Introduction

Chapter Three addresses these questions:

- How do people know whether a particular court has jurisdiction over a case, or the power to hear the case?
- How do people know which trial court will hear the case?
- Who are the major actors in the legal system, what do they do, and how does each actor relate to the business community?
- What does it mean to say people have an adversary system in the United States?
- What are the steps in the civil litigation process? What role do businesspeople play in this process?
- What global considerations are relevant when the structure of the American legal system is considered?

Chapter Three is important because it explains basic principles about the American legal system that students will refer to throughout the course. For instance, it is important for them to understand the nature of an adversary process. If they understand the principles that underlie the adversary system, they will understand why lawyers argue zealously for their clients. This
chapter also provides important practical information, such as the steps in civil litigation. Business managers need to recognize these so they will know what is happening when they become involved in litigation.

**Achieving Teaching Excellence**

*Recitation and Discussion*

Most instructors who encourage students to talk in class believe they are promoting class discussion. An article by J.D. Dillon is a reminder that it is difficult to engage in class discussion,
and that many instructors are not promoting discussion. Instead, they might be encouraging recitation. This section explains the difference, and shows how instructors know whether they are promoting discussion. This distinction is important because it relates to higher-and lower-order thinking skills.

Dillon explains that recitation means that students —recite what they know or are coming to know through questioning. Instructors review, drill, and quiz. Dillon writes that discussion means that teachers and students —discuss what they don’t know. He writes that discussion —involves longer exchanges, exchanges among students and also between teacher and student, and questions soliciting students’ thoughts, not just the right answers.

Dillon’s distinction between recitation and discussion relates to Bloom’s Taxonomy and critical thinking. If instructors encourage recitation, they are encouraging lower-order thinking skills. When instructors ask, —Did the court rule for or against the plaintiff in the Napster case?— they are asking students to recite, not discuss. Instructors are encouraging students to work on their lower-order thinking skills. When instructors engage in longer exchanges with students to work on what they do not know, they are engaging in discussion. If instructors ask, —Nancy, do you agree with Bart’s evaluation of the court’s use of an analogy in the Harris case?— they are engaging in discussion that asks for evaluation. Instructors are working on higher-order thinking skills (including evaluation), which is the primary purpose of critical thinking.

Think about what instructors do in their own classes and see whether they are discussing material with their students. How will instructors know? Dillon writes that when an instructor engages in discussion, the teacher plans, but students account for 40 percent of the talk. That’s a good place to start. Figure out how much talking instructors are doing compared to the students. Next, instructors need to look at the kinds of questions they are asking in class.

If instructors would like to read Dillon’s article in full, the cite is J.T. Dillon, —Research on Questioning and Discussion‖, 42 EDUCATIONAL LEADERSHIP 50 (November, 1984).

Chapter Overview, Topic Outline, and Discussion Questions

Chapter Overview

All people are subject to both state and federal laws. Under the United States’ dual court system, all lawsuits must be brought in either the federal or the state court system. In some cases, an action may be brought in either. Thus, it is important that those in the business community understand how the decisions are made as to which court system can resolve their grievances. This chapter first considers the principles that determine which court system has the power to hear various types of cases and then examines in greater detail the structure of the two basic
divisions of our dual court system. Next, it focuses on the primary actors who play major roles in our litigation process. Finally, it examines the philosophy behind our American legal system and traces the procedures that must be followed when using one of our courts.

This chapter is a break in terms of its length and level of difficulty compared to Chapters Three and Four. It is a good chapter to work on right before a test because most students comprehend most of the material in Chapter Three, so they can spend extra time going back and reviewing some more difficult ideas in Chapters Three and Four.

Students find the material on the adversary system especially interesting. They also seem interested in learning more about how juries work, and how lawyers fulfill their obligations in the legal system. After presenting the topic outline, the discussion questions give students a chance to work with some more difficult ideas presented throughout the chapter.

