to the parties, who then may use such information in negotiating a settlement if they wish.

Judicial Referee

If the parties agree, the court may appoint a judicial referee to conduct a private trial and render a judgment. Referees, who often are retired judges, have most of the powers of a trial judge, and their decisions stand as a judgment of the court. The parties usually reserve their right to appeal.

Online ADR

Several services now offer online arbitration. Most of these services allow a party to a dispute to register the dispute with the service and then notify the other party by email of the registration of the dispute. Most online arbitration requires the registering party to submit an amount that the party is willing to accept or pay to the other party in the online arbitration. The other party is afforded the opportunity to accept the offer. If that party accepts the offer, a settlement has been reached. The other party, however, may return a counteroffer. The process continues until a settlement is reached or one or both of the parties remove themselves from the online ADR process.

Also, several websites offer online mediation services. In an online mediation, the parties sit before their computers and sign onto the site. Two chat rooms are assigned to each party. One chat room is used for private conversations with the online mediator, and the other chat room is for conversations with both parties and the mediator.

Online arbitration and mediation services charge fees for their services. The fees are reasonable. In an online arbitration or mediation, a settlement can be reached rather quickly without paying lawyers’ fees and court costs. The parties also are acting through a more objective online process than meeting face-to-face or negotiating over the telephone, either of which could conclude with verbal arguments.

The ethical duty and social responsibility of a paralegal professional to provide pro bono services to the public is discussed in the following feature.
Mr. Alvarez is a paralegal in a law firm and works directly with Ms. Dawson, a partner in the law firm. In addition to her law practice with the law firm, Ms. Dawson volunteers to work one evening per week at a domestic abuse center that serves women and children.

At the center, Ms. Dawson interviews domestic abuse victims and pursues whatever legal actions that can be taken to assist the victims and their families. This often includes doing the legal work for obtaining restraining orders, government assistance, and spousal and child support. All of Ms. Dawson’s services at the domestic abuse center are provided pro bono, that is, for free.

One day Ms. Dawson asks her paralegal, Mr. Alvarez, if he would be interested in volunteering to help her one night each month at the domestic abuse shelter. Ms. Dawson explains that she could use Mr. Alvarez's assistance as a paralegal to help conduct interviews, prepare documents, and obtain government and other assistance for the domestic abuse victims and their families. Mr. Alvarez would be under the supervision of Ms. Dawson while working at the center.

Does a paralegal owe an ethical duty to provide pro bono services to the public?

Model and state paralegal Code of Ethics and Professional Responsibility provide that a paralegal has an ethical duty to provide pro bono services. Thus, a paralegal should strive to provide pro bono services under the authority of an attorney or as authorized by a court. It is best if these services are provided to assist the poor, persons with limited education, charitable programs, or protect civil rights.

**PARALEGAL’S ETHICAL DECISION**

Because a paralegal owes an ethical duty to provide pro bono services to the public, Mr. Alvarez should agree to assist Ms. Dawson at the domestic abuse shelter one evening each month in order to fulfill his duty to the public. This would be an excellent way for Mr. Alvarez to satisfy his ethical duty as a paralegal professional.
## SUMMARY OF KEY CONCEPTS

### State Court Systems

<table>
<thead>
<tr>
<th>Limited-Jurisdiction Trial Court</th>
<th>General-Jurisdiction Trial Court</th>
<th>Intermediate Appellate Court</th>
<th>Highest State Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>This state court hears matters of a specialized or limited nature (e.g., misdemeanor criminal matters, traffic tickets, civil matters under a certain dollar amount). Many states have created small-claims courts that hear small-dollar-amount civil cases (e.g., under $5,000) in which parties cannot be represented by lawyers.</td>
<td>This is a state court that hears cases of a general nature that are not within the jurisdiction of limited-jurisdiction trial courts.</td>
<td>This state court hears appeals from state trial courts. The appellate court reviews the trial court record in making its decision; no new evidence is introduced at this level.</td>
<td>Each state has a highest court in its court system. This court hears appeals from appellate courts and, where appropriate, trial courts. This court reviews the record in making its decision; no new evidence is introduced at this level. Most states call this court the supreme court.</td>
</tr>
</tbody>
</table>

