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BUL2241

February 1, 2026

Module Two Hypothetical

In the matter of Smith v. Frank's Fabulous Falsies, the clause in the contract that is regarding binding arbitration is an unconscionable contract provision as the terms for the binding arbitration are one sided and are in favor of Frank's Fabulous Falsies. This is evident by the requirement for the arbitration hearing to take place in Minnesota, when the other party, Smith, is a resident of Florida. Additionally, there are noted repercussions to the plaintiff if they decide to dispute with Frank Fabulous Falsies's attorney's fees and costs to be paid for by the plaintiff and for there to be an automatic fee to the plaintiff of one thousand dollars ($1,000.00), both of which are put in place to deter the plaintiff to dispute in the first place, this is an unfair advantage to the benefit of Frank's Fabulous Falsies. The binding arbitration clause within the contract did not state how the arbitrator would be selected, and there will be no option to appeal the decision of the arbitrator once there has been a decision made. On top of the details of binding arbitration clause being unfair, the arbitrator selected for the hearing was not a neutral party as the arbitrator was friend of Frank, of Frank's Fabulous Falsies. With the facts stated, the court should find the binding arbitration clause unconscionable, and not enforceable.

Reference

Dynamics of Business Law: The Essentials, Chapter Three – The U.S. Legal System and Alternative Dispute Resolution