**Alternate Case Problems**

*Chapter 2*

**Courts and Alternative**

**Dispute Resolution**

**2-1. 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)]

**2–2. Standing to Sue.** 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)]

**2–3. E-Jurisdiction.** American Business Financial Services, Inc. (ABFI), a Pennsylvania firm, sells and services loans to businesses and consumers. First Union National Bank, with its principal place of business in North Carolina, provides banking services. Alan Boyer, an employee of First Union, lives in North Carolina and has never been to Pennsylvania. In the course of his employment, Boyer learned that the bank was going to extend a $150 million line of credit to ABFI. Boyer then attempted to manipulate the stock price of ABFI for personal gain by sending disparaging e-mails to ABFI’s independent auditors in Pennsylvania. Boyer also posted negative statements about ABFI and its management on a Yahoo bulletin board. ABFI filed a suit in a Pennsylvania state court against Boyer, First Union, and others, alleging wrongful interference with a contractual relationship, among other things. Boyer filed a motion to dismiss the complaint for lack of personal jurisdiction. Could the court exercise jurisdiction over Boyer? Explain. [*American Business Financial Services, Inc. v. First Union National Bank,* \_\_ A.2d \_\_ , 2002 WL 433735 (Pa.Comm.Pl. 2002)]

**2–4. Arbitration.** Alexander Little worked for Auto Stiegler, Inc., an automobile dealership in Los Angeles County, California, eventually becoming the service manager. While employed, Little signed an arbitration agreement that required the submission of all employment-related disputes to arbitration. The agreement also provided that any award over $50,000 could be appealed to a second arbitrator. Little was later demoted and terminated. Alleging that these actions were in retaliation for investigating and reporting warranty fraud and thus were in violation of public policy, Little filed a suit in a California state court against Auto Stiegler. The defendant filed a motion with the court to compel arbitration. Little responded that the arbitration agreement should not be enforced in part because the appeal provision was unfairly one sided. Is this provision enforceable? Should the court grant Auto Stiegler’s motion? Why or why not? [*Little v. Auto Stiegler, Inc.,* 29 Cal.4th 1064, 63 P.3d 979, 130 Cal.Rptr.2d 892 (2003)]

**2–5. Jurisdiction.** KaZaA BV was a company formed under the laws of the Netherlands. KaZaA distributed KaZaA Media Desktop (KMD) software, which enabled users to exchange, via a peer-to-peer transfer network, digital media, including movies and music. KaZaA also operated the KaZaA.com Web site, through which it distributed the KMD software to millions of California residents and other users. Metro-Goldwyn-Mayer Studios, Inc., and other parties in the entertainment industries based in California filed a suit in a federal district court against KaZaA and others, alleging copyright infringement. KaZaA filed a counterclaim, but while legal action was pending, the firm passed its assets and its Web site to Sharman Networks, Ltd., a company organized under the laws of Vanuatu (an island republic east of Australia) and doing business principally in Australia. Sharman explicitly disclaimed the assumption of any of KaZaA’s liabilities. When the plaintiffs added Sharman as a defendant, Sharman filed a motion to dismiss on the ground that the court did not have jurisdiction. Would it be fair to subject Sharman to suit in this case? Explain. [*Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.,* 243 F.Supp.2d.1073 (C.D.Cal. 2003)]

**2–6. Standing to Sue.** Michael and Karla Covington live in Jefferson County, Idaho. When they bought their home, a gravel pit was across the street. In 1995, the county converted the pit to a landfill. Under the county’s operation, the landfill accepted major appliances, household garbage, spilled grain, grass clippings, straw, manure, animal carcasses, containers with hazardous content warnings, leaking car batteries, and waste oil, among other things. The deposits were often left uncovered, attracting insects and other scavengers and contaminating the groundwater. Fires broke out, including at least one started by an intruder who entered the property through an unlocked gate. The Covingtons complained to the state, which inspected the landfill, but no changes were made to address their concerns. Finally, the Covingtons filed a suit in a federal district court against the county and the state, charging violations of federal environmental laws. Those laws were designed to minimize the risks of injuries from fires, scavengers, groundwater contamination, and other pollution dangers. Did the Covingtons have standing to sue? What principles apply? Explain. [*Covington v. Jefferson County,* 358 F.3d 626 (9th Cir. 2004)]

