
ALTERNATE CASE PROBLEMS

CHAPTER 2

COURTS AND ALTERNATIVE DISPUTE RESOLUTION

2-1. Arbitration. Gates worked for Arizona Brewing Co. and was a member of the International Union of United Brewers, Flour, Cereal, and Soft Drink Workers of America. A contract between Gates's employer and the union stated that the employer and the union were to try to settle their differences, but if the parties could not reach a settlement, the matter was to be decided by arbitration. Claiming that the arbitration clause was void under an Arizona arbitration statute, Gates brought a lawsuit against Arizona Brewing Co. to recover wages. Gates had not made any attempt to submit the dispute between him and the employer to arbitration. The employer argued that Gates could not bring a lawsuit until after arbitration had occurred. A provision in the Arizona arbitration statute, which generally enforced arbitration clauses in contracts, stated that "this act shall not apply to collective contracts between employers and... associations of employ[ees]." Must Gates undergo arbitration before bringing a lawsuit? Explain. [*Gates v. Arizona Brewing Co.*, 54 Ariz. 266, 95 P.2d 49 (1939)]

2-2. Arbitration. When Roger and Susan Faherty divorced, they entered into a property settlement agreement that was incorporated into the final divorce decree. The property settlement agreement contained a clause that mandated arbitration of any dispute arising out of the agreement. Roger failed to make several alimony and child support payments, and Susan sought court enforcement of the property settlement agreement. Roger's consequent motion to have the court compel arbitration was granted by the court, and the dispute was arbitrated. The arbitrator's decision required Roger to pay Susan \$37,648 for back alimony payments and \$12,284 for overdue child support. Roger, although he had been the one to petition the court for arbitration, now challenged the validity of the arbitration clause in alimony and child support matters. He claimed that as a matter of public policy, such matters should be settled by the courts, not by arbitration. Will the court agree with Roger? Discuss. [*Faherty v. Faherty*, 97 N.J. 99, 477 A.2d 1257 (1984)]

2-3. Arbitration. Colorado's Mandatory Arbitration Act required that all civil lawsuits involving damages of less than \$50,000 be arbitrated rather than tried in court. The statutory scheme, which was a pilot project, affected eight judicial districts in the state. It provided for a court trial for any party dissatisfied with an arbitrator's

decision. It also provided that if the trial did not result in an improvement of more than 10 percent in the position of the party who demanded the trial, that party had to pay the costs of the arbitration proceeding. The constitutionality of the act was challenged by a plaintiff who maintained in part that it violated litigants' rights of access to the courts and to trial by jury. What will the court decide? Explain your answer. [*Firelock, Inc. v. District Court, 20th Judicial District*, 776 P.2d 1090 (Colo. 1989)]

2-4. Arbitration. A few years ago, New York State revised its New Car Lemon Law to allow consumers who complained of purchasing a "lemon" to have their disputes arbitrated before a professional arbitrator appointed by the New York attorney general. Before it was revised, the Lemon Law allowed for the arbitration of disputes, but the forum in which arbitration took place was sponsored by trade associations within the automobile industry, and consumers often complained of unfair awards. The revised law also provided that consumers were not required to arbitrate but, if they wished, could sue a manufacturer in court. Manufacturers, however, were *compelled* to arbitrate claims if a consumer chose to do so and could not resort to the courts. Trade associations representing automobile manufacturers and importers brought an action seeking a declaration that the alternative arbitration mechanism of the Lemon Law was unconstitutional because it deprived them of their right to trial by jury. How will the court decide? Discuss. [*Motor Vehicle Manufacturers Association of the United States v. State*, 551 N.Y.S.2d 470, 550 N.E.2d 919, 75 N.Y.2d 175 (1990)]

