

Contracts – Legality

Legality (must be legal – can't pay someone to commit crime or tort)

- Illegal Agreements ... *Void*

Problems with Legality

If agreements involve illegal acts, then the contracts are VOID (and unenforceable) ... for example, contracting to murder someone. Other examples of illegal Ks include:

- Gambling (betting on the uncertain outcome of an event)
- Usurious Interest (charging interest on a loan beyond the legally permitted maximum rate)
- Discrimination (unfair treatment of individuals or groups)
- Obstruction of Justice (paying for false testimony, bribing jurors, not reporting crime for \$)
- Lack of Competency License (ex: doctors, lawyers, pharmacists, brokers, bldg contractors)
 - Exception: Agreements made w/o Revenue Licenses ... still valid
- Interference with Marriage (paying someone to marry/divorce)
- Price Fixing (manufacturer attempts to illegally influence the retail price of its product)
- Resale Price Maintenance (illegally maintaining prices with retailers)
- Allocation of Markets (competitors agree to split markets between themselves)
- Non-Compete Agreements (validity depends on whether terms are reasonable)

Compounding a Crime ... Accepting something of value for a promise not to inform on, or prosecute, a suspected criminal.

Enforceability of Illegal Agreements

Typically, courts will NOT help either party to an illegal K (they will not enforce the agreement and will leave parties where they are ... even if one party has already paid/performed).

Restitution ... Recovery of your consideration/payment

Exceptions to Legality

Restitution may be available under these 5 exceptions (Protected Victims, Excusably Ignorant, Rescission before Act, Divisible Contracts, Unconscionable Contracts)

- Protected Victims (if the law violated was intended to protect a party to the agreement)
- Excusably Ignorant (does not know K is illegal and the other party does ... plus the illegality is minor ... ignorant party may either enforce legal part of K or get restitution)
- Rescission before the Illegal Act (restitution available if party rescinds before illegal act)
- Divisible Contracts (agreement contains combination of legal & illegal provisions)
- Unconscionability (a grossly unfair K that parties would not accept under normal conditions)
 - Procedural Unconscionability (HOW the K was created – very fine print, deceptive wording or elements of duress, undue influence, mistake, misrep, fraud)
 - Substantive Unconscionability (established by the TERMS of the K – unfair terms in K)
 - Most courts require both substantive **and** procedural unconscionability before contract is deemed unconscionable and illegal

Contracts – Writing

Most contracts do NOT have to be in writing. However, writing is usually a better way of communicating than speaking (less chance for disputes and misunderstandings)

Enforceable contracts may be either: Written, Oral or Implied from Conduct. Note: just because a K is not enforceable, does not mean that parties may not choose to carry it out

Statute of Frauds Requires that certain types of contracts MUST be in writing & signed. The writing does not always have to be a formal contract (a letter or sales slip is OK).

Contracts may either fall: WITHIN the statute of frauds (needs to be in writing & signed) or WITHOUT it (does not need to be in writing)

Types of contracts that MUST be in writing & signed (within the Statute of Frauds):

- Buying/selling goods > \$500
- Time >1 year to complete
- Real estate
- Promises to pay someone else's debt

What happens if a K is within the Statute of Frauds, but there is no writing? Depends on the extent of contractual performance:

- **EXECUTED CONTRACTS** (one that has already been performed – both parties have done everything they had promised)
 - If an executed contract falls into the statute of frauds, but it was not in writing or signed ... courts will leave the parties where they are ... neither party may reverse the contract
- **EXECUTORY** (one that has not been fully performed)
 - If an executory contract falls into the statute of frauds, but it was not in writing or signed ... it is unenforceable ... neither party may force the other to perform

Example: Ordering pizza ... after you call (executory) ... when delivered/paid (executed)

Note: an unenforceable contract is not the same as an illegal contract ... Parties can still recover restitution for the part of contract performed ... **quasi contract**

Requirements for type of writing under the Statute of Frauds

- No Specific Form (letters, faxes, emails, typed, handwritten, etc)
- Content – standards vary ... but it is usually a good idea to have all essential terms
- Signature – Only the parties that sign a contract may be required to perform, so usually both parties require each other to sign the contract

Parol Evidence Rule Terms of a written contract may NOT be changed by “parol evidence” unless the original writing is clearly ambiguous. Parol evidence may also be used to show that a written agreement is not binding because of mistake, fraud, illegality or if a party was a minor.

- Parol Evidence (inadmissible spoken words from before the final writing of a contract)
- Parol Evidence Rule (does not allow preliminary inquiries, proposals, negotiations, etc into evidence about the terms of a contract ... the written K should stand alone!)
- Integration Clause (usually written contracts have a clause that specifies that the writing is intended to be the complete agreement: “It is agreed that the terms written here are the entire and final contract between the parties...”)