Solution and Answer Guide

Miller, Business Law Today, Comprehensive Edition: Text & Cases 13e, 9780357634783;   
Chapter 04: Courts and Alternative Dispute Resolution

Table of Contents

[Critical Thinking Questions in Features 1](#_Toc62740195)

[Adapting the Law to the Online Environment 1](#_Toc62740196)

[Critical Thinking Questions in Cases 1](#_Toc62740197)

[Case 4.1 1](#_Toc62740198)

[Case 4.2 2](#_Toc62740199)

[Case 4.3 2](#_Toc62740200)

[Chapter Review 3](#_Toc62740201)

[Practice and Review 3](#_Toc62740202)

[Practice and Review: Debate This 4](#_Toc62740203)

[Issue Spotters 5](#_Toc62740204)

[Business Scenarios and Case Problems 5](#_Toc62740205)

[Critical Thinking and Writing Assignments 11](#_Toc62740206)

# Critical Thinking Questions in Features

Adapting the Law to the Online Environment

1. In our connected world, is there any way a defendant could avoid service of process via social media?

Solution

Yes, there is one way. That defendant could have to have no social media accounts whatsoever. Increasingly, though, fewer and fewer individuals are not connected to others via social media.

# Critical Thinking Questions in Cases

Case 4.1

1. Suppose that Gucci had not presented evidence that Huoqing made one actual sale through his website to a resident of the court’s district (the private investigator). Would the court still have found that it had personal jurisdiction over Huoqing? Why orwhy not?

Solution

The single sale to a resident of the district, Gucci’s private investigator, helped the plaintiff establish that the defendant’s website was interactive and that the defendant used the website to sell goods to residents in the court’s district. It is possible that without proof of such a sale, the court would not have found that it had personal jurisdiction over the foreign defendant. The reason is that courts cannot exercise jurisdiction over foreign defendants unless they can show the defendants had minimum contacts with the forum, such as by selling goods within the forum.

Case 4.2

1. Should an appellate court’s review of the amount of damages awarded at trial be subject to the principle that limits appellate review of other evidence? Why or why not?

Solution

Yes, an appellate court’s review of the amount of damages awarded at trial should be—and is—subject to the same rule that limits the court’s review of other evidence.

An appellate court determines whether the factual findings of a trial court are supported by competent evidence. Only if the findings of fact are not supported by competent evidence in the record will there will be a reversal.

This principle applies to an assessment of damages. Unless it clearly appears that the amount awarded resulted from partiality, caprice, prejudice, corruption, or some other improper influence, an appellate court should not interfere with it. In other words, as long as there is a reasonable relationship between the amount of an award and its proof, it is not the function of a court to substitute its judgment for that of a fact-finder.

In the *Oxford* case, Christophe and Frenchie’s provided documentation in support of their counterclaim at the trial that, in the view of the appellate court, supported the fact-finder’s determination of the amount awarded. Of course, constructive eviction caused by the sewage and water erupting from the pipe, and the landlord’s failure to remedy the problem, was the legal basis for the award.

1. A judge or a jury can decide a question of fact, but only a judge can rule on a question of law. Why?

Solution

A question of fact is decided by a trier of fact. In a jury trial, this is the jury. In a nonjury trial, this is the judge. A ruling on a question of law is made only by a judge, not a jury, which generally consists of laypersons.

A question of fact concerns what really happened with respect to a dispute being tried—such as, in the Oxford case, whether a certain act violated a contract. A question of law concerns the application or interpretation of the law—such as, again in the Oxford case, whether an act that violated a contract also violated the law.

One of the reasons for the distinction between those who can decide questions of fact and those who can decide questions of law is that judges have special training and expertise to make decisions on questions of law that the typical lay member of a jury lacks.

Case 4.3

1. Should the cost of corrective discovery efforts be imposed on an uncooperative party if those efforts turn up nothing of real value to the case? Explain.

Solution

Yes, the cost of corrective discovery efforts should be imposed on an uncooperative party even if those efforts turn up nothing of real value to the case. A party’s uncooperative behavior can make it reasonable to undertake expensive corrective discovery efforts. Those costs should be imposed on the uncooperative party to deter others from destroying, hiding, or stubbornly refusing to reveal materials that are required to be retained and disclosed. There is no way to know beforehand whether such tactics are actually concealing relevant information. But a persistent refusal to comply with a discovery request provides a sufficient ground to suspect that there is value in the hidden evidence.