### Federal Court System

<table>
<thead>
<tr>
<th>Special Federal Courts</th>
<th>U.S. District Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal courts that have specialized or limited jurisdiction. They include: 1. <em>U.S. Tax Court</em>: hears cases involving federal tax laws 2. <em>U.S. Court of Federal Claims</em>: hears cases brought against the United States 3. <em>U.S. Court of International Trade</em>: hears cases involving tariffs and international commercial disputes 4. <em>U.S. Bankruptcy Court</em>: hear cases involving federal bankruptcy law</td>
<td>Federal trial courts of general jurisdiction that hear cases that are not within the jurisdiction of specialized courts. Each state has at least one U.S. district court; more populated states have several district courts. The area served by one of these courts is called a district.</td>
</tr>
</tbody>
</table>
**U.S. Courts of Appeals**
Intermediate federal appellate courts that hear appeals from district courts located in their circuit, and in certain instances from special federal courts and federal administrative agencies. There are 12 geographical *circuits* in the United States. Eleven serve areas composed of several states, and another is located in Washington, DC. A thirteenth circuit court—the Court of Appeals for the Federal Circuit—is located in Washington, DC, and reviews patent, trademark, and international trade cases.

**Supreme Court of the United States**

**U.S. Supreme Court**
Highest court of the federal court system; hears appeals from the circuit courts and, in some instances, from special courts and U.S. district courts. The Court, located in Washington, DC, comprises nine justices, one of whom is named Chief Justice.

**Decisions by U.S. Supreme Court**

**Petition of certiorari and writ of certiorari:** To have a case heard by the U.S. Supreme Court, a petitioner must file a petition for certiorari with the Court. If the Court decides to hear the case, it will issue a writ of certiorari.

**Voting by the U.S. Supreme Court**

1. *Unanimous decision:* All of the justices agree as to the outcome and reasoning used to decide the case; the decision becomes precedent.
2. *Majority decision:* A majority of justices agrees as to the outcome and reasoning used to decide the case; the decision becomes precedent.
3. *Plurality decision:* A majority of the justices agrees to the outcome but not to the reasoning; the decision is not precedent.
4. *Tie decision:* If there is a tie vote, the lower court’s decision stands; the decision is not precedent.
5. *Concurring opinion:* A justice who agrees as to the outcome of the case but not the reasoning used by other justices may write a concurring opinion setting forth his or her reasoning.
6. *Dissenting opinion:* A justice who disagrees with the outcome of a case may write a dissenting opinion setting forth his or her reasoning.

**Jurisdiction of Federal and State Courts**

**Subject-Matter Jurisdiction**
The court must have jurisdiction over the subject matter of the lawsuit; each court has limited jurisdiction to hear only certain types of cases.

**Limited Jurisdiction of Federal Courts**
Federal courts have jurisdiction to hear the following types of cases:
1. *Federal question:* cases arising under the U.S. Constitution, treaties, and federal statutes and regulations; no dollar-amount limit.
2. *Diversity of citizenship:* cases between (a) citizens of different states, (b) a citizen of a state and a citizen or subject of a foreign country; and (c) a citizen of a state and a foreign country where the foreign country is the plaintiff. The controversy must exceed $75,000 for the federal court to hear the case.

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

**Exclusive Jurisdiction**
Federal courts have exclusive jurisdiction to hear cases involving federal crimes, antitrust, and bankruptcy; patent and copyright cases; suits against the United States; and most admiralty cases. State courts may not hear these matters.

