

MY CAR IS A LEMON! USE OF THE BETTER BUSINESS BUREAU'S *AUTO LINE* PROGRAM AS A PEDAGOGICAL MODEL OF ADR

by

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INTRODUCTION

Understanding of Alternative Dispute Resolution (ADR) has become increasingly relevant and important to the undergraduate business major. Often, theoretical descriptions of the differences between arbitration, mediation, and negotiation and all of the variants within those categories are difficult for students in an introductory business law course to grasp. Moreover, the basic processes involved in ADR may be more unfamiliar to students than the litigation process. The Better Business Bureau's (BBB's) *Auto Line* dispute resolution program is an informal arbitration proceeding between customers with vehicle warranty complaints and the vehicle manufacturers.¹ A mock *Auto Line* arbitration conducted in class can serve as a clear, effective pedagogical model of one type of ADR. Since *Auto Line* also incorporates elements of mediation and negotiation, it can further serve as a springboard into discussion of other ADR methods by comparison. Lemon Law cases are familiar to many students due to advertising in the media with catchy jingles by lemon law attorneys, e.g., "Call 1-800-Lemon Law!" Vehicle problems and "horror stories" are familiar to anyone owning or driving a vehicle.

This paper first explains the BBB's *Auto Line* arbitration procedure and the legal framework supporting vehicle warranty arbitration through the program. Resources for use in class, including references to the *Auto Line* website, are noted. Next, a mock "lemon law" arbitration is proposed and explained for utilization in a typical undergraduate business law course. Appendices contain the basic guidelines for the participants as well as suggested questions for assignment or discussion.

OVERVIEW OF THE *AUTO LINE* PROGRAM

The *Auto Line* Program was established by the Council of Better Business Bureaus in 1978. It is, according to the BBB, "the nation's oldest and most respected auto warranty dispute resolution program."² The Better Business Bureau's *Auto Line* Program is a nationwide arbitration program for the resolution of consumer/manufacture vehicle disputes. Manufacturers who participate in the program have contractually committed to arbitrate consumer disputes related to their vehicle warranties.³ Twenty-five "makes" of vehicles are currently participating nationwide in the program, and several additional makes are participating in some, but not all states. General Motors, Honda, Ford, and Nissan are among the nationwide participants in *Auto Line*. Major manufacturers which do not currently participate in *Auto Line* are Chrysler and Toyota.⁴

Once a vehicle owner files a "Customer Claim Form", the manufacturer is notified. At this point, the manufacturer may propose a settlement, either directly to the consumer, or through a BBB "Dispute Resolution Specialist". If no settlement is reached, the case will proceed to arbitration. Therefore, the *Auto Line* process may involve any or all of the major categories of ADR: negotiation/conciliation, mediation, and finally, arbitration.⁵

If the parties are unable to reach a settlement and the dispute proceeds to arbitration, the BBB selects a certified arbitrator⁶ from its list, requests additional documentation from the parties, and schedules a date for arbitration.⁷ One interesting aspect of *Auto Line* arbitration is that the proceeding is "conditionally" binding": this means that the decision of the arbitrator is binding on the vehicle manufacturer, but non-binding on the customer. The customer has the option of either accepting or rejecting the decision of the arbitrator. If the decision is accepted, the parties must comply with the decision.⁸ If a consumer disagrees with the decision of the arbitrator, he may pursue legal remedies including any civil claims pursuant to state lemon law.

The arbitration hearing is held at the BBB office closest to the consumer. The hearing is not as formal as a trial in the courtroom, but the testimony is audio recorded. The arbitrators are instructed on the applicability of rules of evidence as follows: "There are no formal rules of evidence. Any form of evidence is acceptable. However, you may curb evidence that is repetitious or irrelevant."⁹ Either party is permitted representation; the representative may, but is not required to be, an attorney.¹⁰ Both sides are permitted to present their case and any rebuttal. Where appropriate, the arbitrator will inspect and/or test drive the subject vehicle. Most hearings take approximately 2 hours or less.

