

Contracts: Illegal Bargains

Illegal Bargains

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

Violations of Statutes

- Licensing
- Gambling
- Usury
- Sunday

Licensing Statues

- 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

Gambling

- Contracts violating gambling statues are void

Usury

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

Sunday Statutes

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

Violations of Public Policy

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

Tortious 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

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
