



Business/Marketing Virtual Learning

10-12 grade Business Law

May 19, 2020



Lesson: [May 19, 2020]

Objective/Learning Target:

Legal Purpose and Proper Form

Specify illegal agreements that courts will uphold and enforce.

Let's Get Started

Watch This Video:

[Divisible Contracts](#)



Examples of When Illegal Contracts are Enforceable

Most illegal contracts are void and unenforceable. However, when the connection between the illegality and the agreement is slight or a party is relatively innocent of wrongdoing or both, the law will allow restitution (the restoring of the party involved to his or her original position) or the agreement to be enforced in court. Examples of the circumstances under which such treatment may be afforded include the following:

1) Protected Victims - In some cases the law that was violated was designed to protect a party to the agreement. For example, state blue-sky laws prohibit sales of worthless stocks and bonds. Such securities were so named because they supposedly had no more value than a section of the blue sky. The victim who purchases them may obtain restitution to recover money paid.

Parties to an illegal agreement often are not in *pari delicto*, which means “of equal guilt.” For example, one party might be desperate enough to borrow money from another at a usurious rate of interest. To protect the innocent borrower, the agreement, although illegal, would be enforced by the court at the legal rate of interest. Any amount paid as interest over the legal rate would be restored to the victim of the usury.

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- 2) **The Excusably Ignorant** - The excusably ignorant can either enforce the legal part of the contract or obtain restitution. A person is excusably ignorant who:
 - a) does not know the contract is illegal, but
 - b) the other party knows the transaction is illegal, and
 - c) the illegality is minor

- 3) **Rescission Prior to Illegal Act** - If a party rescinds before the illegal act occurs, then restitution will be available. For example, suppose you paid \$50 to another student to steal an advance copy of a final exam. Then you changed your mind and called off the deal before the theft. You could recover the \$50 payment. In this way, the law creates an incentive to stop illegal acts.

- 4) **Divisible Contracts** - Illegal contracts often contain a combination of legal and illegal provisions. Courts may enforce the legal part of a contract if it is divisible. Divisible generally means that separate consideration is given for the legal and illegal parts of the contract. Suppose a retailer contracts to sell camping and hunting supplies, including a pistol. If the seller fails to comply with a state law that requires a 30-day waiting period and a police clearance of sale of a handgun, this part of the contract is illegal. However, a court would probably enforce the legal provisions of the contract because the amount paid for the pistol (the illegal part) can be distinguished from the amount paid for everything else (the legal part).

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On the other hand, suppose a single bid for all electrical contracting work on an office building specifies wiring and terminals in conflict with the building code. This contract probably would not be divisible because labor, wiring, terminals, and other costs were not broken out as separate items. This contract would be held to be indivisible and void.

A major provision in the UCC governing the sale of goods makes agreements or contract clauses that are unconscionable unenforceable. The UCC establishes an additional remedy for courts when dealing with such agreements. A contract is held to be unconscionable when it is so grossly unfair that parties under ordinary circumstances would not accept it. The UCC makes unconscionable contracts for the sale of goods subject to the rules for illegality.

To show that a contract is unconscionable, a victim must show to the satisfaction of the court that:

- (1) he or she was presented with a take it or leave it contract;
- (2) the other party had overwhelming bargaining power;
- (3) there was no viable alternative in the marketplace; and
- (4) injustice can only be avoided by holding certain terms or the whole contract void.

Once it has found that a contract or a term of a contract is unconscionable, a court can refuse to enforce the contract, or it can enforce the legal part and refuse to enforce the illegal part. In addition, courts also can modify the terms of an agreement to make it fair.

ACTIVITY #32

- 1) Under what circumstances will the courts enforce illegal agreements?

- 2) A young couple, the Guptas, wanted to provide for the college education of their infant daughter. They received an offer in the mail from the True Bonanza Mining Corporation, which seemed perfect for their need: “Join us now for only 10 cents a share of stock. Become part owner of a gold and silver mine with already proven mineral deposits. In ten years, you will be rich enough to retire!” The Guptas used all their savings to buy 250,000 shares of Bonanza stock. Months later they learned that Bonanza had violated the law. Its “proven mineral deposits” were commercially worthless iron pyrite. The sales agreement was illegal.
 - a) Can the Guptas recover their \$25,000??

- 3) Randy entered into a contract to provide a computer program to a New Jersey school district. He used without permission parts of a computer program copyrighted by another programmer. The portion of the program that violated the copyright law cost \$12,000 and the part that didn't violate the copyright law cost \$44,000. He delivered both parts to the school district.
Can he recover anything for his work?

ACTIVITY #32

- 4) Mansfield opened a computer repair store in downtown Pennsboro. When Shadee brought in his computer for repair, the work was estimated at more than \$200. Shadee told Mansfield to go ahead with the repair. When Shadee returned to pick up the repaired machine, she refused to pay stating that she had checked with City Hall and Mansfield did not have the required city business license and that the contract was therefore void.
 - a) Is the contract legally enforceable against her?

- 5) Dixon, a wholesaler, was on the brink of bankruptcy. He bought fire insurance policies for more than twice the value of his warehouse and its contents from two companies. Then he arranged to pay a character known only as “Sparky” \$5,000 to “torch” the structure.
 - a) If Sparky did so but Dixon did not pay him, could Sparky enforce the contract for the \$5,000?
 - b) Could Dixon legally collect on his insurance policies if Sparky torched the building?