

BUSINESS LAW

UNIT 1: The Indian Contract Act, 1872

TOPIC- LEGALITY OF OBJECT AND CONSIDERATION

LEGALITY OF OBJECT AND CONSIDERATION

As per Sec.10, object or purpose of a contract must be lawful. **Section 23** specifies what kinds of objects and considerations are not lawful. If the object of an agreement is unlawful, then it is not only **void but also illegal**. Further, any **collateral transaction, would also get tainted with illegality and become void too**, provided the parties to the collateral transaction had knowledge of illegality of the main transaction. As per Sec.23, the object or consideration is unlawful if

- IF IT IS FORBIDDEN BY LAW
 - punishable by criminal law of the country - eg. **A agrees with B to kill C, the enemy of B for Rs 1 lakh.**
 - prohibited by any special legislation or regulations - **Agreements for purchase/sale above the standard price fixed by Essential Commodities Act, 1955 with regard to a controlled article are illegal and hence void.**
- IF IT WOULD DEFEAT PROVISIONS OF ANY LAW
 - It covers those situations where the object/consideration, though not directly forbidden by law, but would indirectly lead to a violation of law. eg. **Chandra Shrinivasa Rao vs Korrapati Raja Rama Mohana Rao - A loan was granted to the guardian of a minor to enable him perform the minor's marriage. This loan could not be recovered back and loan agreement was held illegal as it defeated the provisions of Child Marriage Restraint Act, 1929**
- IF IT IS FRAUDULENT
 - involves defrauding others
- IF IT INVOLVES INJURY TO PERSON\ PROPERTY OF ANOTHER
 - Involves doing any harm to others' property or person

LEGALITY OF OBJECT AND CONSIDERATION

- IF COURT REGARDS IT AS IMMORAL

- sexual immorality eg. Prostitution

Ghumma vs Ram Chandra -A gift deed executed in consideration of illicit intercourse has been held void as its object is immoral

- furtherance of sexual immorality

Pearce vs Brooke- A prostitute was sued for hire money of a carriage in which she used to go every evening to make a display of her beauty and thus to attract customers. The suit was dismissed on the ground that the plaintiff contributed towards the performance of an immoral and illegal act and hence must suffer.

- interference with marital relations

Bai Vijli vs Nansa Nagar-Money advanced to a married woman to enable her to procure a divorce and to marry the lender could not be recovered back as the object of the agreement was held immoral.

- acts against good public morals

Wilson vs Carnley-An agreement for future marriage, after the death of first wife is against good morals and would be void.

LEGALITY OF OBJECT AND CONSIDERATION

- IF COURT REGARDS IT AS AGAINST PUBLIC POLICY
 - Trading with alien enemy. Eg. during Indo-Pak war time, one should not trade with Pakistanis as this would aid the economy of Pakistan and is therefore opposed to public policy
 - Traffic in public offices-eg. agreement for appointment to public offices in consideration of money
 - Agreements interfering with the course of justice-eg. Stopping a person from being a witness; influencing a judge to give decision in your favour etc.
 - Agreements for stifling criminal prosecution eg. Agreement not to prosecute the offender; agreement to withdraw a pending case
 - Agreements creating an interest opposed to duty eg. Agreement with the paper setter to leak the questions in consideration of money.
 - Agreements unduly restraining personal liberty eg. a loan agreement wherein the lender restrained the borrower from leaving the job, borrowing money from elsewhere, disposing of his property, changing his residence etc. is too harsh.
 - Agreements interfering with parental duties.eg. Bartering with parental duties in consideration of some money or favour. Like for money consideration, A agrees to place his daughter with B to be married as B likes.
 - Marriage brokerage agreements.eg. Agreements for the payment of money in consideration of procuring a spouse. Similarly an agreement of dowry is illegal (agreement is illegal only respect of payment, validity of marriage is not affected)
 - Maintenance and Champerty- Under these agreements a third person, with a view to assist a person in litigation, agrees to provide financial or professional assistance. In return, if he charges reasonable interest or fees, it is maintenance but if he also demands a portion of the proceeds of the litigation , then it is called champerty. Maintenance agreements are generally valid in India unless they are unreasonable or made with malafide motive. Champerty agreements of financial assistance are also valid provided they are made with bonafide intention of assisting and the share taken by the helper is reasonable. **But Champertous agreements of professional assistance are always void .**
 - Miscellaneous cases eg. agreements tending to create monopolies, agreements to defraud revenue authorities; agreements where money is given to induce persons to give evidences

When object is unlawful in part

Section 24, 57 and 58 provide for rules when same agreement contains both legal and illegal terms

- When an agreement contains several distinct promises, some legal and some illegal, and **legal part cannot be separated from illegal part**, then the **whole agreement is illegal and void (Sec.24)**. **CASE- Alice Hill vs William Clarke- A agrees to serve B as his housekeeper and also to live in adultery with him at a fixed salary. The whole agreement is unlawful and void**
- When there are reciprocal promises, some legal and some illegal, and the **legal part can be separated from the illegal part** (as there is separate consideration for different promises), then the **legal part is a contract and the illegal part is void.(Sec.57)**. **Illustration to Sec.57-A and B agree that A shall sell B a house for Rs.10000, but that if B uses it as a gambling house, he shall pay A Rs.50000 for it. The first set of reciprocal promise namely, to sell the house and to pay Rs.10000 for it, is a contract. The second set namely B using the house for gambling and paying 50000 to A is a void and illegal agreement.**
- In case of **alternative promise**, one branch of which is legal and the other illegal, the **legal branch alone can be enforced**. **Illustration to Sec.58 - A and B agree that A shall pay B Rs.1000 for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice and an unlawful and void agreement as to opium.**

Effect of illegal agreements

- Illegal agreements are void and cannot be enforced
- transactions collateral to illegal ones also get tainted with illegality and therefore are void and unenforceable, provided parties had knowledge of illegality
- no restitution is allowed in case of illegal agreements as the saying goes- *no polluted hands shall touch the pure fountain of justice.*