1. Should it be inferred from a business’s failure to keep backup copies of its database that the business must therefore have destroyed the data? Discuss.

Solution

No, a business’s failure to keep backup copies of its database does not necessarily indicate that the business destroyed the data. There are other, less culpable reasons that backup copies may not be available. For example, they may have been inadvertently destroyed or lost. Or they may not have been created in the first place. Such a failure does not equate with the willful misconduct that occurred in the *Klipsch* case. There, it could be reasonably inferred from ePRO’s actions that the missing documents and data were relevant and that their absence harmed Klipsch.

# Chapter Review

Practice and Review

Stan Garner resides in Illinois and promotes boxing matches for SuperSports, Inc., an Illinois corporation. Garner created the promotional concept of the “Ages” fights—a series of three boxing matches pitting an older fighter (George Foreman) against a younger fighter, such as John Ruiz or Riddick Bowe. The concept included titles for each of the three fights (“Challenge of the Ages,” “Battle of the Ages,” and “Fight of the Ages”), as well as promotional epithets to characterize the two fighters (“the Foreman Factor”).

Garner contacted George Foreman and his manager, who both reside in Texas, to sell the idea, and they arranged a meeting at Caesar’s Palace in Las Vegas, Nevada. At some point in the negotiations, Foreman’s manager signed a nondisclosure agreement prohibiting him from disclosing Garner’s promotional concepts unless they signed a contract. Nevertheless, after negotiations between Garner and Foreman fell through, Foreman used Garner’s “Battle of the Ages” concept to promote a subsequent fight. Garner filed a lawsuit against Foreman and his manager in a federal district court in Illinois, alleging breach of contract. Using the information presented in the chapter, answer the following questions.

1. On what basis might the federal district court in Illinois exercise jurisdiction in this case?

Solution

The federal district court can exercise jurisdiction in this case because the case involves diversity of citizenship. Diversity jurisdiction requires that the plaintiff and defendant be from different states and that the dollar amount of the controversy exceed $75,000. Here, Garner resides in Illinois, and Foreman and his manager live in Texas. Because the dispute involved the promotion of a series of boxing matches with George Foreman, the amount in controversy likely exceeded the required threshold amount.

1. Does the federal district court have original or appellate jurisdiction?

Solution

Original jurisdiction, because the case was initiated in that court and that is where the trial will take place. Courts having original jurisdiction are courts of the first instance, or trial courts—that is courts in which lawsuits begin, trials take place, and evidence is presented. In the federal court system, the district courts are the trial courts, so the federal district court has original jurisdiction.

1. Suppose that Garner had filed his action in an Illinois state court. Could an Illinois state court have exercised personal jurisdiction over Foreman or his manager? Why or why not?

Solution

No, because the defendants lacked minimum contacts with the state of Illinois. Because the defendants were located out of the state, the court would have to determine whether they had sufficient contacts with the state for the Illinois to exercise jurisdiction based on a long arm statute. Here, the defendants never came to Illinois, and the contract that they are alleged to have breached was not formed in Illinois. Thus, it is unlikely that an Illinois state court would find that sufficient minimum contacts existed to exercise jurisdiction.

1. What if Garner had filed his action in a Nevada state court? Would that court have had personal jurisdiction over Foreman or his manager? Explain.

Solution

Yes, because the defendants met with Garner and formed a contract in the state of Nevada. A state can exercise jurisdiction over out-of-state defendants under a long arm statute if the defendants had sufficient contacts with the state. Here, the parties met and negotiated their contract in Nevada, and a court would likely hold that these activities were sufficient to justify a Nevada court’s exercising personal jurisdiction.

Practice and Review: Debate This

1. In this age of the Internet, when people communicate via e-mail, tweets, social media, and Skype, is the concept of jurisdiction losing its meaning?

Solution

Many believe that yes, the idea of determining jurisdiction based on individuals’ and companies’ physical locations no longer has much meaning. Increasingly, contracts are formed via online communications. Does it matter where one of the parties has a physical presence? Does it matter where the e-mail server or webpage server is located? Probably not.