Within 48 hours of the close of the hearing and collection of evidence, the arbitrator must submit a written decision. The decision must include the reasons supported by the evidence and the documentation. The arbitrator must further consider the "Program Summary"¹¹ of the manufacturer, which incorporates the warranty terms and in some cases, lemon law standards. The arbitrator must initially determine if the claim meets requirements for eligibility under the Program Summary. In the decision¹² the arbitrator may find for the vehicle manufacturer or for the consumer. Remedies available to the consumer are repair of the vehicle, repurchase of the vehicle by the manufacturer, or replacement of the vehicle. The

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arbitrator may issue an interim decision in some cases to allow the manufacturer a chance to repair the problems alleged. Sometimes, the arbitrator may request that a Technical Expert (contracted with the BBB) inspect the vehicle and submit a report prior to rendering a final decision.¹³

In 2007, out of the Auto Line cases arbitrated,¹⁴ 56.1% resulted in a denial of relief to the customer, 33.1% resulted in a repurchase/replacement decision, 40.5% ordered repair, and 18.3% ordered reimbursement to the customer.¹⁵

Two Montana attorneys who serve as volunteer arbitrators summarized the success of the Auto Line program as follows:

“The BBB Auto Line Program is a proven and time tested dispute resolution mechanism that uses trained, volunteer arbitrators to provide effective, fast and inexpensive dispute resolution to consumers with automobile complaints. The BBB program helps courts to ease burgeoning case loads and crowded calendars. The program enables arbitrators to make significant service to their communities, to make meaningful contributions to the quality of life in those communities and to know firsthand the satisfaction of an important job well done.”¹⁶

LEGAL FRAMEWORK OF AUTO LINE ARBITRATION

Auto Line arbitrations are governed by a combination of Federal law and rules, state lemon laws, and the warranty requirements of the Program Summary (discussed in the previous section). In class, a brief explanation of lemon laws, federal warranty law, and FTC rules (administrative law) will reinforce the interaction of multiple sources of law on one issue, in this case, motor vehicle warranty arbitration. Specifically, the Auto Line arbitration process is supported by the Magnuson-Moss Warranty Act, FTC Rule 703, and state lemon laws.

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act of 1975¹⁷ encourages warrantors to create informal dispute settlement procedures “whereby consumer disputes are fairly and expeditiously settled.”¹⁸ Magnuson-Moss provides for implementation of informal dispute resolution by allowing warrantors to incorporate dispute resolution procedures into their written warranties.¹⁹ The Federal Trade Commission is directed to establish minimum standards for any “informal dispute settlement mechanism” (IDSM).²⁰ As a result, the FTC promulgated Rule 703.²¹

FTC Rule 703

The most important aspect of FTC Rule 703 with regard to consumer (and specifically vehicle) warranty arbitrations is that the arbitration decision must be non-binding on the consumer; hence, the “conditionally binding” status discussed above is created (the decision is binding on the manufacturer, but not the consumer).²² Interestingly, Rule 703 only applies to manufacturers who in their warranties *require* consumers to use a dispute resolution program before exercising any legal rights under Magnuson-Moss. Most automobile manufacturers have elected not to operate IDSMs under Rule 703.²³ However, the rule remains applicable to vehicle warranty claims because most state lemon laws require informal dispute resolution in compliance with FTC Rule 703.²⁴

State Lemon Laws

Every state in the United States has enacted some type of automobile Lemon Law. Lemon laws contain the standards for consumer eligibility, and provide specific remedies for consumers in the event a manufacturer cannot correct a defect in a vehicle after a reasonable number of attempts. State lemon laws further outline the procedural requirements for relief, such as notice requirements.²⁵ Pennsylvania’s lemon law²⁶, similar to those in other states, is summarized at Appendix B; however, any state’s lemon law may be utilized for classroom discussion. The Better Business Bureau’s Auto Line website provides summaries of every state’s lemon law by use of a “drop-down” menu.²⁷

Some, but not all, automobile manufacturers incorporate lemon law standards into their warranties. If the lemon law is incorporated, the time for replacement or repurchase of the nonconforming vehicle is limited to a shorter period of time (12 months or 12,000 miles) and warranty repairs are covered for a longer time (for example, 3 years or 36 months). However, even if the lemon law is not incorporated into the warranty and Program Summary, the Auto Line arbitrator must take the lemon law standards into consideration if raised by the consumer.²⁸