**Topic Outline**

I. Jurisdiction
   A. Original vs. Appellate Jurisdiction
   B. Jurisdiction over Persons and Property
      - World-Wide Volkswagen Corp. v. Woodson In Rem Jurisdiction
   C. Subject Matter Jurisdiction
      - State Jurisdiction Exclusive
      - Federal Jurisdiction

II. The Structure of the Court System
   A. The Federal Court System
      - Federal Trial Courts
      - Intermediate Courts of Appeal Court of Last Resort
   B. State Court Systems
      - State Trial Courts Intermediate Court of Appeal Courts of Last Resort

IV. The Actors in the Legal System and Their Relationship to the Business Community
   A. The Attorney
      - Attorney–Client Privilege
      - Additional Functions of the Attorney
The Judge
The Power of Judicial Review

B. The Jury
Petit Juries
Grand Juries

V. The Adversary Process
A. Criticisms of the Adversary System

VI. Steps in Civil Litigation and the Role of Businesspersons
A. The Pretrial Stage
   Informal negotiations
   Initiation of a legal action
   Service of process
   Defendant’s response
   Pretrial motions
   Discovery
   Pretrial conference
B. The Trial
   Jury selection
   Opening statements
   Plaintiff’s case
   Defendant’s case
   Conference on jury instructions
   Closing arguments
   Posttrial motions
   J.E.B. v. Alabama, ex rel. T.B.
C. Appellate Procedure
   Appeal to the U.S. Supreme Court
D. Class Actions

VII. Global Dimensions of the American Legal System

VIII. Summary

Discussion Questions for Chapter Three

1. Explain relationships between original and appellate jurisdiction.

   One relationship between the two is that courts with original jurisdiction do their work before courts of appellate jurisdiction. Another relationship is that courts with appellate jurisdiction review the decisions made by judges who do their work in courts of original jurisdiction. Another relationship is that trials take place in courts of original jurisdiction. Appellate courts do not hold trials. Instead, appellate courts consider matters of law.
A court of original jurisdiction, usually referred to as a trial court, has the power to initially hear and decide a case. A court with appellate jurisdiction has the power to review a previously made decision to determine whether the trial court erred in making its initial decision.

2. Explain relationships between in personam jurisdiction and subject matter jurisdiction.

A court must have both kinds of jurisdiction before it has the power to decide a case. Before the court can render a decision affecting a person, the court must have in personam jurisdiction (jurisdiction over the person). In personam jurisdiction is the power to render a decision affecting the specific persons before the court. Usually, a court gets in personam jurisdiction by serving the defendant with a copy of the complaint and summons. Subject matter jurisdiction is the power of the court to hear certain kinds of cases. This type of jurisdiction refers to whether the case will be heard in state or federal court, or whether either court could hear the case.

3. Explain why someone might think this statement is true: Given the subject matter of state and federal courts, it is not surprising that more cases are heard by state courts than federal courts.

The state court system has subject matter jurisdiction over all cases not within the exclusive jurisdiction of the federal court system. Only a very limited number of cases fall within the exclusive jurisdiction of the federal courts. The cases heard under exclusive federal jurisdiction include admiralty cases, bankruptcy cases, copyrights, trademark and patent cases, claims against the United States, claims arising under statutes providing for exclusive federal jurisdiction, and federal criminal prosecutions. Consequently, almost all cases fall within the state court jurisdiction. Suits for breach of contract, product liability actions, and divorces are just a few of the types of cases falling within the state court system’s jurisdiction. The federal courts are reserved for a limited number of cases. State courts thus have a much broader jurisdiction, so they hear more cases.

4. Explain why someone might think this statement is true: The attorney–client privilege is an important feature of the adversary system.

The attorney can provide effective representation only when he or she knows all the pertinent facts of the case. The businessperson who withholds information from his or her attorney may cause irreparable harm if the hidden facts are revealed by the opposing side in court. To encourage client honesty, the attorney–client privilege was established. This privilege provides that information furnished in confidence to an attorney, in conjunction
with a legal matter, may not be revealed by that attorney without permission from the client.

5. Evaluate this statement: Trial court judges and appellate court judges have very similar job descriptions.

Trial court and appellate judges do not have similar job descriptions. A trial court judge presides over the trial, making sure the case is heard with reasonable speed; rules on all motions made in the case; and decides all questions of law. One of the most crucial functions of the trial court judge is ruling on whether evidence is admissible. Appellate judges review the work of trial court judges to determine whether errors of law were committed by the trial court judges. Appellate judges write judicial opinions that present the law, and new interpretations of the law.

6. Why is the jury an important part of our adversary system?

The jury is the means by which citizens participate in the judicial system. It is often seen as the hallmark of democracy. Juries are groups of individuals, selected randomly from the geographic area in which the court is located, who will determine questions of fact. For instance, they get to decide whether they think a particular witness is telling the truth.

