# Unit 3 Assignment

# Amon-Ra

# Herzing University

BU 642-8 Business and Labor Law

**THE CASE BRIEF**

**Caption:**

United States of America, Plaintiff-appellee, v. Hilton Hotels Corporation et al., Defendants, western International Hotels Company, Defendant-appellant

**Citation:**

United States v. Hilton Hotels Corp., 22 Ill.459 U.S. 1036, 103 S. Ct. 446, 74 L. Ed. 2d 602 (1982)

**Facts:**

Hilton Hotel Corporation was a member of a Portland-based association. The objectives of the association were to attract events to the city thereby generating revenue for the event attendees. The association agreed to give preferential treatment to suppliers that contributed money to the association. This was a collective decision of the association. At the time of this collective decision, Hilton Hotel Corporation was an active member and participant. Suppliers were “encouraged” to contribute. Any suppliers that did not pay money toward the association would suffer a business embargo, a boycott of their business. This business boycott would essentially deny the business participation in revenue generating events within the city of Portland, Oregon. If a business did not want to face business restrictions imposed on it by the association, then the business is forced to pay a predetermined amount. Contrary to this action, Hilton Hotel Corporation’s policy is against such practices. Hilton Hotel Corporation’s policy is to purchase supplies based on cost. A directive was issued by Hilton Hotel Corporation, to its agents, forbidding participation in the Portland-based association. An agent of Hilton Hotel Corporation continued participation in the association and threatened suppliers with business losses if they failed to provide funds to the association. The agent acknowledged that he received the instructions on two occasions.

**Legal History/Procedure:**

1. United States of America filed a suit (“complaint”) against Hilton Hotel Corporation.
2. The trial judge ruled that the agent violated the Sherman Act of 1890 by pressuring suppliers to pay for preferential treatment.
3. The trial judged also ruled that Hilton Hotel Corporation is responsible for the actions of the agent and corporation is the beneficiary of the behavior.
4. The agent employed by the corporation was acquitted.
5. The defendant, Hilton Hotel Corporation, appealed.
6. On appeal, the United States Court of Appeals for the Ninth Circuit September 26, 1972 affirmed the lower court’s decision. Supreme Court Certiorari Denied January 15, 1973 upheld the dismissal.

**Issues (Holdings):**

1. The association stated that funds where to be used to attract conventions to the city to increase business. Does the stated purpose of requesting funds from suppliers exonerate the corporation of any wrongdoing?
2. The association collectively agreed to institute a policy to give preferential treatment to suppliers that contributed money to the association. Does Hilton Hotel Corporation’s involvement constitute accountability?
3. Does boycotting suppliers for not contributing the association’s fund constitute wrongdoing on the part of Hilton Hotel Corporation.?
4. Does corporate policy of not engaging in practices of requesting funds from supplies in exchange for preferential treatment exonerate the corporation of any wrongdoing?
5. Did the agent violate the Sherman Act of 1890?
6. Is the corporation responsible for the actions of the agent?
7. Did the corporation shield itself from all accountability by issuing company-wide instructions not to participate in pressuring suppliers to contribute to the association?
8. Did the corporation protect itself from all accountability by acknowledging that he received instructions on two occasions advising him not to participate in pressuring suppliers to contribute to the association?
9. Is the company shielded from accountability by the admittance of the agent stating that he intentionally committed that act due to being a disgruntled employee?
10. Does acquittal of the agent equate to the acquittal of the corporation?

**Reasoning:**

1. Requesting association members to contribute funds to attract business to the city shows no wrongdoing.
2. Preferential treatment to association members that contribute to the fund over those that do not resulting in a boycott of said businesses. “The necessary and direct consequence of defendants' scheme was to deprive uncooperative suppliers of the opportunity to sell to defendant hotels in free and open competition with other suppliers, and to deprive defendant hotels of the opportunity to buy supplies from such suppliers in accordance with the individual judgment of each hotel, at prices and on terms and conditions of sale determined by free competition” ("United States v. Hilton Hotels Corp., 467 F.2d 1000 (9th Cir. 1973)")
3. Though the corporation has a policy of not engaging in practices of requesting funds from supplies in exchange for preferential treatment the association, to which the corporation belongs to, did in fact create an agreement of the contrary.
4. The agent of Hilton Hotel Corporation, acting as an employee of the company, attempted to further enforce the agreement of the association upon suppliers via the threat of boycott thereby restricting freetrade for the suppliers.