Initially, a vehicle must be considered eligible for relief under a lemon law. Most state lemon laws limit consumers’ rights by the time and/or mileage on the new or newly leased vehicle, for example, within the first 12,000 miles or within a specified period of time.²⁹

Next, a vehicle problem considered initially eligible under most state lemon laws must qualify as a “nonconformity.” A nonconformity is commonly defined under lemon law statutes as a defect or condition which “‘substantially impairs’ the ‘use, value or safety’³⁰ of the vehicle.”³¹ Thus, an arbitrator must consider “substantial impairment” as a result of a defect or condition. It should be noted that substantial impairment is not limited to mechanical defects or drivability; sometimes substantial cosmetic defects or problems with interior accessories can be found substantial enough to constitute a nonconformity.

Once a nonconformity is found, the manufacturer (through a dealer) must have had “a reasonable number of attempts” to repair the nonconformity and not done so. The Pennsylvania lemon law creates a presumption of reasonable number of attempts if:

- (1) “the same nonconformity has been subject to repair three times by the manufacturer, its agents or authorized dealers and the nonconformity still exists; or
- (2) the vehicle is out-of-service by reason of any nonconformity for a cumulative total of 30 or more calendar days.”³²

Finally, if the manufacturer can show that the nonconformity is the result of the consumer’s abuse, neglect or modification of the vehicle, the consumer is not entitled to remedies under state lemon laws.³³ The Auto Line Arbitrator’s Manual refers to this as a type of “affirmative defense” available to the manufacturer.³⁴

State lemon laws such as Pennsylvania’s contain mileage allowances to be deducted from the value of a vehicle if a replacement or repurchase decision is awarded;³⁵ however, for purposes of a classroom exercise, it would be sufficient to give the class three options available as consumer remedies: repair, replacement with a comparable vehicle, or repurchase of the vehicle by the manufacturer.

THE CASE FOR USE OF AN INTERACTIVE CLASSROOM ARBITRATION EXERCISE

In *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*³⁶ Lampe asserts that traditional methods of teaching business law topics need to be updated for 21st century business majors. As an example, Lampe offers as part of this “new paradigm” that various ADR topics (mediation, arbitration and minitrials) be “expanded from their typically miniscule coverage.”³⁷ The instruction of students is geared towards “empowerment”: “Empowerment means students know what steps to take to prevent disputes from arising and can make educated choices about resolving conflict. Empowerment is about providing students with the ability and confidence to take greater control of the processes of conflict avoidance and resolution than is typically the norm.”³⁸

Teaching business students ADR and negotiation skills often involves the use of textbooks which heavily rely upon case law to reinforce points. Additionally, some business law textbooks insert methods of ADR as an “afterthought” and do not explore the topic in depth. Lampe’s discussion of a movement away from traditional methods of teaching business law topics (which rely upon opinions and a “legalistic” approach)³⁹ towards practical relevant delivery of the material needed for today’s future businessperson supports the arbitration model presented here. Students will have the opportunity to interact, to improvise, and to participate. Even those in the class not directly playing a role in the arbitration will have the opportunity to observe, comment, and decide the case. In larger classes, use of this “fishbowl technique” to teach arbitration will allow even the non-involved class members to comment and observe from a more “objective or detached standpoint” and make valuable contributions to the discussion.⁴⁰ Use of practical, real-world examples can engage the more “marginal students” and “reinforce the dedication of the serious students.”⁴¹

The arbitration exercise outlined below presents enhanced learning on the more complex levels of Bloom’s Taxonomy.⁴² Participating in an arbitration based on a real-life situation moves the students from the more passive learning levels of knowledge and comprehension to the more active learning involving application, analysis, synthesis, and evaluation.⁴³ In other words, lecturing and reading about ADR has its place, but adding an interactive, student-centered learning experience after a brief lecture or reading assignment can “raise the bar” for effective teaching of a sometimes complex subject.

