**Alternate Case Problems**

*Chapter 9*

**Capacity, Legality, and Enforceability**

**9-1. Adhesion Contracts.** Patricia Aiken suffered a heart attack and was hospital­ized at Phoenix Baptist Hospital and Medical Center, Inc. At the time of her admission, the Aikens told the hospital that they did not have the money to pay for medical care. At the same time, Patricia’s husband, Thomas, signed an agreement to pay her medical ex­penses. He did not read what he signed, no one explained the agreement to him, and he later claimed to have been so upset that he could not remember having signed anything. When the bills were not paid, the hospital filed a suit in an Arizona state court against the Aikens. The court ruled in favor of the hospital, and the Aikens appealed. They ar­gued that the agreement was an adhesion contract obtained under circumstances that made it unenforceable. Were the circumstances such that the agreement may have been unenforceable? Discuss fully. [*Phoenix Baptist Hospital & Medical Center,* *Inc. v. Aiken,* 179 Ariz. 289, 877 P.2d 1345 (1994)]

**9-2. Contracts by Minors.** Sergei Samsonov is a Russian and one of the top hockey players in the world. When Samsonov was seventeen years old, he signed a contract to play hockey for two seasons with the Central Sports Army Club, a Russian club known by the abbreviation CSKA. Before the start of the second season, Samsonov learned that because of a dispute between CSKA coaches, he would not be playing in Russia's premier hockey league. Samsonov hired Athletes and Artists, Inc. (A&A), an American sports agency, to make a deal with a U.S. hockey team. Samsonov signed a contract to play for the Detroit Vipers (whose corporate name was, at the time, Arena Associates, Inc.). Neither A&A nor Arena knew about the CSKA contract. CSKA filed a suit in a federal district court against Arena and others, alleging, among other things, wrongful interference with a contractual relationship. What effect will Samsonov’s age have on the outcome of this suit? [*Central Sports Army Club v. Arena Associates, Inc.,* 952 F.Supp. 181 (S.D.N.Y. 1997)]

**9-3. Fraudulent Misrepresentation.** In 1987, United Parcel Service Co. and United Parcel Service of America, Inc. (together known as UPS), decided to change the parcel delivery business from relying on contract carriers to establishing its own airline. During the transition, which took sixteen months, UPS hired 811 pilots. At the time, UPS expressed a desire to hire pilots who remained throughout that period with its contract carriers, which included Orion Air. A UPS representative met with more than fifty Orion pilots and made promises of future employment. John Rickert, a captain with Orion, was one of the pilots. Orion ceased operation after the UPS transition, and UPS did not hire Rickert, who obtained employment about six months later as a second officer with American Airlines, but at a lower salary. Rickert filed a suit in a Kentucky state court against UPS, claiming, in part, fraud based on the promises made by the UPS representative. UPS filed a motion for a directed verdict. What are the elements for a cause of action based on fraudulent misrepresentation? In whose favor should the court rule in this case, and why? [*United Parcel Service, Inc. v. Rickert,* 996 S.W.2d 464 (Ky. 1999)]

**9-4. Exculpatory Clause.** Norbert Eelbode applied for a job with Travelers Inn in the state of Washington. As part of the application process, Eelbode was sent to Laura Grothe, a physical therapist at Chec Medical Centers, Inc., for a preemployment physical exam. Before the exam, Eelbode signed a document that stated in part, “I hereby release Chec and the Washington Readicare Medical Group and its physicians from all liability arising from any injury to me resulting from my participation in the exam.” During the exam, Grothe asked Eelbode to lift an item while bending from the waist using only his back with his knees locked. Eelbode experienced immediate sharp and burning pain in his lower back and down the back of his right leg. Eelbode filed a suit in a Washington state court against Grothe and Chec, claiming that he was injured because of an improperly administered back torso strength test. Grothe and Chec cited the document that Eelbode signed, and filed a motion for summary judgment. Should the court grant the motion? Why or why not? [*Eelbode v. Chec Medical Centers, Inc.,* 984 P.2d 436 (Wash.App. 1999)]

**9–5. Oral Contracts.** Robert Pinto, doing business as Pinto Associates, hired Richard MacDonald as an independent contractor in March 1992. The parties orally agreed on the terms of employment, including payment to MacDonald of a share of the company’s income, but they did not put anything in writing. In March 1995, MacDonald quit. Pinto then told MacDonald that he was entitled to $9,602.17—25 percent of the difference between the accounts receivable and the accounts payable as of MacDonald’s last day. MacDonald disagreed and demanded more than $83,500—25 percent of the revenue from all invoices, less the cost of materials and outside processing, for each of the years that he worked for Pinto. Pinto refused. MacDonald filed a suit in a Connecticut state court against Pinto, alleging breach of contract. In Pinto’s response and at the trial, he testified that the parties had an oral contract under which MacDonald was entitled to 25 percent of the difference between accounts receivable and payable as of the date of MacDonald’s termination. Did the parties have an enforceable contract? What should the court rule, and why? [*MacDonald v. Pinto,* 62 Conn.App. 317, 771 A.2d 156 (2001)]

