

CONTRACTS, CONT.

I. INTRO

- A. FORMATION
- B. INTERPRETATION
- C. BREACH
- D. DAMAGES

II. FORMATION

A. AUTHORITY

1. EX: CEO CAN SELL FACTORY WITHOUT SHAREHOLDER APPROVAL IF IT IS NOT 'ALL OR SUBSTANTIALLY ALL' THE FIRM'S ASSETS.

a) WHAT INFORMATION DO YOU WANT?

1. LEGAL STANDARD
2. INFO FROM BOARD, CUSTOMERS,
3. INDEMNIFICATION

*4. OPINION LETTER FROM OUTSIDE COUNSEL

- REQUIRE IT TO BE THEIR GENERAL COUNSEL
- THEY WON'T PUT THE FIRM'S ASSETS ON THE LINE FOR ANY CLIENT
- FIRMS PUT IN PLACE GOOD SCRUTINY TO ENSURE GOOD OPINIONS GO OUT

II. INTERPRETATION

A. PUBLIC POLICY - TOLBERT TRADING

1. FACTS: BUYER IS BUYING RED BEANS FOR RE-SALE. BUYER WANTS BEANS TO BE FROM EUROPEAN UNION, AND SELLER FORGES CERTIFICATE OF AUTHENTICITY, BUT BUYER KNEW IT WAS FALSE. WHEN BEANS WERE DEFECTIVE, BUYER SUED SELLER.
2. COURT: CONTRACT IS VOID BECAUSE ENFORCING IT WOULD VIOLATE PUBLIC POLICY.
3. EXAMPLE
 - a) INSURANCE COMPANY CAN'T INSURE DRUG DEALER
4. INDEMNIFICATION
 - a) WE'D LOOK AT INTENT AND KNOWLEDGE; MERE NEGLIGENCE SHOULD BE COVERED.

B. FILANTRO CASE

1. ISSUE: DOES THE ARBITRATION CLAUSE GOVERN THE ISSUE? THIS IS A BATTLE OF THE FORMS ISSUE.
 - a) FILANTRO WENT FORWARD WITH THE TERMS AS IF THEY'D CONSENTED
 - b) HOW COMMERCIALY REASONABLE IS THE CLAUSE? IN THIS CASE, IT WAS REASONABLE BECAUSE RUSSIA WAS IMPORTANT TO THE DEAL.
 - c) PRIOR DEALINGS → COURSE OF DEALINGS
 - d) TEXT OF THE AGREEMENT
 - e) COMMERCIAL EXPECTATIONS
 - f) INDUSTRY STANDARDS

C. TRANSATLANTIC

1. SUEZ CANAL CLOSES, SO TRANSATLANTIC SAILS AROUND THE CAPE OF GOOD HOPE?

a) WHO BEARS THIS RISK?

1. LOOK AT THE TEXT - BUT THERE'S NOTHING THERE
2. LOOK AT KNOWLEDGE AND EXPERTISE
3. LOSSES FALL WHERE THEY COME TO REST, UNLESS THERE IS A GOOD REASON TO MOVE THEM.