**Concurrent Jurisdiction**
State courts hear some cases that may be heard by federal courts. State courts have concurrent jurisdiction to hear cases involving diversity of citizenship cases and federal question cases over which the federal courts do not have exclusive jurisdiction. The defendant may have the case removed to federal court.
**Personal Jurisdiction and Other Issues**

<table>
<thead>
<tr>
<th>Standing to Sue</th>
<th>To bring a lawsuit, the plaintiff must have some stake in the outcome of the lawsuit.</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>In Personam</em> Jurisdiction (or Personal Jurisdiction)</td>
<td>The court must have jurisdiction over the parties to a lawsuit. The plaintiff submits to the jurisdiction of the court by filing the lawsuit there. Personal jurisdiction is obtained over the defendant by serving that person <em>service of process</em>.</td>
</tr>
<tr>
<td><em>In Rem</em> Jurisdiction</td>
<td>A court may have jurisdiction to hear and decide a case because it has jurisdiction over the property at issue in the lawsuit (e.g., real property located in the state).</td>
</tr>
<tr>
<td><em>Quasi In Rem</em> Jurisdiction (or Attachment Jurisdiction)</td>
<td>A plaintiff who obtains a judgment against a defendant in one state may utilize the court system of another state to attach property of the defendant's located in the second state.</td>
</tr>
<tr>
<td>Long-Arm Statutes</td>
<td>These statutes permit a state to obtain personal jurisdiction over an out-of-state defendant as long as the defendant had the requisite minimum contact with the state. The out-of-state defendant may be served process outside the state in which the lawsuit has been brought.</td>
</tr>
<tr>
<td>Venue</td>
<td>A case must be heard by the court that has jurisdiction nearest to where the incident at issue occurred or where the parties reside. A <em>change of venue</em> will be granted if prejudice would occur because of pretrial publicity or another reason.</td>
</tr>
<tr>
<td>Forum-Selection Clause</td>
<td>This clause in a contract designates the court that will hear any dispute that arises out of the contract.</td>
</tr>
<tr>
<td>Choice-of-Law Clause</td>
<td>This clause in a contract designates what state's law or country's law will apply in resolving a dispute.</td>
</tr>
</tbody>
</table>

**Alternative Dispute Resolution (ADR)**

<table>
<thead>
<tr>
<th>ADR</th>
<th>ADR consists of <em>nonjudicial</em> means of solving legal disputes. ADR usually saves time and money required by litigation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation</td>
<td>A procedure whereby the parties to a dispute engage in discussions to try to reach a voluntary settlement of their dispute.</td>
</tr>
<tr>
<td>Arbitration</td>
<td>Arbitration is a form of ADR where an impartial third party, called the arbitrator, hears and decides the dispute. The arbitrator makes an award. The award is appealable to a court if the parties have not given up this right. Arbitration is designated by the parties pursuant to: 1. <em>Arbitration clause</em>: Agreement contained in a contract stipulating that any dispute arising out of the contract will be arbitrated. 2. <em>Submission agreement</em>: Agreement to submit a dispute to arbitration after the dispute arises.</td>
</tr>
<tr>
<td>Federal Arbitration Act (FAA)</td>
<td>Federal statute that provides that arbitration agreements involving commerce are valid, irrevocable, and enforceable contracts, unless some grounds exist at law or equity (e.g., fraud, duress) to revoke them.</td>
</tr>
<tr>
<td>Other Forms of ADR</td>
<td>Federal statute that provides that arbitration agreements involving commerce are valid, irrevocable, and enforceable contracts, unless some grounds exist at law or equity (e.g., fraud, duress) to revoke them.</td>
</tr>
<tr>
<td>Mediation</td>
<td>In mediation, a neutral third party, called a <em>mediator</em>, assists the parties in trying to reach a settlement of their dispute. The mediator does not make an award.</td>
</tr>
<tr>
<td>Conciliation</td>
<td>In conciliation, an interested third party, called a <em>conciliator</em>, assists the parties in trying to reach a settlement of their dispute. The conciliator does not make an award.</td>
</tr>
<tr>
<td>Minitrial</td>
<td>A minitrial is in a short session, the lawyers for each side present their case to representatives of each party who has the authority to settle the dispute.</td>
</tr>
</tbody>
</table>
Fact-Finding

In fact-finding, the parties hire a neutral third person, called a fact-finder, to investigate the dispute and report his or her findings to the adversaries.

