**Alternate Case Problems**

*Chapter 3*

**Court Procedures**

**3-1. Jury Selection.** Benjamin Omoruyi was convicted in a federal district court for the possession of counterfeit securities in violation of federal law. Omoruyi appealed his con­viction to the U.S. Court of Appeals for the Ninth Circuit, arguing that the district court erred by permitting the government to peremptorily challenge female prospective jurors on the basis of gender. (In a previous case decided by the Ninth Circuit, that court had held that equal-protection principles prohibit striking potential jurors on the basis of gen­der.) The first government peremptory challenge was exercised against an unmarried white woman, and the second was exercised against an unmarried black woman. Omoruyi objected to the second challenge on the basis that it was racially dis­criminatory. In response to the district court’s request to explain the challenge, the government coun­sel responded: “Because she was a single female and my concern, frankly, is that she, like the other juror I struck, is single and given defendant’s good looks would be attracted to the defendant.” The district court denied Omoruyi’s motion for a new jury. In re­sponse to Omoruyi’s allegations on appeal, the government argued that the peremptory strikes were based on marital status, not gender. How should the court decide? Discuss fully. [*United States v. Omoruyi,* 7 F.3d 880 (9th Cir. 1993)]

**3-2. Discovery.** Joseph Stout, while on the job as a construction worker, fell from a beam that he was attempting to secure to a steel column. As a result of the fall, Stout sustained injuries that rendered him a paraplegic. Stout brought suit against his em­ployer, A. M. Sunrise Construction Co., and Central Rent-A-Crane, Inc., for damages. Prior to the trial, a number of discovery motions were filed by the defendants, who sought detailed in­formation on the nature of the accident and the injuries incurred. Stout repeatedly failed to respond to these requests, even when the trial court ordered him to do so. Finally, the trial court dismissed the action because of Stout’s failure to re­spond. Stout appealed the dismissal. On appeal, Stout claimed that the trial court had abused its discretion by dis­missing his action against the defendants, thus depriving him of his right to be heard in court. What will the appellate court decide? [*Stout v. A. M. Sunrise Construction Co.,* 505 N.E.2d 500 (Ind.App. 1987)]

**3-3. Motion for Summary Judgment.** Mary Sabo suffered injuries in an automobile acci­dent caused by Daniel Hoag, an intoxicated driver. Hoag had just left Peoples Restaurant after having consumed a large number of drinks. Sabo sued Peoples for damages, alleg­ing that the restaurant had violated a state statute that provided that any person who “knowingly serves” an individual who is “habitually addicted” to alcohol may be held li­able for any injuries or damages caused by the intoxication of that indi­vidual. In spite of evidence indicating that for the two years prior to the accident, Hoag had gone to Peoples twice a week and on each occasion had drunk liquor until he was in­toxicated, the trial court granted Peoples’ motion for summary judgment. The court held that Sabo had failed to show that Peoples had knowledge that Hoag was an alco­holic and the bar had therefore not “knowingly” served an alcohol addict. Sabo appealed. The appellate court reversed the trial court’s ruling, and Peoples appealed the case to the Supreme Court of Florida. Was summary judgment for Peoples appropriate in this case? [*Sabo v. Peoples Restaurant,* 591 So.2d 907 (Fla. 1991)]

**3-4. Motion for a New Trial.** Ms. Hummel sued Dr. James Strittmatter and his pro­fes­sional corporation, the Gainesville Radiology Group, P.C. (“the Group”), for medical malpractice. Hummel alleged that the Group was negligent in failing to timely diagnose her breast cancer after a mammogram examination. During *voir dire,* jurors were asked if any of them had family members who had been diagnosed with breast cancer or other forms of cancer, how the cancer had been diagnosed, and whether there had been any recurrence. One juror made no response, but it was later discovered that the juror’s wife had died of breast cancer some years before. When the trial court jury returned a verdict for the Group, Hummel moved for a new trial on the ground that the juror had vi­olated his oath and failed to disclose pertinent information during *voir dire.* In oppos­ing the motion, the Group submitted an affidavit signed by the juror in which the juror averred that he had not answered the question because he had not heard it and that the cause of his wife’s death had not influenced his judgment in the case. Did the juror’s failure to hear the question about cancer constitute juror misconduct to the extent that Hummel’s motion for a new trial should be granted? [*Hummel v. Gainesville Radiology Group, P.C.,* 205 Ga.App. 157, 421 S.E.2d 333 (1992)]

**3-5. Motion to Dismiss.** Martin brought a civil rights action against his employer, the New York Department of Mental Hygiene, when it failed to promote him on several occa­sions. His complaint stated only that the defendant had discriminated against him on the basis of race by denying him “the authority, salary, and privileges commensurate with this position.” The employer made a motion to dismiss the claim for failure to state a cause of action. Discuss whether the employer could be successful. [*Martin v. New York State Department of Mental Hygiene,* 588 F.2d 371 (2d Cir. 1978)]