EXPLANATION OF THE LEMON LAW ARBITRATION CLASSROOM EXERCISE

The lemon Law/vehicle warranty arbitration exercise has three roles which need to be assigned to class members: the consumer, Pat Walker; the manufacturer’s representative, Alex Rodriguez; and the arbitrator, Jordan McBride.⁴⁴ Each of the three participants receives a summary⁴⁵ of the position of the parties, the repair schedule, and a summary of the state lemon law, included herein under the appendices. Since actual Auto Line arbitration participants and arbitrators are familiar with the positions of each other prior to the hearing, providing the participants with the positions of the other side is realistic.⁴⁶ In classes in which volunteers for the roles are not forthcoming, it may be suggested as a motivation that the “actors” will not have to submit a written decision and reasons like the observers. The three participants may be given their summaries in advance (perhaps the preceding class period) in order to prepare for the arbitration. Alternatively, should the instructor prefer more improvisation and less “canned” preparation, the summaries may be handed to the participants on the day of the exercise.

The remainder of the class will be assigned the task of observing the arbitration hearing, submitting a written decision consisting of a paragraph or two, and participating in the subsequent discussion. The observers should receive the repair history and lemon law summary, but not the positions of the parties. Their decisions should be based upon their observation of the participants and their testimony instead of reading the script. Thus, there are many “arbitrators” who may enter differing decisions based upon the facts presented. The reasons why observers reached their decisions can be the subject of discussion following the exercise.

The physical layout of the exercise is simple. A table with three chairs, situated in a part of the classroom which is visible and audible to all is sufficient. Visual aids, such as photos of a vehicle, or a timeline of the repair history, may be added, if desired.

Prior to commencement of the arbitration, it is suggested that the instructor introduces the Auto Line arbitration procedure and summarizes the legal framework.⁴⁷ This is an excellent point to show the class the Auto Line website and resources contained there. The homepage for Auto Line has a link for consumers to file vehicle complaints online, which can be demonstrated.⁴⁸

The instructor should briefly state the “ground rules” for the exercise by summarizing the roles of the parties and the roles of the remainder of the class as observers and “co-arbitrators.” The learning objectives and expectations for participation of the class should be conveyed.

The student playing the role of arbitrator begins the exercise by instructing the parties on the procedure and evidence, as stated in Appendix A. The consumer then presents his/her facts, followed by the manufacturer. Next, there is an opportunity for rebuttal by both parties and follow-up questions by the arbitrator.⁴⁹ In the arbitration exercise presented a test drive and results are included and announced by the arbitrator.⁵⁰ The classroom time used by the arbitration is flexible and depends on the needs of the instructor. Even ten or fifteen minutes may be sufficient to convey the essential facts and issues.

After presentation of the evidence, the rebuttal, and test drive, the class is asked to make a decision either for the consumer or for the manufacturer, taking into consideration the lemon law standards. The decision may be submitted in writing, as part of a discussion, or by a poll, such as “show of hands”.⁵¹ Specifically, the class must decide if there is a nonconformity which “substantially impairs the use, value or safety” of the vehicle. If the participants find for the consumer, which remedy would they choose? Additional discussion questions are included in Appendix D. These questions can be assigned in written form or discussed during the following class period.

CONCLUSIONS

As business law faculty we have the responsibility to teach business majors the effectiveness of ADR to resolve disputes.⁵² While traditional methods of teaching ADR certainly have their place, the addition of creativity and interaction can enhance the learning experience. Learning methods and uses of ADR is becoming increasingly important for today’s undergraduate business major. Explanation and demonstration of an ADR procedure through the use of this lemon law arbitration exercise can generate attention, interest, excitement (and even humor) into the lesson. The Better Business Bureau’s Auto Line Arbitration program offers an excellent model for this interactive learning exercise, and the BBB’s website offers additional resources for use by the instructor, including state specific cases and laws. Finally, with some modification (and inspiration), the arbitration exercise presented here may be customized to many types of classroom situations and dispute resolution topics.

