

## Contracts: Illegal Bargains

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## Illegal Bargains

- Violations of Statutes
- Violations of Public Policy
- Effects of Illegality

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## Violations of Statutes

- Licensing
- Gambling
- Usury
- Sunday

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## Licensing Statutes

- Regulatory License
  - Protect public from unqualified practitioners
  - No recovery for services
- Revenue Raising License
  - Taxing measure
  - Agreements for unlicensed services are unenforceable
- Express Statutory Provision

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## Gambling

- Contracts violating gambling statutes are void

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## Usury

- Elements
  - Loan
  - Money
  - Repayable absolutely
  - Interest charge is extracted in excess of interest rate allowed by law

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## Sunday Statutes

- Prohibit entering contractual relationships on Sunday
  - not part of common law
- “Blue Laws”

## Violations of Public Policy

- Tortuous Conduct
- Common Law Restraint of Trade
- Obstructing the Administration of Justice
- Corrupting Public Officials
- Exculpatory Clauses
- Unconscionable Contract

## Tortuous Conduct

- Can not contract away tort liability

## Common Law Restraint of Trade

- Sale of Business
  - Protect goodwill, time, place, consideration
- Employment
  - Protects trade secrets, other legitimate interests, time, place, consideration

## Corrupting Government Officials

- Bribery
- Paying for performance of duties

## Exculpatory Clauses

- Releases one from liability
  - Can not contract away tort liability
- Intentional conduct
  - Unenforceable
- Negligent Conduct
  - Tunkl factors (see page 252)

## Unconscionability

- Lack of bargaining power
- Commercially unreasonable terms

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## Effects of Illegality

- Generally unenforceable
- Illegal portion may be severed and the remainder of the contract enforced
- Illegal portion may be reformed so that it is legal

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