

15.617, Spring 2004
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Lecture 5: 2/18/04

No readings.

Agreement
Consideration
Intent
Capacity
Formalities
Legal Purpose

Did she have the power to bind the banks?

- Credit line for \$500,000
- You would get credit, b/c she's an agent who has authority, but she actually had APPARENT authority.
- You can rely on the agent's APPARENT authority.
- But with the Fed Ex example, it's different.
- Called "distinguishing the cases": one principle is unique to one case,
- Not many.
- You shouldn't have trusted the Fed Ex employee. He is not in the business to sell vans or computers.
- Therefore, you can rely on agent's apparent authority, but ONLY REASONABLY.
- If corporation wants to sell substantially all of its assets, it needs to get permission from shareholders or Board of Directors. (One doesn't have the capacity to do this)

BUYER:

- Risk averse. How does he figure out if seller has capacity to sell the factory?
- Try to figure out if it will have an impact? Factors? Sales? Financial Matters?
How do you find out about these things?
 - 1.) Get access to information about, due diligence → look at files.
 - 2.) But, what happens if the company doesn't have that many records, and you are scared to go to the seller (you don't trust him)
 - 3.) Ask for certain kinds of statements/premises in the documents. But you have the problem that you are still taking risks.
 - 4.) Objective Third Party opinion.
 - 5.) I want seller to say to its law firm, "Write a letter addressed to the buyer".
It's called an OPINION LETTER.
 - i. It says, "No outstanding taxes, etc"
 - ii. CEO has capacity to do the deal

- iii. Therefore, you want Seller's law firm to say, "Based on investigations, we represent to you that CEO has capacity to do this deal."
- iv. This law firm will be conservative
- v. If all steps are clean, you can do the deal.

Formalities:

Penzoil.

What is the purpose of formalities?

- 1.) Gives specifics/evidence
 - 1.) Intent to bound/clear line

Getty Case:

Texaco vs. Penzoil.

- Penzoil claims that Getty made an agreement to sell the company to Penzoil.
 - Announced to public
 - Texaco offers a better offer, and Getty takes it.
 - Penzoil claims that Getty and them had a contract
 - Texaco may be liable for damages
 - Key Question: Was there a binding agreement?
 - If the parties intended to have a contract before the signing maybe there was a deal.
 - How does the court decide if the jury was right?
 - What does the court look at? → Look at page 63, last full paragraph.
 - Court says, "Was there partial period that the party disclaiming the contract accepted?"
 - Penzoil says start period, I was hustling. We won't tell Getty "you can have your cake and eat it too."
 - You can't manipulate formalities.
 - Court spends time looking at press release. Looking for some clear expression of each of the parties.
 - Make reasonable inferences.
Court looks at grammar.
 - A reasonable jury would have said, "We have a deal."
 - Express agreement: we can infer
 - Implicit agreement: from general commercial practice.
 - Contracts have to have legal purpose.
 - Indemnification
 - If you get into legal trouble, as the corporation, the company will pay the lawyers.
 - But corporation may not be doing well and have little cash.
 - So: Insurance Company will support you. It is important protection. Almost all corporations will provide indemnification insurance.
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Interpretation:

- Filanto case in Italy
- Chilwich selling boots to Ranzoexport in NYC
- Deal falls apart
- Chilwich gives paper to Filanto (who doesn't sign it)
- Can Chilwich say to Filanto that we have to settle this in Russia?
- Filanto says "NO"
- Goes to Russia. Most persuasive court looks at it and says this is a "mess." Filanto should have taken action.
- Court evaluates "how reasonable is the clause to go to Russia?"
- The end customer is from Russia
- What is a reasonable delay? Answer: "reasonable" time.
- When you go into a contract dispute, you need "clean hands."