

UNLAWFUL CONSIDERATION AND OBJECT

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In most of the cases, the words 'Object' and 'Consideration' mean the same thing. But in some cases they may be different. For example, where money is borrowed for the purpose of the marriage of a minor, the consideration for the contract is the loan and the object is the marriage. An agreement will not be enforceable if its object or the consideration is unlawful. According to Section 23 of the Act, the consideration and the object of an agreement are unlawful in following cases:

If it is forbidden by law :

If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law when it is punishable by the criminal law of the country or when it is prohibited by special legislation derived from the legislature.

Illustration i) A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back (Srinivas v. Raja Ram Mohan).

ii) A promises to drop 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.

If it defeats the provisions of any law:

If it is of such a nature that if permitted, it would defeat the provisions of any law. In other words if the object or the consideration of an agreement is of such a nature that, though not directly forbidden by law, it would defeat the provisions of the law, the agreement is void.

If it is fraudulent

An agreement with a view to defraud others is void. For example, A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

If it involves or implies injury to the person or property of another

If the object of an agreement is to injure the person or property of another, it is void. For example, A borrowed Rs. 100 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very 1 exorbitant rate and the principal amount at once. Held, the contract was void (Ralm Saroop v. Bansi)

Immoral

An agreement whose object or consideration is immoral is void. What amounts to immorality depends upon the standards of morality prevailing at a particular time and approved by courts. For example, A let a cab on hire to B, a prostitute, knowing that it would be used for immoral purposes. The agreement is void (Pearce v. Brooks)

Opposed to Public Policy

It is very difficult to define the term 'public policy' with any degree of precision because public policy, by its very nature, is highly uncertain and fluctuating. It keeps on varying with the habits and fashions of the day, with the growth of commerce and usage of trade.

Section 23 of the Indian Contract Act, however, leaves it open to the court to hold any contract as unlawful on the ground of being opposed to public policy. In simple words, it may be said that an agreement which conflicts with morals of the time and contravenes any established interest of society, is void as being against public policy. Thus, an agreement which tends to be injurious to the public or against the public good is void as being opposed to public policy.

Heads of Public Policy

The commonly accepted grounds of public policy include:

Trading with Enemy

All contracts made with an alien (foreigner) enemy, unless made with the permission of the Government, are unlawful on the ground of public policy.

Marriage brokerage or brokerage contracts

A marriage brokerage contract is one in which, in consideration of marriage, one or the other of the parties to it, or their parents or third parties receive a certain sum of money. Accordingly, dowry is a marriage brokerage and hence unlawful and void. In the case of Venkatakrisna v Venkatachalam, a sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. Held, such a promise amounted to a marriage brokerage contract and was void.

Unfair, unreasonable or unconscionable dealings

Where the parties are not economically on equal footing and there is a wide gap in the bargaining power of the parties, where one of them is in a position to exploit and the other is vulnerable and the contract is made with that other is apparently unfair, it van in circumstances be also regarded as opposed to public policy.

In Central Inland Water Transport Corporation v Brojo Nath Ganguly, that a government corporation imposing upon a needy employee a term that he can be removed just by three months' notice or pay in lieu of notice and without any ground is an exploitation and every ruthless exploitation is against public policy.