7. Evaluate this statement: The adversary system is flawless.

Many people criticize the adversary system and point out its flaws. They argue that because each side is searching only for evidence that supports its position, a proponent who discovers evidence helpful to the other side will not bring such evidence to the attention of the court. This tendency to ignore contrary evidence prevents a fair decision—one based on all the available evidence—from being rendered. Another flaw is that the adversary process is extremely time-consuming and costly. Two groups of "investigators" are seeking the same evidence. Thus, there is a duplication of effort that lengthens the process and unnecessarily increases the cost. Others argue that the adversary system, as it functions in this country, is unfair. Each party in the adversarial process is represented by an attorney. Having the most skillful attorney is a tremendous advantage. The wealthier a party is, the better the attorney she or he can afford to hire; hence, the system unjustifiably favors the wealthy.

8. Review the steps in civil litigation. Why is the discovery stage especially important?

Discovery is important because it allows each party to gain knowledge of most of the facts in the case. Once both sides know the facts, it is likely that the parties will be more willing to discuss possible settlement of the case.
Answers to Critical Thinking about the Law Questions, Case Summaries, Answers to Review Questions, Review Problems, and Case Problems

Suggested Answers to Critical Thinking about the Law Questions

1. One person might be talking about in personam jurisdiction (jurisdiction over the person), whereas the other person might be talking about subject matter jurisdiction (the power of the court to hear different kinds of cases).

2. Numerous procedural requirements further the value of security. Procedural requirements ensure that no one will interfere with people’s rights. Also, these requirements protect justice, if it defines justice as procedural fairness.

3. Individualism is furthered by the adversary system. Individualism is the idea that people have what they have based upon desert. No one can take away what people have because they deserve what they have. In the legal system, people are allowed to use whatever resources they have to further their legal causes. People are allowed to spend as much money as they have, even though doing so gives some of them a distinct advantage over others. For instance, people rarely question the litigant who pays large sums of money to hire consultants to help select a jury. People think, —It’s your money. You may spend it as you wish."

Case Summary—World-Wide Volkswagen Corp. V. Woodson

This case is in the book to show how long-arm statutes are used to gain in personam jurisdiction when an out of state defendant committed a tort within a state. The case is famous for focusing on the phrase —minimum contacts.

The issue before the Supreme Court of the United States was whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise in personam jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants’ only connection with Oklahoma was the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

The Court stated the relevant rule of law, which says that a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist —minimum contactsl between the defendant and the forum State. The court stressed that —foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause; that it was foreseeable that the automobile would cause injury is not enough. Here, the Court ruled that
the mere —unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.1

Case Summary—Hertz Corporation v. Friend

This case is in the book to show how corporate citizenship can be determined by applying the —nerve center test.1 It established that a corporation is the citizen of the state where its decision making hub is situated.

Plaintiffs, California citizens, sued Hertz Corporation for state law violations in a California State Court. Defendant Hertz filed a motion to remove the case to federal court on diversity of citizenship grounds, claiming that it was not a resident of California, the residence of all the plaintiffs. Plaintiffs argued that Hertz was a California citizen, like themselves, and that, hence, diversity jurisdiction was lacking under § 1332(c)(1), which provides that —a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.1

The District Court concluded that it lacked diversity jurisdiction because Hertz was a California citizen under Ninth Circuit precedent, which asks, inter alia, whether the amount of the corporation’s business activity is —significantly largerl or —substantially predominatesl in one State. Finding that California was Hertz’s —principal place of businessl under that test because a plurality of the relevant business activity occurred there, the District Court remanded the case to state court. The Ninth Circuit affirmed. Hertz appealed to the United States Supreme Court. The Court said, —Petitioner’s unchallenged declaration suggests that Hertz’s center of direction, control, and coordination, its —nerve center,l and its corporate headquarters are one and the same, and they are located in New Jersey, not in California. Because respondents should have a fair opportunity to litigate their case in light of our holding, however, we vacate the Ninth Circuit’s judgment and remand the case for further proceedings consistent with this opinion.1

Suggested Answers to Critical Thinking about the Law Questions

1. In addition to fairness, Justice Brayer recognized the fact that a perfect test that would satisfy and meet the administrative criteria would be very complex. For this reason, he remanded the case for further proceedings. Therefore, approaching a Federal court would be fair and bias toward the defendant could be ruled out.