Judicial Referee

With the consent of the parties, the court can appoint a judicial referee (usually a retired judge or lawyer) to conduct a private trial and render a judgment. The judgment stands as the judgment of the court and may be appealed to the appropriate appellate court.

**Online ADR**

Online ADR

A form of alternative dispute resolution where the parties use an online provider of ADR services. This could be online arbitration, online mediation, and other forms of online ADR.

**WORKING THE WEB**

1. Visit the website http://www.clicknsettle.com. What services are offered by this website? What are the costs of using this site's services?
2. Visit the website http://www.internetneutral.com. What services are offered by this site? What are the costs of these services?
3. Visit the website http://www.abanet.org/published/preview/briefs/home.html. Select one of the case names. Find the “Petitioner’s Brief” for the selected case and either print out or write down the “Question Presented” for that case.
4. Visit the website http://www.law.cornell.edu/supct/index.html. Find the most recent decision of the U.S. Supreme Court. Read the case heading and the summary of the case. Who are the parties? What issue was presented to the Supreme Court? What was the decision of the Supreme Court?
6. Find the homepage for the courts in your state. What are the names of the courts in your state? Draw a diagram of the courts of your state. Include limited-jurisdiction courts, general-jurisdiction trial courts, appellate courts, and the highest state court.

**CRITICAL THINKING & WRITING QUESTIONS**

1. Describe the difference between state limited-jurisdiction courts and general-jurisdiction courts.
2. What are the functions of the state intermediate courts and the highest state courts? Explain.
3. List the special federal courts, and describe the types of cases that each of these courts can hear.
4. What is the function of U.S. District Courts? How many are there?
5. What is the function of U.S. Courts of Appeals? How many U.S. Courts of Appeals are there? How does the Court of Appeals for the Federal Circuit differ from the other U.S. Courts of Appeals?
6. What is the function of the U.S. Supreme Court? How many justices does the Supreme Court have? How does the Chief Justice differ from Associate Justices?
7. Explain the difference between the following types of decisions by the U.S. Supreme Court: (1) unanimous decision, (2) majority decision, (3) plurality decision, and (4) tie decision. Which types of decision or decisions establish precedent? What are concurring opinions and dissenting opinions?
8. Explain the difference between a federal court’s jurisdiction to hear a case based on (1) federal question jurisdiction and (2) diversity of citizenship jurisdiction.
9. Explain the difference between subject-matter jurisdiction and in personam jurisdiction. Explain the difference between in rem jurisdiction and quasi in rem jurisdiction.
10. What is a long-arm statute? What is the purpose of a long-arm statute?
11. What is venue? When can a change of venue be granted?
12. What is the difference between judicial dispute resolution and nonjudicial alternative dispute resolution? Why would one be preferred over the other, and who would have a preference?
13. Define arbitration. Describe how the process of arbitration works. What is an award?
14. Describe the difference between mediation and conciliation. How do these differ from arbitration?
15. Describe minitrial and fact-finding.
Building Paralegal Skills

VIDEO CASE STUDIES

Meet the Courthouse Team
An interview with Judge Kenney, a trial judge, who introduces members of the courthouse and the roles they serve as members of the courtroom team.

After viewing the video case study at www.pearsonhighered.com/goldman answer the following:
1. What type of relationship should the paralegal develop with the courthouse team?
2. In addition to the courtroom team, what other members of the courthouse should the paralegal know about?

Jury Selection: Potential Juror Challenged for Cause
Trial counsel for a case, which is going to be tried before a jury, are interviewing the individual potential jurors to select an appropriate jury member.

