

Chapter 22 #1: How does one determine whether handshakes imply a contract?

*A handshake is a contract if it is the norm for the industry to establish a transaction through a handshake (e.g. think of the diamonds industry). This is also true if the negotiation is high profile and there are photographs of the handshake as evidence.*

Chapter 22 #2: In Pennzoil v. Texaco, how did the court determine the cost of the breach to Pennzoil? What are some superior methods? Why are they superior?

*The court took into account the cost of drilling, the probability of success, the extent of the discovered reserves. Specific performance would have been a better method in that case, i.e. rescind the contract with Texaco and give the shares to Pennzoil. But here the action was in tort. The price differential between the price agreed between Getty and Pennzoil and the price actually paid by Texaco would be the best method in estimating. Pennzoil would have sold on the firm to Texaco and would have made a profit. This profit, the price differential should be turned over to Pennzoil.*

*Another method could be to look at other similar oil firms and find out how much it would cost to buy them. The benefits of these methods is that they take into account market forces which are objectively detectable. The method chosen by the court goes into determining drilling costs and probabilities, something that is better done by private firms and was bound to give a higher estimate. This is the reason the two companies were competing on buying out Getty instead of drilling in the first place.*

Chapter 22 #3: What problems arise if a contract is ruled null because it was hard for the plaintiff to understand. What is the benefit of such a ruling?

*This is the case for Williams vs. Walker Thomas Furniture Company. Courts should be hesitant to overturn contracts since they are the binding agreement, expectations, and responsibilities between the two parties involved. If contracts can be overturned when the plaintiff claims the contract is hard to understand, then plaintiffs will not bother to understand contracts and contracts will be unenforceable. Either way, the parties would not know what kind of contract they made until the courts made their decision.*

*Furthermore, the contracts may enable potential borrowers to obtain a loan at a lower interest rate (or convinced them to loan at all). All of these reasons suggest that the contract should be upheld. However, efficiency requires that key parts of the contracts be clear and understandable so that people understand the bargain that they are making. Otherwise, the agreement may not be a Pareto improvement.*

*Given that the defendant may have not understood the contract (and would probably not have agreed to the last purchase agreement had she understood it) and the contract was rather really confusing anyway, then the contract should have been deemed void. This is the efficient outcome given that there is little competition in this market.*

Chapter 22 #4: Why aren't contracts for criminal activity upheld?

*It wouldn't make any sense to punish crimes when they are committed but allow contracts for criminal behavior to be performed. Society would contradict itself. Crimes diminish social utility (are not wealth maximizing) and society doesn't want contracts with criminal content to be upheld since we do not want any Pareto-improving move for criminals. An example of this is between Miltenberg & Samton v. Mallor.*