**Alternate Case Problems**

*Chapter 2*

**Courts and Alternative**

**Dispute Resolution**

**2-1. 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)]

**2-2. 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)]

**2-3. 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)]

**2-4. 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)]

**2–5. 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)]

**2–6. 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 \_\_ (Pa.Comm.Pl. 2002)]

**2–7. 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)]

**2–8. 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)]

**2–9. 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)]

**2–10. A Question of Ethics**

Linden Research, Inc., operates a multiplayer role-playing game in the virtual world known as “Second Life” at **secondlife.com**. Participants create avatars to represent themselves on the site. In 2003, Second Life became the only virtual world to recognize participants' rights to buy, own, and sell digital content—virtual property, including “land.” Linden’s chief executive officer, Philip Rosedale, joined efforts to publicize this recognition and these rights in the real world media. Rosedale also created an avatar to tout the rights in Second Life town meetings. March Bragg, an experienced Pennsylvania attorney, was a Second Life participant whose avatar attended the meetings, after which Bragg began to invest in Second Life’s virtual property. In April 2006, Bragg bought “Taessot,” a parcel of virtual land. Linden decided that the purchase was improper, however, and took Taessot from Bragg. Linden also froze Bragg's account, effectively confiscating all of his virtual property and currency. Bragg filed a suit against Linden and Rosedale, claiming that the defendants acted unlawfully. [*Bragg v. Linden Research, Inc.,* \_\_ F.Supp.2d \_\_ (E.D.Pa. 2007)]

**1.** In the federal district court in Pennsylvania that was hearing the suit, Rosedale, who lives in California, filed a motion to dismiss the claim against him for lack of personal jurisdiction. On what basis could the court deny this motion and assert jurisdiction? Is it fair to require Rosedale to appear in a court in a distant location? Explain.

**2.** To access Second Life, a participant must accept its “Terms of Service” (TOS) by clicking an “accept” button. Under the TOS, Linden has the right “at any time for any reason or no reason to suspend or terminate your Account,” to refuse to return a participant’s money, and to amend the terms at its discretion. The TOS also stipulate that any dispute be resolved by binding arbitration in California. Is there anything unfair about the TOS? Should the court compel Bragg to arbitrate this dispute? Discuss.