After viewing the video case study at www.pearsonhighered.com/goldman answer the following:
1. What is the role of the jury in the justice system?
2. Why are the attorneys allowed to request that certain individuals not be allowed to serve on a jury?
3. Is everyone guaranteed a right to a jury trial and the American system of justice?

Settlement Conference with Judge
Opposing counsel are meeting with Judge Lee prior to the start of the trial. The trial judge is presenting the strengths and weaknesses of each side in an attempt to get the parties to settle the case.

After viewing the video case study at www.pearsonhighered.com/goldman answer the following:
1. How is a settlement conference with a judge before trial like an alternative method of dispute resolution?
2. Is the judge in the settlement conference being unfair to one side or the other?
3. Why is the judge trying to settle the case before trial?

ETHICS ANALYSIS & DISCUSSION QUESTIONS

1. May a paralegal represent a client in court?
2. Are a paralegal’s time records or calendar subject to the attorney-client privilege?
3. You have been appointed as a trustee of a client’s children’s educational trust. You need to petition the court for a release of the funds for noneducational purposes—paying the taxes on the trust income. [Ziegler v. Harrison Nickel, 64 Cal. App. 4th 545; 1998 Lexis 500.] May you appear alone as the trustee and represent the trust in the court proceedings? Would a nonlawyer, nonparalegal be permitted to appear?

DEVELOPING YOUR COLLABORATION SKILLS

With a group of other students, selected by you or as assigned by your instructor, review the facts of the following case. As a group, discuss the following questions.
1. What is a forum-selection clause?
2. Is putting a forum-selection clause (or choice-of-law clause) in a contract good practice?
3. If there had not been a forum-selection clause in the contract, would the state of Washington have jurisdiction over Carnival Cruise Lines to make it answer the Shute’s lawsuit in Washington?
CHAPTER 6 The Court System and Alternative Dispute Resolution

**Supreme Court of the United States**

Congress enacted the Child Pornography Prevention Act (CPPA). Section 2256(8)(B) of the act prohibits “any visual depiction, including any photograph, film, video, picture, or computer-generated image or picture” that “is, or appears to be, of a minor engaging in sexually explicit conduct.” This section includes computer-generated images known as “virtual child pornography.” A first-time offender may be imprisoned for 15 years; repeat offenders face prison sentences up to 30 years. The Free Speech Coalition, a trade association for the adult-entertainment industry, sued the United States, alleging that Section 2256(8)(B) violated their constitutional free speech rights. The District Court granted summary judgment to the United States government, but the court of appeals reversed. The U.S. Supreme Court granted certiorari.

**Question**

1. Does Section 2256(8)(B), which criminalizes virtual child pornography, violate the Freedom of Speech Clause of the First Amendment to the U.S. Constitution?

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**Carnival Cruise Lines, Inc. v. Shute**

Mr. and Mrs. Shute, residents of the State of Washington, purchased passage for a seven-day cruise on the *Tropicale*, a cruise ship operated by Carnival Cruise Lines, Inc. (Carnival). They paid the fare to the travel agent, who forwarded the payment to Carnival’s headquarters in Miami, Florida. Carnival prepared the tickets and sent them to the Shutes. Each ticket consisted of five pages, including contract terms. The ticket contained a forum-selection clause that designated the State of Florida as the forum for any lawsuits arising under or in connection with the ticket and cruise. The Shutes boarded the *Tropicale* in Los Angeles, which set sail for Puerto Vallarta, Mexico. While the ship was on its return voyage and in international waters off the coast of Mexico, Mrs. Shute was injured when she slipped on a deck mat during a guided tour of the ship’s galley. Upon return to the State of Washington, she filed a negligence lawsuit against Carnival in U.S. district court in Washington, seeking damages. Carnival defended, arguing that the lawsuit could only be brought in a court located in the State of Florida pursuant to the forum-selection clause contained in its ticket.