Section 1 of the Sherman Antitrust Act:

“U.S. Code Title 15. COMMERCE AND TRADE Chapter 1. MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE Section 1. Trusts, etc., in restraint of trade illegal; penalty

1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.” ("15 U.S. Code § 1 - Trusts, etc., in restraint of trade illegal; penalty", n.d.)

1. It appears that the Hilton Hotel Corporation made attempts to dissuade it agents from participating in the boycott of suppliers, however there was an agent the participated. The company is liable for its employees that act on its behalf or in the name thereof to conduct business. “A corporation is responsible for acts and statements of its agents, done or made within the scope of their employment, even though their conduct may be contrary to their actual instructions or contrary to the corporation's stated policies.” ("United States v. Hilton Hotels Corp., 467 F.2d 1000 (9th Cir. 1973)")
2. The acquittal of the employee for the appellant, Hilton Hotel Corporation, does not exonerate the company in which the agent was acting behalf. The agent is simply an individual and is not the business but an agent of the business. The agent confirmed that he was instructed not to participate in the boycott of suppliers that did not contribute. “If a violation of the Sherman Act occurs, the corporation, and not the individual agents, will have realized the profits from the illegal activity.” (Browning, 1973)

**Rule of Law:**

Judgment was affirmed regarding the liability of the company. It was concluded that the actions of the agent are commercial offenses and that the violations are for the benefit of the business. Due to the complex nature of the corporation, the court takes the position that pursuing only the agents of the corporation would not be effective in upholding the Sherman Act, 15 U.S.C. Section:1. While agents would be held accountable the corporation would continue to operate under a veil of plausible deniability.

“Even where the agents are identified and prosecuted, it is ineffective as a deterrent as no consequences would befall the corporation itself.” ("United States v. Hilton Hotels Corp", (n.d.))

“It attempts to maximize the deterrent effect by encouraging corporations to be more diligent in supervising the business activities of its agents done on behalf of the corporation.” ("United States v. Hilton Hotels Corp", (n.d.))

**Your Response:**

The Hilton Hotel Corporation exhibited willingness to participate in an agenda to coerce money from suppliers. The corporation was a party of an agreement to give preferential treatment to suppliers that contributed money to the association. Hilton Hotel Corporation has a corporate policy of not engaging in practices of requesting funds from supplies in exchange for preferential treatment. Cleary the actions of the corporation in supporting the agreement with the association to provide preferential is a violation of their own policy.

The association went even further to have noncontributing companies boycotted. This strikes me as a form of extortion and restricts freetrade. However, I do believe that every business reserves the right to conduct business with other companies of their choosing. Hilton Hotel Corporation has a policy selecting suppliers based on prices and on terms and conditions in the spirit of free competition, so it claims. I view what is written in Hilton Hotel Corporation policy and what is actually practice are not consistent.

Perhaps Hilton Hotel Corporation had a change of heart and found its ethical compass and decided to take a different path regarding the entire situation. Such actions appear to be too late for their earlier decision has already set in motion events that prove to be detrimental to the business of the suppliers. As seen in the behavior of its agent, the initial position of the corporation had an effect. Hilton Hotel Corporation holds the position that it gave specific instructions to its employees not to take part in the boycott, but it happened. Should the corporation he held accountable for a seemingly rogue agent? Yes. If punishment is starts and stops with employees, it will create a “catch me if you can” or “don’t get caught” attitude within companies with the corporation denying any knowledge of the agents’ actions. The corporation should be held liable in order that it will be prompted to make a serious effort to prevent and stop such behavior. Furthermore, if the corporation itself had not taken the initial position of agreeing to the boycott, then the entire situation would not have manifested.

## References

15 U.S. Code § 1 - Trusts, etc., in restraint of trade illegal; penalty. (n.d.). Retrieved March 21, 2020, from https://www.law.cornell.edu/uscode/text/15/1

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