In contrast, in one sense, jurisdiction still has to be decided when conflicts arise. Slowly, but ever so surely, courts are developing rules to determine where jurisdiction lies when one or both parties used online systems to sell or buy goods or services. In the final analysis, a specific court in a specific physical location has to try each case.

Issue Spotters

1. At the trial, after Sue calls her witnesses, offers her evidence, and otherwise presents her side of the case, Tom has at least two choices between courses of actions. Tom can call his first witness. What else might he do?

Solution

Tom could file a motion for a directed verdict. This motion asks the judge to direct a verdict for Tom on the ground that Sue presented no evidence that would justify granting Jan relief. The judge grants the motion if there is insufficient evidence to raise an issue of fact.

1. Lexi contracts with Theo to deliver a quantity of computers to Lexi’s Computer Store. They disagree over the amount, the delivery date, the price, and the quality. Lexi files a suit against Theo in a state court. Their state requires that their dispute be submitted to mediation or nonbinding arbitration. If the dispute is not resolved, or if either party disagrees with the decision of the mediator or arbitrator, will a court hear the case? Explain.

Solution

Yes. Submission of the dispute to mediation or nonbinding arbitration is mandatory, but compliance with the decision of the mediator or arbitrator is voluntary.

Business Scenarios and Case Problems

1. **Standing to Sue.** Jack and Maggie Turton bought a house in Jefferson County, Idaho, located directly across the street from a gravel pit. A few years later, the county converted the pit to a landfill. The landfill accepted many kinds of trash that cause harm to the environment, including major appliances, animal carcasses, containers with hazardous content warnings, leaking car batteries, and waste oil. The Turtons complained to the county, but the county did nothing. The Turtons then filed a lawsuit against the county alleging violations of federal environmental laws pertaining to groundwater contamination and other pollution. Do the Turtons have standing to sue? Why or why not? (See *Basic Judicial Requirements*.)

Solution

This problem concerns standing to sue. As you read in the chapter, to have standing to sue, a party must have a legally protected, tangible interest at stake. Parties must show that they have been injured, or are likely to be injured, by the actions of the parties that they seek to sue. In this problem, the issue is whether the Turtons had been injured, or were likely to be injured, by the county’s landfill operations. Clearly, one could argue that the injuries that the Turtons complained of directly resulted from the county’s violations of environmental laws while operating the landfill. The Turtons lived directly across from the landfill, and they were experiencing the specific types of harms (fires, scavenger problems, groundwater contamination) that those laws were enacted to address. Thus, the Turtons would have standing to bring their suit.

1. **Discovery.** Advance Technology Consultants, Inc. (ATC), contracted with RoadTrac, LLC, to provide software and client software systems for products using global positioning satellite (GPS) technology being developed by RoadTrac. RoadTrac agreed to provide ATC with hardware with which ATC’s software would interface. Problems soon arose, however, and RoadTrac filed a lawsuit against ATC alleging breach of contract. During discovery, RoadTrac requested ATC’s customer lists and marketing procedures. ATC objected to providing this information because RoadTrac and ATC had become competitors in the GPS industry. Should a party to a lawsuit have to hand over its confidential business secrets as part of a discovery request? Why or why not? What limitations might a court consider imposing before requiring ATC to produce this material? (See *Following a State Court Case*.)

Solution

Under the work-product rule, attorneys are allowed to protect information that they have gathered as a result of their own skill and diligence. For example, an attorney for a party involved in an auto accident can go out to the scene of the accident and observe the fact that there is a stop sign missing without being under any obligation to divulge such information to his opponent in the lawsuit. Similarly, attorneys who discover recently decided case decisions supporting their theories are under no obligation to share these discoveries with opposing attorneys. If attorneys had to share everything, they would be less inclined to expend efforts on behalf of their clients because, in essence, they would be working for both sides at once.

1. **Arbitration.** Horton Automatics and the Industrial Division of the Communications Workers of America—the union that represented Horton’s workers—negotiated a collective bargaining agreement. If an employee’s discharge for a workplace-rule violation was submitted to arbitration, the agreement limited the arbitrator to determining whether the rule was reasonable and whether the employee had violated it. When Horton discharged its employee Ruben de la Garza, the union appealed to arbitration. The arbitrator found that de la Garza had violated a reasonable safety rule, but “was not totally convinced” that Horton should have treated the violation more seriously than other rule violations. The arbitrator ordered de la Garza reinstated to his job. Can a court set aside this order from the arbitrator? Explain. [*Horton Automatics v. The Industrial Division of the Communications Workers of America, AFL-CIO*, 506 Fed. Appx. 253 (5th Cir. 2013)] (See *Alternative Dispute Resolution*.)

