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Strange But True Unusual Contracts

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STRANGE BUT TRUE UNUSUAL CONTRACTS

I. INTRO

The law is full of exceptions. Contract law is no different.

Generally, all you need in order to have a binding contract is a mutual agreement by which each party agrees to do something in exchange for some consideration (exception: illegal stuff). Generally, they don't have to be in writing (exception: Statute of Frauds). Generally, an “agreement to agree” is viewed as unenforceable until the final agreement is executed. But there are exceptions there too.

Consider the following scenario:

Company A seeks to takeover Company B. The two companies entered into a tentative written agreement, specifying certain terms of the takeover, all subject to approval by various boards and to a formal agreement. The sales price is announced as \$5.2 billion. After all relevant parties signed the tentative written agreement, and issues a press release about it, Company C sought to takeover Company B and Company B backs out of the deal with Company A. Company C buys Company A for \$10.1 billion.

This is, of course, the basic fact pattern of *Pennzoil vs. Texaco*. The Plaintiff, Company A (Pennzoil Co.) sued Company C (Texaco) for interference with its contact with Company B (Getty Oil Co., Gordon Getty and the J. Paul Getty Museum). The jury agreed there was a contract, despite the contingencies, and determined that Pennzoil had been injured by \$7.53 billion plus \$3 billion in punitive damages.

To the press in Houston

<https://www.chron.com/local/history/economybusiness/article/Handshake-in-New-York-led-to-courtroom-drama-in-9206355.php>

the agreement between Getty and Pennzoil was not much more than a handshake, subject to a lot of negotiating and finalizing. The written agreement said as much. Texaco and Getty thought they were free to ignore it. Pennzoil thought otherwise. Can such deals be made orally, or with a handshake, or at least with an agreement in principle to stop negotiating the important details? Depending on all the facts, and under the applicable law of New York, you bet.

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3233&context=facpubs>

That concludes the really serious lesson of this part of the presentation. Be careful who you shake hands with and what you shake hands over. And if you signed a binding memorandum, the handshake is optional and a bit of a red herring.

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Crafting and Drafting The Win-Win Deal

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