

**15.617, Spring 2004**  
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**Lecture 4: 2/17/04**

Hard edge

- Overview
- Punishing companies
- Punishing managers
- Managing a crisis—Bhopal, Solomon
- Staying out of Trouble

Contracts

- Overview
- Formation
- Interpretation
- Breach/disputes/remedies

1.) Prevent/ameliorate all harm

- Help those people in Bhopal → of course, you are responsible; you will look bad if you don't.
- Other plants? You don't want another accident next week.
- It's a common concern/dilemma.
- Assume you are a manager... What do we do?
- Don't do anything.
- Or help out?

2.) Public Announcement?

- But what will we say early on?
- America has a system of "discovery" i.e. corporation have no privacy and things will come out in deposition in open court.

3.) Reach out to a variety of companies.

4.) Counsel

5.) Gather facts, Internal Investigation

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\* Who's in charge though?

- Maybe outside lawyers?

- Or inside lawyers?
- You tell person who's directly related?
  - o No, b/c withstand internal scrutiny
  - o Argue for credibility of the company

- Has to be someone who is completely divorced, operationally from all the decisions that were made.
- Give me him a budget. Select a team. Hopefully, you had a crisis plan already.

Solomon Brothers (SB):

- Supervisor: Meriwether
  - Road Trader: Moser
  - Special trade in firm
  - Arbitrage group
  - Trying to buy government securities of more than 35%
  - He submits false bids in the clients' names
  - Moser → Meriwether → Boss → CEO
  - Meriwether → Boss → CEO is to the top inside council. They try to figure out what to do. Should they report to the authority? They don't do anything.
- 1.) How does it break open?
- \* Concerns about auctions for Treasury bonds.
  - Concerns on part of regulators.
  - They try to call in the top bankers
  - CEO does internal investigation (hire an outside law firm) to appeal regulators
  - Lawyers ask compliance problems
  - CEO calls a press conference. "We are horrified to discover that there is misconduct. We will get rid of clerks that covered it up."
  - BUT: Why didn't they say anything earlier? He spoke after 2 months.
  - He was sitting on top of unequivocal, clear knowledge.
  - This gets referred to U.S. Attorney who is inclined to indict.
  - But problem is: if a firm has been convicted in a crime regulation government security, they cannot participate. I.e. GONE, (won't survive indictment).
  - Board of Directors of SB
    - Get rid of everyone who was involved
    - Make public statement that you are going to revamp
    - Grovel (turn themselves inside out)
    - Programs of compliance
    - Waive turning-client privately
    - Squeaky-clean team
  - Internal investigation: Moser did it again a couple of times. Perhaps he had tacit permission.
  - Investigation turns out clean except for Moser.
  - Adequate supervision.
- Nobody goes to jail. They are just forced to retire.
- How could this have been better?

- Inside council has problem when it comes to compliance “boss pushing boss”
- But if they had called outside law firm, this wouldn’t have happened.
  
- No such thing as a quiet withdrawal.
- What should the CEO have done to Moser?
  - Put him under supervision?
  - Demote him?
  - Disclose?
    - 1<sup>st</sup>: fix it internally
    - 2<sup>nd</sup>: Hit the bad people
    - 3<sup>rd</sup>: Tidy things up
    - 4<sup>th</sup>: reevaluate situation
    - 5<sup>th</sup>: Then go to regulators. And explain to them what you’ve done and ensure that it won’t ever happen again.

Outside council gives you leverage.

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Staying Out of Trouble:

- 1.) Company you keep is key:
  - Stay away from ethically-challenged people.
  - People who enforce white collar crime have harder times. It’s opaque. So you end up processing minor and major stuff.
  - Consultants (people come to you when they are in trouble)
  - Tell clients in the beginning:
    - Make an assessment early on (set clear expectations)
    - No cover-ups
    - 100% compliant
  
- 2.) Don’t do anything stupid. (ex. Arthur Anderson shredding documents)
  - give us full disclosure
  - if you’ve lied to us, we will send you to jail policy holds
  - 99/100 times tell the truth (if you lie, you will get caught)
  - Evaluate your instincts

Contracts: (law of the Deal)

- \* Freedom of contract: you agree then law enforces it.
- Ex. Marriage: “I do” (law then tells you what you have to do)
- Ex. Doctor-patient

HOW DO YOU GET A CONTRACT?

- 1.) Agreement “Meeting of the minds”
- 2.) Consideration: “You scratch my back, and I’ll scratch yours”, “reciprocity”, courts don’t like bosses who overreach.
- 3.) Legal capacity. 2 parties should have the capacity to enter the contract.

- 4.) Formalities (i.e. written, handshake—evidence that there was a contract.)
- 5.) Intent to be bound (3 hours walk w/ friend example)