Solution

Yes, a court can set aside this order. The parties to an arbitration proceeding can appeal an arbitrator’s decision, but court’s review of the decision may be more restricted in scope than an appellate court’s review of a trial court’s decision. In fact, the arbitrator’s decision is usually the final word on a matter. A court will set aside an award if the arbitrator exceeded any powers—that is, arbitrated issues that the parties did not agree to submit to arbitration.

In this problem, Horton discharged its employee de la Garza, whose union appealed the discharge to arbitration. Under the parties’ arbitration agreement, the arbitrator was limited to determining whether the rule was reasonable and whether the employee violated it. The arbitrator found that de la Garza had violated a reasonable safety rule, but “was not totally convinced” that the employer should have treated the violation more seriously than other rule violations and ordered de la Garza reinstated. This order exceeded the arbitrator’s authority under the parties’ agreement. This was a ground for setting aside the order.

In the actual case on which this problem is based, on the reasoning stated here, the U.S. Court of Appeals for the Fifth Circuit reached the same conclusion.

1. **Discovery.** Jessica Lester died from injuries suffered in an auto accident caused by the driver of a truck owned by Allied Concrete Co. Jessica’s widower, Isaiah, filed a suit against Allied for damages. The defendant requested copies of all of Isaiah’s Facebook photos and other postings. Before responding, Isaiah “cleaned up” his Facebook page. Allied suspected that some of the items had been deleted, including a photo of Isaiah holding a beer can while wearing a T-shirt that declared “I [heart] hotmoms.” Can this material be recovered? If so, how? What effect might Isaiah’s “misconduct” have on the result in this case? Discuss. [*Allied Concrete Co. v. Lester*, 736 S.E.2d 699 (Va. 2013)] (See *Following a State Court Case*.)

Solution

Yes, the items that were deleted from a Facebook page can be recovered. Normally, a party must hire an expert to recover material in an electronic format, and this can be time consuming and expensive.

Electronic evidence, or e-evidence, consists of all computer-generated or electronically recorded information, such as posts on Facebook and other social media sites. The effect that e-evidence can have in a case depends on its relevance and what it reveals. In the facts presented in this problem, Isaiah should be sanctioned—he should be required to cover Allied’s cost to hire the recovery expert and attorney’s fees to confront the misconduct. In a jury trial, the court might also instruct the jury to presume that any missing items are harmful to Isaiah’s case. If all of the material is retrieved and presented at the trial, any prejudice to Allied’s case might thereby be mitigated. If not, of course, the court might go so far as to order a new trial.

In the actual case on which this problem is based, Allied hired an expert, who determined that Isaiah had in fact removed some photos and other items from his Facebook page. After the expert testified about the missing material, Isaiah provided Allied with all of it, including the photos that he had deleted. Allied sought a retrial, but the court instead reduced the amount of Isaiah’s damages by the amount that it cost Allied to address his “misconduct.”

1. **Electronic Filing.** Betsy Faden worked for the U.S. Department of Veterans Affairs. Faden was removed from her position in April 2012 and was given until May 29 to appeal the removal decision. She submitted an appeal through the Merit Systems Protection Board’s e-filing system seven days after the deadline. Ordered to show good cause for the delay, Faden testified that she had attempted to e-file the appeal while the board’s system was down. The board acknowledged that its system had not been functioning on May 27, 28, and 29. Was Faden sufficiently diligent in ensuring a timely filing? Discuss. [*Faden v. Merit Systems Protection Board*, 553 Fed. Appx. 991 (Fed. Cir. 2014)] (See *Courts Online*.)

Solution

No, Faden was not sufficiently diligent in ensuring a timely filing. Diligence in this context requires carefulness and persistence. Excusable delay might be evidenced by proof of circumstances beyond a party’s control that prevents a timely filing.

From the facts as stated, it appears that Faden attempted to file her appeal only at the end of the relevant period when the Board’s e-filing system was down. But there is no indication that anything prevented her from e-filing at a time when the Board’s system was not down, or from mailing or faxing her appeal at any time, before the deadline. Thus, Faden appears to have been neither timely nor diligent in filing her appeal before the deadline.