**2–7.** **Arbitration.** Kathleen Lowden sued cellular phone company T-Mobile USA, Inc., contending that its service agreements were not enforceable under Washington state law. Lowden moved to create a class-action lawsuit, in which her claims would extend to similarly affected customers. She contended that T-Mobile had improperly charged her fees beyond the advertised price of service and charged her for roaming calls that should not have been classified as roaming. T-Mobile moved to force arbitration in accordance with provisions that were clearly set forth in the service agreement. The agreement also specified that no class-action lawsuit could be brought, so T-Mobile asked the court to dismiss the class-action request. Was T-Mobile correct that Lowden’s only course of action would be to file for arbitration personally? Explain. [*Lowden v. T-Mobile USA, Inc.,* 512 F.3d 1213 (9th Cir. 2008)]

**2–8.** **Venue.** Brandy Austin used powdered infant formula to feed her infant daughter shortly after her birth. Austin claimed that a can of Nestlé Good Start Supreme Powder Infant Formula was contaminated with *Enterobacter sakazakii* bacteria, which can cause infections of the bloodstream and central nervous system, in particular, meningitis (inflammation of the tissue surrounding the brain or spinal cord). Austin filed an action against Nestlé in Hennepin County District Court in Minnesota. Nestlé argued for a change of venue because the alleged tortious action on the part of Nestlé occurred in South Carolina. Austin is a South Carolina resident and gave birth to her daughter in that state. Should the case be transferred to a South Carolina venue? Why or why not? [*Austin v. Nestle USA, Inc.,* 677 F.Supp.2d 1134 (D.Minn. 2009)]

**2–9.** **Arbitration.** PRM Energy Systems owned patents licensed to Primenergy, LLC, to use in the United States. Their contract stated that “all disputes” would be settled by arbitration. Kobe Steel of Japan was interested in using the technology represented by PRM’s patents. Primenergy agreed to let Kobe use the technology in Japan without telling PRM. When PRM learned about the secret deal, the firm filed a suit against Primenergy for fraud and theft. Does this dispute go to arbitration or to trial? Why? [*PRM Energy Systems v. Primenergy, LLC,* 592 F.3d 830 (8th Cir. 2010)]

**2–10. A Question of Ethics**

Narnia Investments, Ltd., filed a suit in a Texas state court against several defendants, including Harvestons Securities, Inc., a securities dealer. (Securities are documents evidencing the ownership of a corporation, in the form of stock, or debts owed by it, in the form of bonds.) Harvestons is registered with the state of Texas and thus may be served with a summons and a copy of a complaint by serving the Texas Securities Commissioner. In this case, the return of service indicated that process was served on the commissioner “by delivering to JoAnn Kocerek defendant, in person, a true copy of this [summons] together with the accompanying copy(ies) of the [complaint].” Harvestons did not file an answer, and Narnia obtained a default judgment against the defendant for $365,000, plus attorneys’ fees and interest. Five months after this judgment, Harvestons filed a motion for a new trial, which the court denied. Harvestons appealed to a state intermediate appellate court, claiming that it had not been served in strict compliance with the rules governing service of process. [*Harvestons Securities, Inc. v. Narnia Investments, Ltd.,* \_\_ S.W.3d \_\_, 2007 WL 64227 (Tex.App.—Houston [14 Dist.] 2007)]

**1.** Harvestons asserted that Narnia’s service was invalid in part because “the return of service states that process was delivered to ‘JoAnn Kocerek’ ” and did not show that she “had the authority to accept process on behalf of Harvestons or the Texas Securities Commissioner.” Should such a detail, if it is required, be strictly construed and applied? Should it apply in this case? Explain.

**2.** Whose responsibility is it to see that service of process is accomplished properly? Was it accomplished properly in this case? Why or why not?