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# ALTERNATE CASE PROBLEM ANSWERS

## CHAPTER 2

### COURTS AND ALTERNATIVE DISPUTE RESOLUTION

#### 2-1A. *Arbitration*

(Chapter 2—Pages 43–45)

No. The Supreme Court of Arizona held that Gates could have his case decided by a trial court without first submitting the dispute to arbitration. The court pointed out that there are two kinds of arbitration, one under the common law and the other by virtue of express arbitration statutes. The court stated that under the common law “the overwhelming weight of authority holds that an agreement that all disputes and contentions which may arise between the parties under a contract shall be settled by arbitration to the exclusion of the courts, is void as an attempt to oust the courts of jurisdiction.” The court noted that the right of arbitration has been greatly extended in recent years, but this extension is “practically universally done by statute.” The Arizona arbitration statute expressly provided that its provisions would not apply to collective contracts between employers and associations of employees. Therefore, the court held that under both the common law and the statute, Gates could not be compelled by the contract clause to undergo arbitration before proceeding to trial.

#### 2-2A. *Arbitration*

(Chapter 2—Pages 43–45)

No. The court could find no reason to prohibit spouses from submitting disputes arising out of their contracts to binding arbitration. “Rather than frowning on arbitration of alimony disputes,” the court stated, “public policy supports it.... In this sensitive and intensely private area of domestic disputes, arbitration expressly contracted for by the spouses is highly desirable.” The court did note, however, that the courts’ interest in the welfare of children permits the courts to review the validity of an arbitration award affecting child support if the support may not provide adequate protection for the child. “Thus, only an arbitrator’s award that either reduced child support or refused a request for increased support could be subject to court review ... because only such an award could adversely affect the interests of the child.”

#### 2-3A. *Arbitration*

(Chapter 2—Pages 43–45)

The Colorado Supreme Court stated that the statute did not violate litigants’ constitutional right of access to the courts because it provided the parties with an opportunity

for a court trial in the event either party was dissatisfied with the arbitrator's decision. The court stated that burdens on a person's access to the courts will be upheld as long as they are reasonable. The court held that the statute did not violate state constitutional rights to a jury trial because the required payment of arbitration costs is not an unreasonable burden. The court emphasized that the arbitration procedures mandated by the statute were reasonably related to the legitimate government interest of attaining speedier and less costly resolution of disputes.

**2-4A.            *Arbitration***

*(Chapter 2—Page 43)*

Although the argument offered by the trade associations—that they were being denied their right to trial by jury under the Lemon Law—has a certain appeal to it, the Court of Appeals of New York was not so persuaded. It viewed the replacement remedy provided by the Lemon Law as being analogous to the remedy of specific performance; it was designed to produce a degree of performance as promised under the contract. The court held that the auto manufacturers were not entitled to trial by jury under the state constitution when consumers seek to exercise the replacement remedy under the Lemon Law. Moreover, the Lemon Law permits any consumer to seek rescission of the contract to undo the wrong and return the parties to the status quo ante. Such an action for restitution is equitable in nature and would not have been triable by jury under the common law. Therefore, the trade association position was rejected by the court.

**2-5A.            *Jurisdiction***

*(Chapter 2—Page 31)*

A court can exercise personal jurisdiction over nonresidents under the authority of a long arm statute. Under a long arm statute, it must be shown that the nonresident had sufficient contacts with the state to justify the jurisdiction. In regard to business firms, this requirement is usually met if the firm does business within the state. In this case, the parties to the sponsorship agreement contemplated that substantial activities to further their joint venture would take place in Florida. Sutton lived in Florida, and he was expected to and did play in tour events in Florida. Sutton was to be provided health care insurance in Florida. All earnings from Sutton's golf-related activities in Florida and elsewhere were to be paid by the Professional Golfing Association from its headquarters and bank account in Florida to the ARS & Associates account in Michigan; the partnership was to disburse funds from the account to Sutton's account in Florida to enable him to perform golf-related activities and participate in tour events for the benefit of the joint venture. After ARS failed to fund health insurance for Sutton, it instructed Sutton to obtain medical care in return for providing golf lessons to a physician in Florida. These facts—the provision of health care insurance in Florida, the exchange of funds to and from Florida, the instruction to Sutton to perform certain work in Florida—showed that the members of the joint venture were operating, conducting, engaging in, or carrying on their business venture in Florida. When an agreement for a joint venture made outside a state contemplates and results in performance in substantial part within the state, the nonresident members of the venture exercise sufficient minimum contacts within the state to support the state's exercise of personal jurisdiction over them. Thus, ARS could be subjected to the Florida court's exercise of jurisdiction and could be required to appear to defend itself in that state.