In the actual case on which this problem is based, the Merit Systems Protection Board dismissed Faden’s appeal. The Board found that she was not reasonably diligent in ensuring timely filing. On her further appeal, the U.S. Court of Appeals for the Federal Circuit affirmed.

1. **Business Case Problem with Sample Answer—Corporate Contacts.** LG Electronics, Inc., a South Korean company, and nineteen other foreign companies participated in the global market for cathode ray tube (CRT) products. CRTs were components in consumer goods, including television sets, and sold for many years in high volume in the United States, including the state of Washington. The state filed a suit against LG and the others, alleging a conspiracy to raise prices and set production levels in the market for CRTs in violation of a state consumer protection statute. The defendants filed a motion to dismiss the suit for lack of personal jurisdiction. Should this motion be granted? Explain your answer. [*State of Washington v. LG Electronics, Inc*., 185 Wash. App. 394, 341 P.3d 346 (2015)] (See *Basic Judicial Requirements*.)

**—For a sample answer to Problem 4–6, go to Appendix E.**

Solution

No, the defendants’ motion to dismiss the suit for lack of personal jurisdiction should not be granted. A corporation normally is subject to jurisdiction in a state in which it is doing business. A court applies the minimum-contacts test to determine whether it can exercise jurisdiction over an out-of-state corporation. This requirement is met if the corporation sells its products within the state or places its goods in the “stream of commerce” with the intent that the goods be sold in the state.

In this problem, the state of Washington filed a suit in a Washington state court against LG Electronics, Inc., and nineteen other foreign companies that participated in the global market for cathode ray tube (CRT) products. The state alleged a conspiracy to raise prices and set production levels in the market for CRTs in violation of a state consumer protection statute. The defendants filed a motion to dismiss the suit for lack of personal jurisdiction. These goods were sold for many years in high volume in the United States, including the state of Washington. In other words, the corporations purposefully established minimum contacts in the state of Washington. This is a sufficient basis for a Washington state court to assert personal jurisdiction over the defendants.

In the actual case on which this problem is based, the court dismissed the suit for lack of personal jurisdiction. On appeal, a state intermediate appellate court reversed on the reasoning stated above.

1. **Appellate, or Reviewing, Courts.** Angelica Westbrook was employed as a collector for Franklin Collection Service, Inc. During a collection call, Westbrook told a debtor that a $15 processing fee was an “interest” charge. This violated company policy, and Westbrook was fired. She filed a claim for unemployment benefits, which the Mississippi Department of Employment Security (MDES) approved. Franklin objected. At an MDES hearing, a Franklin supervisor testified that she had heard Westbrook make the false statement, although she admitted that there had been no similar incidents with Westbrook. Westbrook denied making the statement but added that, if she had said it, she did not remember it. The agency found that Franklin’s reason for terminating Westbrook did not amount to the misconduct required to disqualify her for benefits and upheld the approval. Franklin appealed to a state intermediate appellate court. Is the court likely to uphold the agency’s findings of fact? Explain. [*Franklin Collection Service, Inc. v. Mississippi Department of Employment Security*, 184 So.3d 330 (Miss.App. 2016)] (See *The State and Federal Court Systems*.)

Solution

Yes, the state intermediate appellate court is likely to uphold the agency’s findings of fact. Appellate courts normally defer to lower tribunals’ findings on questions of fact because those forums’ decision makers are in a better position to evaluate testimony. A trial court judge or jury, for example, can directly observe witnesses’ gestures, demeanor, and other nonverbal conduct during a trial. A judge or justice sitting on an appellate court cannot.

In this problem, Angelica Westbrook, an employee of Franklin Collection Service, Inc., allegedly made a statement during a call to a debtor that violated company policy. Westbrook was fired, and applied for unemployment benefits. Benefits were approved, but Franklin objected. Witnesses at an administrative hearing on the dispute included a Franklin supervisor who testified that she heard Westbrook make the false statement, although she admitted that Westbrook had not been involved in any similar incidents. Westbrook denied making the statement, but added that if she had said it, she did not remember it. The agency found that Franklin’s reason for terminating Westbrook did not amount to the misconduct required to disqualify her for benefits and upheld the approval. Franklin appealed. Under the standard for appellate review of findings of fact, the appellate court will likely affirm the agency’s findings.