The U.S. Supreme Court held that the forum-selection clause contained in Carnival Cruise Lines’ ticket was enforceable against Mrs. Shute. The Supreme Court stated that including a reasonable forum clause in a form contract is permissible for several reasons. First, a cruise line has a special interest in limiting the number of jurisdictions in which it potentially could be subject to a lawsuit. Because a cruise ship typically carries passengers from many locales, it is likely that a mishap on a cruise could subject the cruise line to litigation in several different jurisdictions. Secondly, a clause establishing the forum for dispute resolution dispels any confusion as to where lawsuits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum, and conserving judicial resources needed to decide such issues. Finally, passengers who purchase tickets containing a forum-selection clause benefit in reduced fares reflecting the savings that the cruise line enjoys by limiting the forum in which it may be sued.

The Supreme Court held that the forum-selection clause in Carnival Cruise Lines’ ticket was fair and reasonable, and therefore enforceable against Mrs. Shute. If Mrs. Shute wished to sue Carnival Cruise Lines, she must do so in a court in the State of Florida, not in a court in the State of Washington.

**Source:** Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 111 S.Ct. 1522, 113 L.Ed.2d 622, Web 1991 U.S. Lexis 2221 (Supreme Court of the United States)

**PARALEGAL PORTFOLIO EXERCISE**

Based on the facts of the case described in the Opening Scenario, prepare and complete the following documents as well as you can from the facts of the scenario.

1. A complaint to file the case on behalf of the plaintiff against the defendant in the appropriate trial court of your state.
2. The defendant’s answer to the complaint.

**LEGAL ANALYSIS & WRITING CASES**

**Ashcroft, Attorney General v. The Free Speech Coalition**


**Supreme Court of the United States**

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1. Does Section 2256(8)(B), which criminalizes virtual child pornography, violate the Freedom of Speech Clause of the First Amendment to the U.S. Constitution?

Supreme Court of the United States
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The Shutes boarded the Tropicale in Los Angeles, which set sail for Puerto Vallarta, Mexico. While the ship was on its return voyage and in international waters off the Mexican coast, Mrs. Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. Upon return to Washington, she filed a negligence lawsuit against Carnival in U.S. district court in Washington, seeking damages. Carnival filed a motion for summary judgment contending that the suit could be brought only in a court located in the state of Florida. The District Court granted Carnival's motion. The court of appeals reversed, holding that Mrs. Shute could sue Carnival in Washington. Carnival appealed to the U.S. Supreme Court.

Question 1. Is the forum-selection clause in Carnival Cruise Lines' ticket enforceable?


United States District Court for the Southern District of Mississippi
James Clayton Allison, a resident of Mississippi, was employed by the Tru-Amp Corporation as a circuit breaker tester. As part of his employment, Allison was sent to inspect, clean, and test a switch gear located at the South Central Bell Telephone Facility in Brentwood, Tennessee. One day he attempted to remove a circuit breaker manufactured by ITE Corporation (ITE) from a bank of breakers when a portion of the breaker fell off. The broken piece fell behind a switching bank and, according to Allison, caused an electrical fire and explosion. Allison was severely burned in the accident. Allison brought suit against ITE in Mississippi state court, claiming damages.

Question 1. Can this suit be removed to federal court?


United States District Court for the Eastern District of New York
AMF Incorporated and Brunswick Corporation both manufacture electric and automatic bowling center equipment. The two companies became involved in a dispute over whether Brunswick had advertised certain automatic scoring devices in a false and deceptive manner. The two parties settled the dispute by signing an agreement that any future problems between them involving advertising claims would be submitted to the National Advertising Council for arbitration. Two years later Brunswick advertised a new product, Armor Plate 3000, a synthetic laminated material used to make bowling lanes. Armor Plate 3000 competed with wooden lanes produced by AMF. Brunswick's advertisements claimed that bowling centers could save up to $500 per lane per year in maintenance and repair costs if they would switch to Armor Plate 3000 from wooden lanes. AMF disputed this claim and requested arbitration.