APPENDIX A: Parties in the lemon law vehicle arbitration, their respective positions, and results of test drive (provided to 3 participants in arbitration):

1. **PAT WALKER:** Pat is the owner of a United Motors “Electron” sedan, the newest hybrid model introduced by United Motors. The vehicle was purchased nine months prior to the date of the arbitration for a price of \$18,500 from a local dealer. At the time the claim for arbitration was filed, the vehicle had 8755 miles on the odometer. As stated in the Repair History, the car has been returned to the dealership for service on several occasions. Pat maintains that the most serious problem developed recently. When accelerating while climbing a hill, the car seems to “lose all power” and hesitate. At times, Pat cannot accelerate beyond 40 mph on the interstate. The problem is intermittent, and when Pat brought the vehicle in for service for the hesitation, the dealer told him that everything checked out fine. Pat maintains that the hesitation problem continues to occur. Other issues with the vehicle which were serviced are indicated in the Repair History. These are a loose rearview mirror, paint chipping off the radio knobs, and a problem with the air conditioning/defroster system. These problems were repaired by the United Motors dealership where Pat purchased the vehicle. Pat agrees that the proper repairs have been made for all of the issues except the hesitation. Nevertheless, Pat maintains the vehicle is a lemon, because it was brought in for service on five separate occasions in the span of nine months. Pat is requesting that the dealership replace or repurchase the vehicle as provided in the state lemon law and manufacturer’s warranty.
Pat disputes United Motor’s claim that the vehicle is improperly maintained. The scheduled oil changes were performed by a friend at home.
2. **ALEX RODRIGUEZ:** Alex is the regional representative for United Motors, Inc. in charge of customer warranty claims. As part of the job, Alex must attend and represent the manufacturer at arbitrations involving warranty and lemon law claims. Alex has discussed the case with the Service Department Manager of the dealership which serviced Pat Walker’s Electron, and maintains that the hesitation issue can be repaired if Walker would have allowed them to keep the vehicle for several days. The dealership

further alleges that the mechanical problem which is the subject of the complaint could be due to improper maintenance of the vehicle by Walker. Walker has not had routine maintenance performed as required by the manufacturer, such as frequent oil changes suggested for newer vehicles. United Motors is requesting an opportunity to repair the hesitation problem, and states that the additional problems brought in for repair have been resolved to the customer's satisfaction. United Motors asserts that the problems (other than the hesitation) are not major nonconformities, but matters of cosmetics and comfort.

3. JORDAN McBRIDE: Jordan is a local attorney who volunteers as an arbitrator for automobile warranty/lemon law cases. Jordan's job during the arbitration is to instruct the parties on the procedure, the rules of evidence, to test drive the vehicle, and afterward, to render a written decision based upon the evidence presented. Jordan is to keep the arbitration moving and to exclude any repetitive or irrelevant material. Jordan is to remain fair, impartial and neutral in treatment of the parties. Jordan needs to instruct the parties as follows at the commencement of the arbitration:
 - A. Welcome the parties, introduce yourself;
 - B. Explain that the hearing will be recorded;
 - C. Make sure the parties have signed the affirmation/oaths statement;
 - D. Ask the parties to demonstrate courtesy towards each other;
 - E. Explain that you may curb irrelevant or repetitious testimony;
 - F. Explain that the decision is "conditionally binding," that is, it is binding on the manufacturer, but not the consumer, who can choose to exercise additional legal remedies;
 - G. Explain that a written decision will be sent to the parties within 72 hours.

4. PROCEDURE FOR THE HEARING: The consumer (Pat Walker) presents testimony, followed by the manufacturer's representative (Alex Rodriguez). Then, each party has the opportunity to rebut points which were raised by the other. Finally, the arbitrator may question the parties for clarification on any points. The vehicle is inspected and drive in the presence of the consumer and the manufacturer's representative. At the conclusion of the hearing the arbitrator thanks the participants and announces that a decision will be forthcoming.

5. RESULTS OF TEST DRIVE: Jordan inspects and test drives the vehicles in the presence of both parties. The vehicle is driven on city streets and the highway for approximately 20 minutes in an attempt to replicate the hesitation. Jordan detected an initial hesitation on two hills at speeds of 45-50 mph, but the vehicle did eventually get to 55-60 mph on the incline. This result is announced to the class and the parties at the end of the arbitration.