2-5. Jurisdiction. Alex Sutton, a professional golfer living in Middleburg, Florida, entered into a sponsorship agreement with ARS & Associates, a Michigan partnership. Among other things, the agreement provided that (1) ARS would sponsor Sutton on a Professional Golfing Association (PGA) tour, (2) ARS would pay all of Sutton's expenses, (3) ARS and Sutton would split the proceeds (whatever remained after ARS had been reimbursed for expenses) fifty-fifty, and (4) ARS would provide health insurance for Sutton. Preliminary negotiations were carried out mostly over the phone. ARS drew up the agreement in Michigan and sent it to Sutton in Florida; Sutton signed and returned the contract to ARS. ARS then signed the agreement and sent a copy of it to Sutton. Sutton subsequently participated in several senior PGA events, including two tournaments in Florida. While playing golf in a senior PGA tournament in Palm Springs, California, Sutton suffered a heart attack and, as a result, later incurred costs of more than \$100,000 for open-heart surgery and related medical expenses. Because ARS had not obtained health-insurance coverage for Sutton, Sutton sued ARS in a Florida state court for breach of the agreement. ARS moved to dismiss the action for lack of personal jurisdiction. Can the Florida court, under its long arm statute, exercise personal jurisdiction over the Michigan defendant in this case? Discuss. [*Sutton v. Smith*, 603 So.2d 693 (Fla.App. 1992)]

2-6. Arbitration. Phillip Beaudry, who suffered from mental illness, worked in the Department of Income Maintenance for the state of Connecticut. Beaudry was fired from his job when it was learned that he had misappropriated approximately \$1,640 in state funds. Beaudry filed a complaint with his union, Council 4 of the American Federation of State, County, and Municipal Employees (AFSCME), and eventually the dispute was submitted to an arbitrator. The arbitrator concluded that Beaudry had been dismissed without "just cause," because Beaudry's acts were caused by his mental illness and

were not “within his capacity to control.” Because Beaudry had a disability, the employer was required, under state law, to transfer him to a position that he was competent to hold. The arbitrator awarded Beaudry reinstatement, back pay, seniority, and other benefits. The state appealed the decision to a court. What public policies must the court weigh in making its decision? How should the court rule? [*State v. Council 4, AFSCME*, 27 Conn.App. 635, 608 A.2d 718 (1992)]

2-7. Arbitration. Randall Fris worked as a seaman on an Exxon Shipping Co. oil tanker for eight years without incident. One night, he boarded the ship for duty while intoxicated, in violation of company policy. This policy also allowed Exxon to discharge employees who were intoxicated and thus unfit for work. Exxon discharged Fris. Under a contract with Fris's union, the discharge was submitted to arbitration. The arbitrators ordered Exxon to reinstate Fris on an oil tanker. Exxon filed a suit against the union, challenging the award as contrary to public policy, which opposes having intoxicated persons operate seagoing vessels. Can a court set aside an arbitration award on the ground (legal basis) that the award violates public policy? Should the court set aside the award in this case? Explain. [*Exxon Shipping Co. v. Exxon Seamen's Union*, 11 F.3d 1189 (3d Cir. 1993)]

2-8. Jurisdiction. Cal-Ban 3000 is a weight loss drug made by Health Care Products, Inc., a Florida corporation, and marketed through CKI Industries, another Florida corporation. Enticed by North Carolina newspaper ads for Cal-Ban, the wife of Douglas Tart bought the drug at Prescott's Pharmacies, Inc., in North Carolina for her husband. Within a week, Tart suffered a ruptured colon. Alleging that the injury was caused by Cal-Ban, Tart sued Prescott's Pharmacies, CKI, the officers and directors of Health Care, and others in a North Carolina state court. CKI and the Health Care officers and directors argued that North Carolina did not have personal jurisdiction over them because CKI and Health Care were Florida corporations. How will the court rule? Why? [*Tart v. Prescott's Pharmacies, Inc.*, 118 N.C.App. 516, 456 S.E.2d 121 (1995)]

2-9. Standing. Blue Cross and Blue Shield insurance companies (the Blues) provide 68 million Americans with health-care financing. The Blues have paid billions of dollars for care attributable to illnesses related to tobacco use. In an attempt to recover some of this amount, the Blues filed a suit in a federal district court against tobacco companies and others, alleging fraud, among other things. The Blues claimed that beginning in 1953, the defendants conspired to addict millions of Americans, including members of Blue Cross plans, to cigarettes and other tobacco products. The conspiracy involved misrepresentation about the safety of nicotine and its addictive properties, marketing efforts targeting children, and agreements not to produce or market safer cigarettes. The defendants' success caused lung, throat, and other cancers, as well as heart disease, stroke, emphysema, and other illnesses. The defendants asked the court to dismiss the case on the ground that the plaintiffs did not have standing to sue. Do the Blues have standing in this case? Why or why not? [*Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*, 36 F.Supp.2d 560 (E.D.N.Y. 1999)]