In the actual case on which this problem is based, the state intermediate appellate court to which Franklin appealed the MDES’s approval of Johnson’s claim upheld the agency’s decision.

1. **Service of Process.** Bentley Bay Retail, LLC, filed a suit in a Florida state court against Soho Bay Restaurant LLC, and its corporate officers, Luiz and Karine Queiroz, in their individual capacities. The charge against the Queirozes was for a breach of their personal guaranty for Soho Bay’s debt to Bentley Bay. The plaintiff filed notices with the court to depose the Queirozes, who reside in Brazil. The Queirozes argued that they could not be deposed in Brazil. The court ordered them to appear in Florida to provide depositions in their corporate capacity. Witnesses appearing in court outside the jurisdiction of their residence are immune from service of process while in court. On the Queirozes’ appearance in Florida, can they be served with process in their individual capacities? Explain. [*Queiroz v. Bentley Bay Retail, LLC*, 43 Fla. L. Weekly D85, 27 So.3d 1108 (3 Dist. 2018)] (See *The State and Federal Court Systems*.)

Solution

No, on the Queriozes’ appearance in Florida to provide depositions in their corporate capacities, they cannot be served with process in their individual capacities.

As stated in the problem, witnesses appearing in court outside the jurisdiction of their residence are immune from service of process while in court. The Queirozes reside in Brazil. Bentley Bay filed a suit in a Florida state court against the Queriozes’ company, Soho Bay Restaurant LLC, and against the Queriozes, as its corporate officers, in their individual capacities. The charge was for breach of a personal guaranty. Bentley Bay sought to depose the Queirozes. The court ordered them to appear in Florida to be deposed in their corporate capacity. These circumstances would not support serving them with process in their individual capacities.

In the actual case on which this problem is based, Bentley Bay served the Queriozes in Florida with a copy of the summons and complaint. They moved to quash service, arguing that they were immune from service because they were appearing in the jurisdiction in their corporate capacities. The court denied the motion. A state intermediate appellate court reversed, on the principle stated above.

1. **A Question of Ethics—The IDDR Approach and Complaints.** John Verble worked as a financial advisor for Morgan Stanley Smith Barney, LLC. After nearly seven years, Verble was fired. He filed a suit in a federal district court against his ex-employer. In his complaint, Verble alleged that he had learned of illegal activity by Morgan Stanley and its clients. He claimed that he had reported the activity to the Federal Bureau of Investigation, and that he was fired in retaliation. His complaint contained no additional facts. [*Verble v. Morgan Stanley Smith Barney LLC*, 676 Fed. Appx. 421 (6th Cir. 2017)] (See *Following a State Court Case*.)
2. To avoid a dismissal of his suit, does Verble have a legal obligation to support his claims with more facts? Explain.
3. Does Verble owe an ethical duty to back up his claims with more facts? Use the IDDR approach to express your answer.

Solution

**1.** A suit begins when a plaintiff files a complaint in a court with appropriate jurisdiction. A complaint must include a statement of facts necessary to show that the plaintiff is entitled to a remedy.

In this problem, John Verble, a financial advisor for Morgan Stanley Smith Barney, LLC for nearly seven years, was terminated. He filed a complaint in a federal district court against Morgan Stanley. Verble alleged that he learned of illegal activity by his employer and its clients. He claimed that he reported this to the Federal Bureau of Investigation and was fired in retaliation. His complaint contained no additional facts. From a legal standpoint, Verble clearly needed to provide more facts to support his conclusory allegations. His complaint should have contained facts that showed he was engaged in a protected activity, that he acted to stop a specific illegal activity by Morgan Stanley and its clients, and that he was fired in retaliation. A claim is plausible when a plaintiff pleads facts that allow a court to draw a reasonable inference that the defendant is liable for the alleged misconduct. Here, without additional facts, it is within the discretion of the court to dismiss Verble’s complaint.

**2.** Yes, Verble has an ethical duty to supply additional facts to back up his claims. Not doing so fails to meet even the minimal ethical standard in this case.