APPENDIX B: Repair history of Walker's 2008 United Motors Electron (provided to entire class and participants):

1. October 8, 2007: Vehicle purchased new by Pat Walker for \$18,500.
2. October 23, 2007: Vehicle brought in for service-windshield defroster not working properly. Problem related to air conditioning system. Repaired by dealer. Covered under new vehicle warranty.
3. December 2, 2007: Vehicle brought in for service. Complaints:
 - a. Paint flaking off knobs on radio. Knobs replaced. No charge to customer.
 - b. Fan on defroster/air conditioner vibrating. Screws tightened in unit, problem resolved.
 - c. Customer declines routine maintenance (checking belts, changing oil).
4. February 17, 2008: Vehicle brought in for service. Rearview mirror loose; will not stay in position. Mirror re-glued to windshield.
5. April 21, 2008: Vehicle brought in for service. Customer claims vehicle hesitates occasionally when traveling up an incline and accelerating rapidly. At times, vehicle cannot go past 40mph. Diagnostic tests run, test drive performed. Unable to replicate problem; all diagnostic tests fine.
6. May 4, 2008: Vehicle brought in for service. Customer complains vehicle hesitates when accelerating up hill to higher speeds. Advise customer that vehicle needs to remain in service area for up to 2-3 days to run additional tests and tear apart fuel system. Customer declines.
7. May 10, 2008: Customer files claim form with Better Business Bureau's Auto Line Dispute Resolution Program. After settlement is attempted and not reached through the dispute resolution specialist, the case is scheduled for arbitration on June 28, 2008. Parties are required to submit documentation supporting their claims.

APPENDIX C: Summary of state lemon law (Based on Pennsylvania Statute-provided to class and participants):

Eligible Vehicles: Newly purchased or leased vehicles sold and registered in the Commonwealth of Pennsylvania. Vehicle must be used or leased primarily for personal or family use.

Repair Obligations: Manufacturers of new motor vehicle must repair and correct, at no cost to the purchaser, “a nonconformity which substantially impairs the use, value or safety” of the vehicle.

Eligible Time Period: Nonconformities which occur within a period of one year of delivery of the vehicle, or within the first 12,000 miles of the use of the vehicle, whichever occurs first.

Repair or Replacement Obligations: If the manufacturer fails to correct a nonconformity after “a reasonable number of attempts,” the manufacturer shall, at the option of the purchaser, replace the vehicle or refund the full purchase price, less an allowance for mileage on the vehicle.

Presumption of “reasonable number of attempts”: If the same nonconformity 1) has been subject to repair three times and not repaired; or 2) if the vehicle is out of service for any repair “for a cumulative total of 30 or more calendar days”, it is presumed that a reasonable number of repair attempts have been made by the manufacturer.

Informal Dispute Settlement Procedure: If the manufacturer has established an informal dispute settlement procedure which complies with federal law, the consumer must first resort to the non-binding procedure prior to pursuing a civil cause of action under the lemon law.

APPENDIX D: Discussion Questions:

1. How did you decide? Why? Did you find it difficult to make a decision for one party or the other?
2. Did you feel biased towards one side or the other? As an arbitrator, how would you handle those feelings?
3. What are some facts which were presented during the arbitration which support your decision?
4. Is there additional information you would like to have heard before you made your decision?
5. What were some questions you would have asked the parties if you were the arbitrator?
6. Another option available to arbitrators an actual Auto Line arbitration is the ordering of an inspection by a Technical Expert, who issues a report to the arbitrator to assist in making a decision. Would you have ordered a technical expert’s report? What would you have requested that the Technical Expert examine on the vehicle?
7. Re-read the Lemon Law Summary (or the lemon law in your state). What are some examples of non-conformities in your opinion? What does it mean for a defect to substantially impair the “use, value, or safety” of a vehicle? Can a cosmetic defect, like body paint, be serious enough to constitute nonconformity?
8. Regarding the process of Auto Line arbitration: Do you believe it is productive and cost-saving, or a waste of time in light of the fact that the decision is “non-binding” on the consumer? Should this case have reached a settlement before resorting to the arbitration procedure?
9. Alternative Dispute Resolution (ADR) is utilized in many business disputes and often inserted into contracts as a requirement prior to initiating litigation. Do you believe that mandatory ADR is a positive or negative? Does limiting access to the civil courts restrict our rights? Does it actually save time and money?
10. Which of the other methods of ADR (negotiation, mediation, mini-trial) would have been appropriate in this case?
11. What is your opinion about this exercise as a method of explaining arbitration?