**2-6A.            *Arbitration****(Chapter 2—Page 43)*

The public policy that the court weighed in making its decision included the policy of “not tolerating the knowing misappropriation of state funds by state officials or employees,” as well as “[t]he public policy of discouraging fraud,” which is “firmly rooted in our common law.” The defendant asserted the public policy of discouraging discrimination against the mentally ill. The court considered this policy, but “did not find that Beaudry’s discharge was motivated by an intent to discriminate against the mentally ill.” In this case, “the policy of minimizing discrimination against the mentally ill did not outweigh the damaging consequences to the concomitant policy goal of refusing to countenance the knowing misappropriation of state moneys.” The court vacated the award, the union appealed, and a state appellate court affirmed the trial court’s decision.

**2-7A.            *Arbitration****(Chapter 2—Pages 43–45)*

The U.S. Court of Appeals for the Third Circuit held that the arbitration award, requiring Exxon to reinstate Fris, should be vacated as contrary to public policy. The court reasoned that the award “violates a public policy that is both well defined and dominant,” that is “that owners and operators of oil tankers should be permitted to discharge crew members who are found to be intoxicated while on duty.” The court explained, “An intoxicated crew member on such a vessel can cause loss of life and catastrophic environmental and economic injury. Some of this injury may not be reparable by money damages.” The court offered, as an example, harm caused by oil spills. “Moreover,” added the court, “it is entirely possible that much of the cost resulting from a major oil spill may fall on taxpayers and those who are injured by the accident.”

**2-8A.            *Jurisdiction****(Chapter 2—Pages 31–33)*

The North Carolina state court held that it had personal jurisdiction over the Florida defendants. On appeal, the North Carolina Court of Appeals agreed. The appellate court initially pointed out that a court can assert “personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. When a corporation purposefully avails itself of the privilege of conducting activities in this State, it is not unreasonable to subject it to suit here.” The court pointed out that Health Care advertised Cal-Ban in North Carolina. “Health Care sold the Cal-Ban 3000 capsules to its distributor, defendant CKI Industries, who in turn advertised and sold the drug to defendant Prescott’s Pharmacies.” The court concluded, “[a]ccordingly,” that the defendants “injected Cal-Ban 3000 into the stream of commerce of this State with the expectation that the drug would be purchased by consumers here. The trial court properly exercised personal jurisdiction over defendants.”

**2-9A.            *Standing****(Chapter 2—Pages 36–37)*

The court held that the Blues had standing and denied the tobacco companies’ motion to dismiss the case. The defendants argued in part that any injury to the plaintiffs was indirect and too remote to permit them to recover, and that it would be too difficult to de-

termine whether the plaintiffs' injuries were due to the defendants' conduct or to intervening third causes. The court reasoned that the damages claimed in this case were separate from the damages suffered by smokers. The plaintiffs "seek recovery only for the economic burden of those medical claims and procedures which they directly paid as a result of tobacco use." The Blues had paid for the smokers' health care, and thus only the Blues could recover those amounts. As to whether the injuries were too remote, the court said that if "as alleged, the defendants conducted a decades long scheme to deceive the American public and its health providers concerning the addictive characteristics and health hazards of their tobacco products, and if they conspired to deprive smokers of safer or less addictive tobacco products, then their actions can properly be characterized as illegal and deliberate criminal fraud." If so, the plaintiffs' injuries would have been foreseeable and direct. The court also noted that the plaintiffs might have reliable statistical and expert evidence to show the percentage of damage caused by the defendants' actions.

Note: The Blues filed suits in three federal district courts. Two of the courts refused to dismiss the suits, applying the reasoning set out above. The third court agreed with the defendants, however. See *Regence Blueshield v. Philip Morris, Inc.*, 40 F.Supp.2d 1179 (W.D.Wash.1999). In that case, the court concluded that the Blues' injuries were "derivative" of personal injuries to smokers because it would be impossible to separate the smokers' injuries from those of the insurers and there would thus be a possibility of "duplicative recovery."