The steps in the IDDR approach begin with an Inquiry that identifies the ethical issue, the stakeholders, and relevant ethical theories. Here, the issue is whether Verble has a duty to support the claims in his complaint with more facts. Besides Verble, the stakeholders include the court and other litigants. The applicable ethical concepts include the categorical imperative—that individuals should evaluate their actions in light of the consequences that would follow if everyone in society acted the same way.

The second step discusses possible actions. Factors include the strengths and weaknesses of each, considering the consequences and the impacts on stakeholders. Verble might choose to proceed without supporting his claims, or he could decide to go ahead only with added facts.

A party has a legal duty to allege sufficient facts in a complaint to state a plausible claim for relief. This is an ethical duty, at a minimum. Thus, choosing to proceed without sufficient factual support presents almost no advantage. In the face of an unsupported complaint, for example, an opponent who might otherwise be willing to settle would have little motivation to do so. A failure to meet the legal standard undercuts credibility, jeopardizes a case, wastes judicial resources, and affects the ability of other litigants to timely present their cases. If everyone chose to present their complaints in the same way, the courts would be clogged with insufficient complaints, and even legitimate claims would not be redressed.

The IDDR approach’s third step is to make a decision and provide reasons for it. In all cases, it seems that the best decision would be to support a claim with sufficient facts. This would comport with the legal duty, meet the minimal ethical standard, and avoid the negative effects of doing otherwise.

The last step is to review the chosen action to determine its success or failure in terms of the issue and the stakeholders. Plaintiffs have a legal and ethical responsibility to properly plead their cases. Litigation requires the parties to invest time and money, and a court to expend its own limited time and money. Vague, unsupported allegations can waste everyone’s resources. Therefore, choosing to present sufficient facts to state a plausible claim is clearly the best ethical act.

Critical Thinking and Writing Assignments

1. **Time-Limited Group Assignment—Access to Courts.** Assume that a statute in your state requires that all civil lawsuits involving damages of less than $50,000 be arbitrated. Such a case can be tried in court only if a party is dissatisfied with the arbitrator’s decision. The statute also provides that if a trial does not result in an improvement of more than 10 percent in the position of the party who demanded the trial, that party must pay the entire cost of the arbitration proceeding. (See *Alternative Dispute Resolution*.)
2. One group will argue that the state statute violates litigants’ rights of access to the courts and trial by jury.
3. Another group will argue that the statute does not violate litigants’ right of access to the courts.
4. A third group will evaluate how the determination on right of access would be changed if the statute was part of a pilot program that affected only a few judicial districts in the state.

Solution

1. The statute violates litigants’ rights of access to the courts and to a jury trial because the imposition of arbitration costs on those who improve their positions by less than 10 percent on an appeal is an unreasonable burden. And the statute forces parties to arbitrate before they litigate—an added step in the process of dispute resolution. The limits on the rights of the parties to appeal the results of their arbitration to a court further impede their rights of access. The arbitration procedures mandated by the statute are not reasonably related to the legitimate governmental interest of attaining less costly resolutions of disputes.

2. The statute does not violate litigants’ constitutional right of access to the courts because it provides the parties with an opportunity for a court trial in the event either party is dissatisfied with an arbitrator’s decision. The burdens on a person’s access to the courts are reasonable. The state judicial system can avoid the expense of a trial in many cases. And parties who cannot improve their positions by more than 10 percent on appeal are arguably wasting everyone’s time. The assessment of the costs of the arbitration on such parties may discourage appeals in some cases, which allows the courts to further avoid the expense of a trial. The arbitration procedures mandated by the statute are reasonably related to the legitimate governmental interest of attaining speedier and less costly resolution of disputes.

3. The determination on rights of access could be different if the statute was part of a pilot program and affected only a few judicial districts in the state because only parties who fell under the jurisdiction of those districts would be subject to the limits. Opponents might argue that the program violates the due process of the Fifth Amendment because it is not applied fairly throughout the state. Proponents might counter that parties who object to an arbitrator’s decision have an opportunity to appeal it to a court. Opponents might argue that the program exceeds what the state legislature can impose because it does not reasonably relate to a legitimate governmental objective—it arbitrarily requires only litigants who reside in a few jurisdictions to submit to arbitration. Proponents might counter that this is aimed at the reduction of court costs—that the statute rationally relates to a legitimate governmental end. An equal protection challenge would most likely be subject to a similar rational basis test. Under these and other arguments, the reduction of court costs would be a difficult objective to successfully argue against.