FOOTNOTES

¹ The author is a certified Auto Line arbitrator for Better Business Bureau of Eastern Pennsylvania.

² Better Business Bureau’s Auto Line Home Page, <http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=008c749a-0b-40ed-9be1-65db5886a6fd> (last visited May 12, 2008).

³ Council of Better Business Bureaus, Inc., BBB AUTO LINE STATE LEMON LAW TRAINING MANUAL, Section 1.

⁴ BBB’s Auto Line Home Page, *supra*.

⁵ Council of Better Business Bureaus, *supra* at 1-3.

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- ⁶ The pool of certified arbitrators consists mainly of attorneys and experienced arbitrators, however, professionals from “non-legal” disciplines are included as well. Arbitrators attend a two day training program and are required to submit a sample decision based on hypothetical facts prior to certification. The position is considered “volunteer,” however; a small honorarium is paid for expenses. *See* Council of Better Business Bureaus, *supra* at 1-2.
- ⁷ As an alternative, the arbitration may be conducted by telephone, or the parties may present their cases in writing. *See, Practice Tips, Handling Better Business Bureau Vehicle Claims*, 28 L.A. LAWYER 19 (2005).
- ⁸ Pursuant to FTC Rule 703, 16 C.F.R 703.1 *et seq.*, arbitrations must be non-binding on the consumer. Further discussion of the applicability of Rule 703 to the Auto Line process is discussed in “Legal Framework of Auto Line Arbitration,” *infra*.
- ⁹ Council of Better Business Bureaus, *supra* at 2-2.
- ¹⁰ *Id.*
- ¹¹ The Program Summary is the contractual commitment between the BBB and the manufacturer to arbitrate claims falling within its parameters. *Id.* at 3-1.
- ¹² Decisions and reasons in support of the decision are submitted by arbitrators onto a secure online site.
- ¹³ Council of Better Business Bureaus, *supra* at 2-31.
- ¹⁴ Only 15.1% of cases commenced by contact with the BBB culminated in arbitration. The majority, 41.1%, ended with “claim packets sent & not returned.” 2007 BBB Arbitration Statistics, <https://www.auto.bbb.org/scripts/cgiip.exe/WService=wsbroker1/stats/arbstats.w> (last visited May 14, 2008).
- ¹⁵ *Id.*
- ¹⁶ Leslie Halligan and Dale Mrkich, *When the Auto Industry Makes a Lemon, Arbitrate*, 23 MONT. LAWYER 13, at 15, (1998).
- ¹⁷ 15 U.S.C. §2301 *et seq.*
- ¹⁸ *Id.* at §2310(a)(1).
- ¹⁹ *Id.* at § 2310(a)(3).
- ²⁰ Interestingly, even though Congress refers to “informal dispute settlement procedures” in Magnuson-Moss, they are not specifically defined. The power to oversee implementation of Magnuson Moss was delegated to the Federal Trade Commission, which coined the term “IDSM’s”. *See* Shannon Karla, *Recent Developments: Koons Ford of Baltimore, Inc. v. Lobach*, 23 OHIO ST. J. ON DISP. RESOL. 421 at 424 (2008).
- ²¹ 16 C.F.R. 703.1 *et seq.*
- ²² “Decisions of the Mechanism [IDSM] shall not be legally binding on any person,” but the warrantors are required to act “in good faith” in determining whether to abide by the IDSM. Hence, it can be argued that since the warrantors created the IDSM, they must agree to be bound to act in good faith. 16 C.F.R. 703.2(g), 703.5(j). *See* Karla, *supra*.
- ²³ *See* 54 Fed.Reg. 21070, *Advance Notice of Proposed Rulemaking, Rule 703 Review*, May 16, 1989.
- ²⁴ *See, e.g.*, 73 PA. CONS. STAT. §1959 (Pennsylvania’s lemon law), referring to an “informal dispute settlement procedure which complies with the provisions of 16 CFR Pt. 703.”
- ²⁵ *Learn More About State Lemon Laws*, <http://us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=37161749-4dce-4260-808d-8182f4e4a949> (last visited May 13, 2008).
- ²⁶ 73 PA. CONS. STAT. § 1951 *et seq.*
- ²⁷ *Learn More about State Lemon Laws, Id.*
- ²⁸ Council of Better Business Bureaus, *supra* at 4-2.
- ²⁹ *See* 73 PA. CONS. STAT §1954(A).
- ³⁰ Some lemon law statutes make these criteria joint requirements, i.e., use, value, *and* safety must be substantially impaired. *See* Council of Better Business Bureaus, *supra* at 4-3.
- ³¹ *Id.*
- ³² 73 PA. CONS. STAT. §1956.
- ³³ *See, e.g.*, 73 PA. CONS. STAT. §1955.
- ³⁴ Council of Better Business Bureaus, *supra* at 4-3, 4.
- ³⁵ *See, e.g.* 73 PA. CONS. STAT. §1955, which deducts a “reasonable allowance for the purchaser’s use of the vehicle not exceeding 10 cents per mile driven or 10% of the purchase price of the vehicle, whichever is less.”
- ³⁶ Marc Lampe, *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*, 23 J. LEGAL STUD. EDUC.1 (2006).
- ³⁷ *Id.* at 6.
- ³⁸ *Id.* at 7.
- ³⁹ *Id.*
- ⁴⁰ Paul M. Secunda, “*Arasoi O Mizu Ni Nagasu*” or “*Let the Dispute Flow to Water*”: *Pedagogical Methods for Teaching Arbitration Law in American and Japanese Law School*, 21 OHIO ST. J. ON DISP. RESOL. 687, at 715 (2006).
- ⁴¹ *See* M.P. “Marty” Ludlum, *Invite the Magic of Siegfried and Roy into your Torts Discussion*, J. LEGAL STUD. EDUC. 107, at 126.