**9-6. Covenants Not to Compete.** In 1993, Mutual Service Casualty Insurance Co. and its affiliates (collectively, MSI) hired Thomas Brass as an insurance agent. Three years later, Brass entered into a career agent’s contract with MSI. This contract contained provisions regarding Brass’s activities after termination. These provisions stated that, for a period of not less than one year, Brass could not solicit any MSI customers to “lapse, cancel, or replace” any insurance contract in force with MSI in an effort to take that business to a competitor. If he did, MSI could at any time refuse to pay the commissions that it otherwise owed him. The contract also restricted Brass from working for American National Insurance Co. for three years after termination. In 1998, Brass quit MSI and immediately went to work for American National, soliciting MSI customers. MSI filed a suit in a Wisconsin state court against Brass, claiming that he had violated the noncompete terms of his MSI contract. Should the court enforce the covenant not to compete? Why or why not? [*Mutual Service Casualty Insurance Co. v. Brass,* 625 N.W.2d 648 (Wis.App. 2001)]

**9–7.** **Unconscionable Contracts or Clauses.** Roberto Basulto and Raquel Gonzalez, who did not speak English, responded to an ad on Spanish-language television sponsored by Hialeah Automotive, LLC, which does business as Potamkin Dodge. Potamkin’s staff understood that Basulto and Gonzalez did not speak or read English and conducted the entire transaction in Spanish. They explained the English-language contract, but did not explain an accompanying arbitration agreement. This agreement limited the amount of damages that the buyers could seek in court to less than $5,000, but did not limit Potamkin’s right to pursue greater damages. Basulto and Gonzalez bought a Dodge Caravan and signed the contract in blank—that is, leaving some terms to be filled in later. Potamkin later filled in a lower trade-in allowance than agreed and refused to change it. The buyers returned the van—having driven it a total of seven miles—and asked for a return of their trade-in vehicle, but it had been sold. The buyers filed a suit in a Florida state court against Potamkin. The dealer sought arbitration. Was the arbitration agreement unconscionable? Why or why not? [*Hialeah Automotive, LLC v. Basulto,* 22 So.3d 586 (Fla.App. 3 Dist. 2009)]

**9–8. Contract Involving Interests in Land.** Mohammad Salim offered to sell a convenience store and gas station to Talat Solaiman and Sabina Chowdhury. The prospective buyers drafted a “Purchase Agreement” that described its object as “the property and business known as BP Food Mart” at a specific address. The parties signed the agreement. Later, the buyers wanted out of the deal. Is the property description sufficient for the seller to enforce the agreement? Explain. [*Salim v. Solaiman,* 302 Ga.App. 607, 691 S.E.2d 389 (2010)]

**9–9. Mutual Mistake.** When Steven Simkin divorced Laura Blank, they agreed to split their assets equally. They owned an account with Bernard L. Madoff Investment Securities estimated to be worth $5.4 million. Simkin kept the account and paid Blank more than $6.5 million—including $2.7 million to offset the amount of the funds that they believed were in the account. Later, they learned that the account actually contained no funds due to its manager’s fraud. Could their agreement be rescinded on the basis of a mistake? Discuss. [*Simkin v. Blank,* 80 A.D.3d 401, 915 N.Y.S.2d 47 (1 Dept. 2011)]

**9-10. A Question of Ethics**

Dow AgroSciences, LLC (DAS), makes and sells agricultural seed products. In 2000, Timothy Glenn, a DAS sales manager, signed a covenant not to compete. He agreed that for two years from the date of his termination, he would not “engage in or contribute my knowledge to any work or activity involving an area of technology or business that is then competitive with a technology or business with respect to which I had access to Confidential Information during the five years immediately prior to such termination.” Working with DAS business, operations, and research and development personnel, and being a member of high-level teams, Glenn had access to confidential DAS information, including agreements with DAS's business partners, marketing plans, litigation details, product secrets, new product development, future plans, and pricing strategies. In 2006, Glenn resigned to work for Pioneer Hi-Bred International, Inc., a DAS competitor. DAS filed a suit in an Indiana state court against Glenn, asking that he be enjoined from accepting any “position that would call on him to use confidential DAS information.” [*Glenn v. Dow AgroSciences, LLC,* 861 N.E.2d 1 (Ind.App. 2007)]

**1.** Generally, what interests are served by enforcing covenants not to compete? What interests are served by refusing to enforce them?

**2.** What argument could be made in support of reforming (and then enforcing) il­legal covenants not to compete? What argument could be made against this prac­tice?

**3.** How should the court rule in this case? Why?