Question 1. Is the arbitration agreement enforceable?


Supreme Court of the United States
The National Enquirer, Inc., a Florida corporation, has its principal place of business in Florida. It publishes the National Enquirer, a national weekly newspaper with a circulation of more than 5 million copies. About 600,000 copies, almost twice the level of the next highest state, are sold in California. The Enquirer published an article about Shirley Jones, an entertainer. Jones, a California resident, filed a lawsuit in California state court against the Enquirer and its president, a resident of Florida. The suit sought damages for alleged defamation, invasion of privacy, and intentional infliction of emotional distress.

Question 1. Are the defendants subject to suit in California?
Burnham v. Superior Court of California

Supreme Court of the United States

Dennis and Francis Burnham were married and lived in New Jersey, where their two children were born. Ten years later the Burnhams decided to separate. Mrs. Burnham, who intended to move to California, was to have custody of the children. Mr. Burnham agreed to file for divorce on grounds of “irreconcilable differences.” Mr. Burnham threatened to file for divorce in New Jersey on grounds of “desertion.” After unsuccessfully demanding that Mr. Burnham adhere to the prior agreement, Mrs. Burnham brought suit for divorce in California state court. One month later Mr. Burnham visited California on a business trip. He then visited his children in the San Francisco Bay area, where his wife resided. He took the older child to San Francisco for the weekend. Upon returning the child to Mrs. Burnham’s home, he was served with a California court summons and a copy of Mrs. Burnham’s divorce petition. He then returned to New Jersey. Mr. Burnham made a special appearance in the California court and moved to quash the service of process.

Question

1. Did Mr. Burnham act ethically in trying to quash the service of process? Did Mrs. Burnham act ethically in having Mr. Burnham served on his visit to California? Is the service of process good?

Adler v. Duval County School Board

United States Court of Appeals for the Eleventh Circuit

Read the following case, excerpted from the court of appeals opinion. Review and brief the case. In your brief, answer the following questions.

1. What is the doctrine of mootness?
2. What was the action the plaintiffs complained of?
3. When would the plaintiffs have had to file and have their case heard for the court to rule on their claim?
4. How would bringing the cases as a class action have allowed the court to hear the case under the Case or Controversy requirement?
5. How does this case differ from the case of Lee v. Weisman in Chapter 5?

Tjoflat, Circuit Judge

Appellants are four former high school students in the Duval County, Florida, school system who brought this action under 42 U.S.C. § 1983 (1994), alleging that a Duval County school policy permitting student-initiated prayer at high school graduation ceremonies (the “policy”) violated their rights under the First and Fourteenth Amendments.

On June 7, 1993, three of the appellants graduated from Mandarin, one of the schools in the Duval County system. A fourth appellant graduated in June 1994. Because all four appellants have graduated, and none is threatened with harm from possible prayers in future Duval County graduation ceremonies...
Equitable relief is a prospective remedy, intended to prevent future injuries. In contrast, a claim for money damages looks back in time and is intended to redress a past injury. The plaintiff requests money damages to redress injuries caused by the defendant’s past conduct and seeks equitable relief to prevent the defendant’s future conduct from causing future injury. When the threat of future harm dissipates, the plaintiff’s claims for equitable relief become moot because the plaintiff no longer needs protection from future injury. This is precisely what happened in this case.

Appellants argue that, despite their graduation from high school, their claims for declaratory and injunctive relief are not moot because the original injury is “capable of repetition, yet evading review.” This exception to the mootness doctrine is narrow. In the absence of a class action, the “capable of repetition, yet evading review” doctrine is limited to the situation where two elements combine: (1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. This case does not satisfy the second element. Because the complaining students have graduated from high school, there is no reasonable expectation that they will be subjected to the same injury again.