⁴² See Lucille M. Ponte, *The Case of the Unhappy Sports Fan: Embracing Student-Centered Learning and Promoting Upper-Level Cognitive Skills Through an Online Dispute Resolution Simulation*, 23 J. OF LEGAL STUD. EDUC. 169 (2006). for additional comments on “student centered learning” and the use of an online dispute resolution exercise to enhance “upper –level cognitive skills.” *Id.* at 170.

⁴³ E. Cruz, *Bloom's revised taxonomy*, ENCYCLOPEDIA OF EDUCATIONAL TECHNOLOGY, San Diego State University, <http://coe.sdsu.edu/eet/Articles/bloomrev/start.htm> (last visited May 14, 2008).

⁴⁴ The fictional names selected are “gender neutral;” the instructor may wish to use the actual names of the class participants instead to reinforce collegiality in the class.

⁴⁵ A summary of the facts and positions of the parties, rather than a “script” is suggested to allow for improvisation and a more natural scenario. The students who participate in the roles may be instructed to use the summary as a guideline for their testimony.

⁴⁶ Alternatively, the positions of the parties may be withheld from the arbitrator and the opposing party with “secret instructions.” See *Secunda, supra* at 714.

⁴⁷ A brief explanation of a state’s lemon law can serve as an example of a statute as a source of law and how statutory law is used in the legal process as a means to protect the public.

⁴⁸ An additional aspect of the “new paradigm” for business law students is the knowledge of “self-help law”, which is essential for students’ business and personal lives. Lampe, *supra* at 14. Reference to the complaint procedure on the Auto Line website is an excellent example of a method for consumers to utilize self-help online to gain access to ADR.

⁴⁹ BBB Auto Line has established this particular format for the arbitration hearing “in order to ensure a consistent process for all participants.” Council of Better Business Bureaus, *supra* at 2-19.

⁵⁰ In an actual Auto Line arbitration, the results of the test drive and the observations are not announced until the decision; but since the class is acting as arbitrators, it is appropriate to indicate whether the mechanical problem alleged by the consumer was replicated.

⁵¹ An effective method to poll a class in this situation would be through the use of the PRS (Personal Response System), commonly known as the “classroom clicker.” If the students enter their decision into the remote radio frequency device, the results can be graphed on the instructor’s computer, projected to the class, and discussed.

⁵² Lampe, *supra* at 24.