**3-6. Jury Trials.** On June 16, 1986, the director of the Administrative Office of the U.S. Courts notified all federal district courts that no civil jury trials could be initiated until the end of the fiscal year (September 30) due to lack of funds with which to pay the jurors. Armster and others claimed that the consequent delay (of three and a half months) in scheduling a jury trial violated the Seventh Amendment right to a civil jury trial. The Justice Department maintained that although the Sixth Amendment guarantees a speedy criminal jury trial, the Seventh Amendment does not guarantee a speedy civil jury trial. The Justice Department further noted that district courts have postponed civil jury trials before, although for other reasons—such as court-calendar congestion, the lack of a sufficient number of judges, and the priority accorded to trying criminal cases before civil actions. Discuss whether the suspension of civil jury trials for a period of three and a half months due to lack of funds to pay jurors violates the constitutional right to a trial by jury. Are people always entitled to a jury trial in civil lawsuits? [*Armster v. U.S. District Court for the Central District of California,* 792 F.2d 1423 (9th Cir. 1986)]

**3-7. Jury Selection.** Ms. Thompson filed a suit in a federal district court against her employer, Altheimer & Gray, seeking damages for alleged racial discrimination in violation of federal law. During *voir dire*, the judge asked the prospective jurors whether “there is something about this kind of lawsuit for monetary damages that would start any of you leaning for or against a particular party?” Ms. Leiter, one of the prospective jurors, raised her hand and explained that she had “been an owner of a couple of businesses and am currently an owner of a business, and I feel that as an employer and owner of a business that will definitely sway my judgment in this case.” She explained, “I am constantly faced with people that want various benefits or different positions in the company or better contacts or, you know, a myriad of issues that employers face on a regular basis, and I have to decide whether or not that person should get them.” Asked by Thompson’s lawyer whether “you believe that people file lawsuits just because they don’t get something they want,” Leiter answered, “I believe there are some people that do.” In answer to another question, she said, “I think I bring a lot of background to this case, and I can’t say that it’s not going to cloud my judgment. I can try to be as fair as I can, as I do every day.” Thompson filed a motion to strike Leiter for cause. Should the judge grant the motion? Explain. [*Thompson v. Altheimer & Gray,* 248 F.3d 621 (7th Cir. 2001)]

**3-8.**  **Motion for Judgment *N.O.V.*** Gerald Adams worked as a cook forUno Restaurants, Inc., at Warwick Pizzeria Uno Restaurant & Bar in Warwick, Rhode Island. One night, shortly after Adams’s shift began, he noticed that the kitchen floor was saturated with a foul-smelling liquid coming from the drains and backing up water onto the floor. He complained of illness and went home, where he contacted the state health department. A department representative visited the restaurant and closed it for the night, leaving instructions to sanitize the kitchen and clear the drains. Two days later, in the restaurant, David Badot, the manager, shouted at Adams in the presence of other employees. When Adams shouted back, Badot fired Adams and had him arrested. Adams filed a suit in a Rhode Island state court against Uno, alleging that he had been unlawfully terminated for contacting the health department. A jury found in favor of Adams. Arguing that Adams had been fired for threatening Badot, Uno filed a motion for judgment as a matter of law (also known as a motion for judgment *n.o.v*.). What does a court weigh in considering whether to grant such a motion? Should the court grant the motion in this case? Why or why not? [*Adams v. Uno Restaurants, Inc.,* 794 A.2d 489 (R.I. 2002)]

**3-9. A Question of Ethics**

The state of Alabama, on behalf of a mother (T.B.), brought a paternity suit against the al­leged father (J.E.B.) of T.B.’s child. During jury selection, the state, through peremp­tory challenges, removed nine of the ten prospective male jurors. J.E.B.’s attorney struck the final male from the jury pool. As a result of these peremptory strikes, the fi­nal jury con­sisted of twelve women. When the jury returned a verdict in favor of the mother, the fa­ther appealed, asserting that the trial court erred in overruling his objec­tion to the state’s removal of potential male jurors through the use of its peremptory challenges. The fa­ther argued that the use of peremptory challenges to eliminate men from the jury consti­tuted gender discrimination and violated his rights to equal protec­tion and due process of law. The father requested the court to extend the principle enunciated in a United States Supreme Court case that prohibited peremptory strikes based solely on race, to include gender-based strikes. The appellate court, following a precedent established by the state’s supreme court, refused to do so and affirmed the lower court’s decision that J.E.B. was the child’s father and had to pay child support. [*J.E.B. v. State,* 606 So.2d 156 (Ala.App. 1992)]

**1.** Do you agree with J.E.B. that the state’s exercise of its peremptory challenges violated his right to equal protection and due process? Why or why not?

**2.** If you were the judge, how would you rule on this issue?

**3.** The late United States Supreme Court Justice Thurgood Marshall urged that peremptory challenges be banned entirely. Do you agree with this proposal? Discuss fully.