2. There are three aspects that highlight the ambiguity of the nerve center test. It would be difficult to ascertain the portion of business activity in the region as it comprises of a number of factors. Next, the location of the company’s headquarters and its central leadership has to be considered. Additionally, the location from which the discharge of executive and
administrative functions takes place is important as well. However, it would be a challenge to identify these factors when there are multiple states and factors involved, which would make it more complex and the room for errors would increase.

3. The reasoning that the light in which a corporate would be seen depends on where the case would be tried. For instance, if the case were to be tried in the city, people would be sympathetic toward the corporate, but it could elicit a different response from people residing in a rural resident. This reasoning can be related to Justice Breyer’s reasons for the nerve center test. Here the fundamental decision of trying this case in a Federal court or a State court based on this reasoning can be raised.

Case Summary—J.E.B. v. Alabama, ex rel. T.B.

This case is in the book to present some interesting issues that arise while selecting juries. The specific issue the Court addressed was whether the Equal Protection Clause prohibits gender-based peremptory challenges. The issue arose in a paternity suit when the state used its peremptory challenges to remove male jurors. The defendant removed a male juror, and then an all-female jury found J.E.B. to be the father of T.B.’s baby.

Suggested Answers to the Critical Thinking about the Law Questions

1. Justice Blackmun expands the application of Batson (which prohibited race-based peremptory challenges) to gender-based peremptory challenges. He makes the decision because with respect to jury service, African Americans and women share a history of total exclusion. He probably would have been less likely to make this decision in 1950 because then many states still excluded women from jury service, so the issue of exclusion was taken for granted.

2. Respondent suggests that gender discrimination in this country has never reached the level of discrimination against African Americans, so gender discrimination is tolerable in the courtroom. To compare levels of discrimination, students could start with the number of people affected (women account for more than half the population in the United States), the probability of harm (this is hard to decide), and the extent of the harm. They could also compare the poverty levels, comparing groups based upon both race and gender. They could look at the number of employment discrimination claims filed by these groups, and the outcomes of those cases. They could also look at the employment rates of various groups. They could look at the number of women and minorities who hold positions of power in the government and corporations.

3. Justice Scalia might have agreed with the majority if the facts had been such that the case
focused on excluding women from the jury. Here, men were excluded, so he can’t figure out why there’s such a long discussion of discrimination against women, when it was men who were discriminated against in this case. He also points out the Court’s inconsistent view on whether women are like men, or not. In the present case, the majority assumes women and men are the same. In other cases, the Court has stressed that women bring their own perspectives and values to the jury room. Scalia points out the Court’s confusion on whether women are the same or different.

Answers to Review Questions

3-1. Jurisdiction is the power of the courts to hear a case and render a decision that is binding on the parties. The following are the different types of jurisdictions:

- Original jurisdiction—a court of original jurisdiction, usually referred to as a trial court, has the power to initially hear and decide a case. It is in the court of original jurisdiction that a case originates.
- Appellate jurisdiction—a court with appellate jurisdiction has the power to review a previously made decision to determine whether the trial court erred in making its initial decision.
- In personam jurisdiction—this is the power to render a decision affecting the specific persons before the court.
- In rem jurisdiction—this is the power of a court to render a decision that affects property directly rather than the owner of the property. Such proceedings are often used when the owner of the property cannot be located for personal service.
- Subject matter jurisdiction—this is the power of a court to hear certain kinds of cases. Subject matter jurisdiction is extremely important because if a judge renders a decision in a case over which the court does not have subject matter jurisdiction, the decision is void or meaningless.
  - State jurisdiction—this applies to cases that may be heard only in the state system. Suits for breach of contract, product liability actions, and divorces are just a few of the types of cases falling within the state court system’s jurisdiction.
  - Exclusive federal jurisdiction—this applies to cases that may be heard only in the federal court system. Cases that fall within the exclusive jurisdiction of the federal courts include such matters as admiralty, bankruptcy, federal criminal prosecutions, claims against the United States, and claims arising under those federal statutes that include a provision for exclusive federal jurisdiction.
  - Concurrent federal jurisdiction—this applies to cases that may be heard in either the federal or the state court system.