

Legality of object, consideration and agreements opposed to public policy

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INTRODUCTION

Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

Legality of object, consideration and agreements opposed to public policy

LO **On the successful completion of this paper, candidates will be able to demonstrate knowledge of laws relating to legality of object and agreements opposed to public policy.**

LO 2.6.1 Identify circumstances where object or consideration is unlawful

LO 2.6.2 Identify agreements opposed to public policy.

References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

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1 LEGALITY OF OBJECT, CONSIDERATION AND AGREEMENTS OPPOSED TO PUBLIC POLICY

Section overview

- Circumstances where object or consideration is unlawful
- Agreement, the consideration or object of which is partly unlawful
- Agreements opposed to public policy

1.1 Circumstances where object or consideration is unlawful



Definition: Legality of object and consideration [Section 23]

The consideration or object of an agreement is lawful unless:

- It is forbidden by law
- Is of such a nature that if permitted would defeat the provisions of any law
- It is fraudulent
- It involves an injury to the person or property of another

The court regards it as immoral, or opposed to public policy

The analysis of above definition is given below:

Forbidden by law

If the law of the state prohibits an object or the consideration of an agreement then such agreements are void. An act is forbidden by law when it is punishable by the law of the country.



Example: Forbidden by law

- A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.
- A promises to obtain for B an employment in the public service, and B promises to pay Rs.1,000/- to A. The agreement is void as the consideration for it is unlawful.

The effects of such agreements are following:

- The collateral transactions to such an agreement also become tainted and hence cannot be enforced.
- No action can be taken for the recovery of money paid or property transferred under such an agreement and for the breach of any such agreement.
- In case of an agreement containing the promise, some part of which is legal and other part illegal, the legal position is as under: [Section 57 & 58]
 - If the illegal part cannot be separated then the whole agreement is illegal.
 - If the illegal part can be separated then court will enforce the legal part and will reject illegal part.

Defeats the provisions of any law

If the object or the consideration of an agreement is of such nature that, if permitted, it would defeat the provisions of any law, the agreement is void.



Example: Defeats the provisions of any law

A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which a defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A, upon receiving from him the price which B has paid. The agreement is void as the transaction, in fact, a purchase by the defaulter, and would so defeat the object of the law.

Fraudulent

Where the object of an agreement is fraudulent the agreement is void.



Example: Fraudulent

- A, B and C enter into an agreement of the division among them of gains acquired, or be acquired, by them by fraud. The agreement is void, as its object is unlawful.
- A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.

Involves or implies injury

The object of an agreement will be unlawful if it tends to injure a person or the property of another. Property can either be movable or immovable.



Example: Involves or implies injury

A promised to pay Rs.100,000 to B on agreeing to publish a defamatory article against C. It was held that B could not recover the amount because the agreement was void as it involves injury to C.

Court regards it as immoral or opposed to public policy

Where the object or consideration of an agreement is such that the court regards it as immoral or opposed to the public policy then the agreement is void.



Example: Court regards it as immoral or opposed to public policy

- A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay Rs 1,000 to A. The agreement is void, because it is immoral.
- A agrees to let her daughter to hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the Pakistan Penal Code.

1.2 Agreement, the consideration or object of which is partly unlawful

A contract may contain several distinct promises or a promise to do several distinct acts of which some are legal and others illegal, or a part of which is legal and a part of which is illegal. In case of an agreement containing the promise, some part of which is legal and other part(s) illegal, the legal position is as follows [Section 24]:

- If the illegal part cannot be separated then the whole agreement is illegal.
- If the illegal part can be separated then court will enforce the legal part and will reject illegal part.

Promise to do legal and illegal things

Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement. [Section 57]



Example: Promise to do legal and illegal things

A and B agree that A shall sell B a house for Rs.10,000,000 but that, if B uses it as a gambling house, he shall pay Rs.50,000,000 for it.

The first set for reciprocal promises, namely to sell the house and to pay Rs.10,000,000 for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house and is a void agreement.

Alternative promise being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. [Section 58]



Example: Alternative promise being illegal

A and B agree that A shall pay B Rs.1,000 for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

1.3 Agreements opposed to public policy

An agreement is said to be unlawful if the court regards it as opposed to public policy. Following are the agreements which are held to be opposed to public policy:

Trading with enemy

A person cannot enter into an agreement with an alien enemy during the period of war on the ground of public policy. This is because the further performance of the agreement involves commercial interaction with the enemy and the continued existence of agreement would confer upon the enemy an immediate or future benefit. Contracts entered before the declaration of war are either suspended or terminated during the period of war.

Stifling prosecution

Criminals should be prosecuted and punished; hence an agreement for stifling prosecution is illegal. It is in public interest that if a person has committed crime he must be prosecuted and punished.



Example: Stifling prosecution

A, who knows that B has stolen goods amounting to Rs.500,000, receives Rs.100,000 from B in consideration of not exposing A. This agreement is illegal.

Sale of public offices

The agreements of sale of public offices are illegal as such agreements, if enforced, would lead to inefficiency and corruption on public life. Similarly, an agreement to pay money to a public servant to induce him to act corruptly or to retire and thus make way for the appointment of promisor are void on the ground of public policy.

Restraint of parental rights

An agreement which prevents a parent to exercise his right of guardianship is void. A father is entitled by law to the custody of his child. He cannot enter into an agreement which is inconsistent with his duties arising out of such custody.

Restraint of personal liberty

An agreement which unduly restricts the personal liberty of a person is void as law generally allows all persons freedom to enter into any contract they please.

Agreement to create monopoly

An agreement to create monopoly is void as this will impair consumer sovereignty and result in high prices for low quality of goods and services.

Marriage brokerage agreement

An agreement in which a person promises for reward to procure marriage for another is void being opposed to public policy.

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2 CHAPTER REVIEW

Chapter review

Before moving on to the next chapter check that you now know how to:

- Explain the cases where the object or consideration of an agreement are said to be unlawful
- Name various types of agreements which are considered to be opposed to public policy

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