Having disposed of the appellants’ claims for equitable relief, we are left with their claim for money damages, which we now address. Because the appellants’ claim for money damages does not depend on any threat of future harm, this claim remains a live controversy. We accordingly turn our focus to the basis for the appellants’ claim for damages. The complaint alleges that a “senior class chaplain” delivered a prayer at the June 7, 1993, Mandarin graduation ceremony at which appellants Adler, Jaffa, and Zion graduated. The only past injury for which the appellants could seek redress is being subjected to this prayer at their graduation ceremony. To prove that the appellees caused this injury, the appellants alleged in their complaint that the prayer was “a direct consequence” of the school’s policy. In their answer, the appellees admitted that a student said the prayer, but denied that the prayer was a consequence of the policy.

The only issue the appellants raise on appeal is whether the District Court erred in holding the policy constitutional. While the constitutionality of the policy may have been central to the now moot issue of whether equitable relief is warranted to prevent the policy from being implemented at future graduations, it does not dispose of the issue of whether the appellants should be awarded money damages for being subjected to the prayer at their graduation. In other words, any claim for damages does not depend on the constitutionality of the policy in the abstract or as applied in other Duval County schools.

Even if the policy is unconstitutional, the defendants might not be liable if, for example, they did not implement the policy at the ceremony in question or if the prayer would have been delivered without the policy. On the other hand, if the District Court was correct in finding the policy constitutional, defendant Epting, Mandarin’s principal, might nonetheless be liable if he implemented the policy in an unconstitutional manner.

The constitutionality of the policy, therefore, has little independent relevance to the appellants’ damages claim. Whether they are entitled to damages depends entirely on the circumstances under which the prayer was delivered at their graduation ceremony. In order to prevail, the appellants must have some theory connecting the individual defendants to the prayer. For these reasons, even if we were to find fault with the district court’s constitutional analysis of the policy, this conclusion by itself would not answer the question of whether the court erred in granting the appellees summary judgment on the damages claim. The appellants offer no other grounds in their briefs for finding trial court error.

After considering the appellants’ briefs and oral argument, we are convinced that they either fail to understand the basis for their damages claim or do not seriously seek damages. They have offered us no connection between the prayer and their damages claim; their briefs offer no indication as to any of the circumstances surrounding the Mandarin graduation prayer. They failed to argue that the prayer was a “direct consequence” of the policy, or any other theory connecting the defendants’ actions to the Mandarin prayer. Their briefs do not even include the allegation made in their complaint that a prayer was delivered at Mandarin.

For all these reasons, we hold that they have waived their damages claim on appeal. We therefore affirm the District Court’s order to the extent it denied the appellants’ motion for summary judgment and granted the appellees’ motions for summary judgment on the appellants’ damages claim. For the foregoing reasons, we vacate the district court’s order granting the appellees summary judgment on the appellants’ claims for declaratory and injunctive relief and remand the case with instructions that the District Court dismiss those claims. We affirm the District Court’s denial
of the appellants’ motion for summary judgment and its grant of summary judgment for the appellees on the appellants’ damages claim. It is so ordered.

**UPDATE TO CASE**

After a rehearing en banc the court, upon a majority vote of the judges of the court, issued a subsequent opinion on June 3, 1999, and on March 15, 2000, on further proceeding the Court ruled that the policy on prayer did not violate the Establishment Clause. On June 19, 2000, the Supreme Court rendered a decision in *Santa Fe Independent School District v. Doe*, 530 U.S. 290, which invalidated a Texas school board’s policy permitting students to vote on a prayer subject to officials’ approval at home football games. The Duval Court proceeded to rehear the case based on the *Santa Fe* decision and ruled again in favor of the Duval School Board because the prayer there was not subject to official approval or input ([*Adler v. Duval County School Board*, 250 F.3d 1330, 2001 U.S. App. Lexis 8880 (United States Court of Appeals for the Eleventh Circuit)]).