

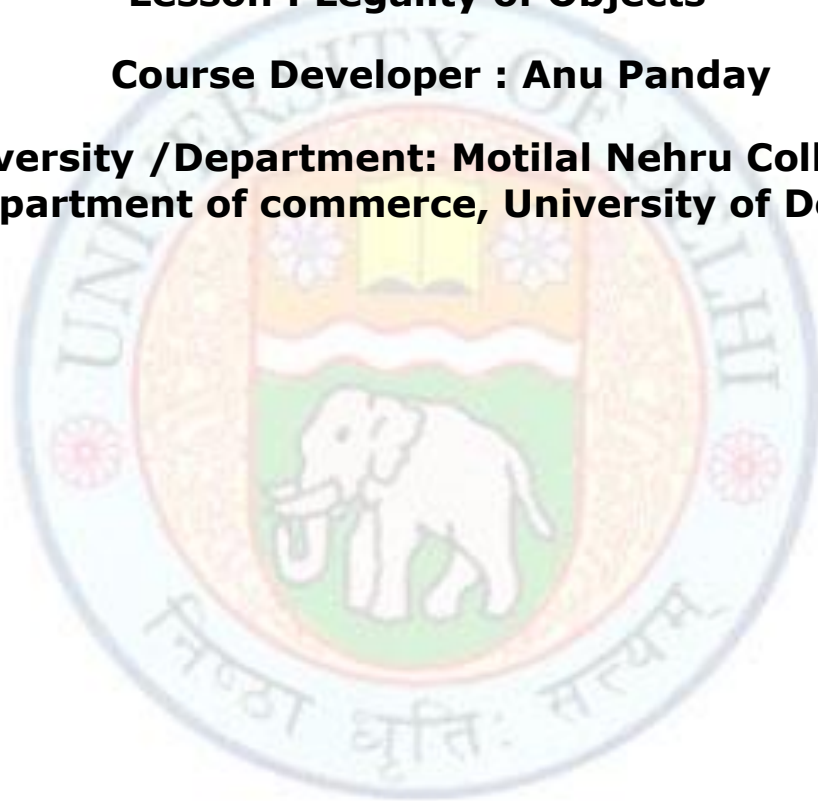
1 (F) Legality of Objects

Subject : Commerce

Lesson : Legality of Objects

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1 (F) Legality of Objects

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6.1 Objects and Considerations that are unlawful

- 6.1.1 Forbidden by law
- 6.1.2 Defeating the provisions of law
- 6.1.3 Fraudulent purpose
- 6.1.4 Involving injury to person or property of another



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6.2 Objects and Considerations which are unlawful in part

One of the essential elements of a valid contract is a lawful object. The object is the purpose for which two persons enter into an agreement. For an agreement to be a contract it is important that the object be lawful. If the object is unlawful then an agreement can never become a contract. The consideration is some act or abstinence or reciprocal promise. The consideration should be lawful. An unlawful consideration will not give rise to a valid contract. Both the consideration and the object of an agreement must be lawful. An agreement having an unlawful object or an unlawful consideration or both is void.



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6.1 What Objects and Considerations are Unlawful?

According to Section 23 of the Indian Contract Act the following considerations and objects are unlawful:

6.1.1 Forbidden by law an agreement to do what law has prohibited is unlawful. Such acts are punishable either by the criminal law of the country or by a special legislation. These agreements may also be called illegal agreements.



Figure 6.1 Legal agreement

Illustration

John asked Shakeel to kill Javed for rupees two lakh and Shakeel accepted the offer. This is an agreement forbidden by law and hence punishable.

Illustration

Sunita offered to steal Payal's necklace and give it to Supriya for rupees twenty thousand. Supriya accepted the offer. This is an agreement forbidden by law.

Difference between Illegal agreement and void agreement

All illegal agreements are void but all void agreements are not illegal. Illegal agreements are entered into to perform criminal acts that are forbidden by law and therefore are punishable. Void agreements are agreements that are not enforceable by law and do not involve criminality of any nature. Transactions that are collateral to the main transactions that are illegal also become void and illegal, whereas transactions collateral to the main transactions that are void remains valid contracts.

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Illustration

Ghanshyam a fourteen-year old boy promised to sell his bicycle to Sooraj a twenty-year old man if he paid him an advance of rupees five hundred. Sooraj was a poor man without money so he borrowed five hundred rupees from Lakhanpal. Sooraj gave Ghanshyam rupees five hundred. Later Ghanshyam refused to sell Sooraj the bicycle. Sooraj cannot sue Ghanshyam for not selling the bicycle because the agreement between them is void. On the other hand Lakhanpal can sue Sooraj for returning the borrowed money because the agreement between them is a valid contract. Thus the agreement between Sooraj and Ghanshyam, which is a main agreement, is void and the agreement between Ghanshyam and Lakhanpal, which is a collateral agreement, is valid.

Illustration

Sudhir hired Rammu to kidnap Sita for rupees two lakh. Sudhir borrowed rupees two lakh from Sharif to pay Rammu. Later Rammu refused to carry out the promise. Sudhir cannot sue Rammu because the agreement between them is illegal. Similarly Sharif too cannot sue Sudhir for the borrowed money because the agreement between them is also tainted with illegality. Thus the agreement between Sudhir and Rammu, which is a main agreement, is illegal and the agreement between Sudhir and Sharif, which is a collateral agreement, is also illegal.

Case law 1

Universal Plast Ltd. Vs. Santosh Kumar A.I.R. 1985 Delhi 383

In this case the textile commissioner had forbidden the sale of spindles without prior permission of the textile commissioner. Without taking the prior permission the plaintiff sold spindles to the defendant and the defendant paid an advance to the plaintiff. Later the plaintiff sued the defendant for the balance. It was held that the money could not be recovered because the sale of spindles was illegal.

Case law 2

Nutan Kumar vs. Second Additional District Judge, Banda A.I.R. 1994 All. 298

It was held in this case that an agreement of lease between a landlord and tenant without allotment or release order, as required by the law is void and unenforceable.

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6.1.2 Defeating the provisions of law

6.1.2 Defeating the provisions of law: An act may not be forbidden by law but if permitted it may defeat the provisions of any law. It means that an agreement may not be of an illegal nature and not directly forbidden by law but if allowed to be executed it would indirectly violate the law.



Figure 6.2 Provisions of law

Illustration

Rekha a resident of Delhi wanted to own a house in the state of Jammu and Kashmir. The rule in Jammu and Kashmir is that only the residents of Jammu and Kashmir can buy property in the state. No other person belonging to other states of India is eligible to buy property in the state. Rekha asked Namita who was a resident of Jammu to buy the house and later transfer the property to her. Rekha also paid consideration to Namita. Later Namita refused to buy the house. Rekha claimed the consideration back from Namita. Rekha cannot claim the consideration because the agreement is void.

Case Law 3

Sundara Gownder vs. Balachandran A.I.R. 1990 Ker 324

In this case Sundara (the plaintiff) an Abkari contractor was in default on the payment of Toddy Welfare Fund so he was ineligible to participate in the auction where shops were being sold. As he could not buy the shops in his own name so he entered into an agreement with Balachandran (the defendant) where it was agreed that Balachandran would buy shops and later transfer some of these to Sundara. Sundara also paid some consideration to Balachandran. Balachandran failed to fulfill the promise and did not transfer the shops to Sundara. Sundara claimed the consideration back from Balachandran. It was held by the Court that the agreement between Sundara and Balachandran aimed at defeating Rule 5(4A) of the Abkari Shops (Disposal in Auction) Rules, and therefore it was void.

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6.1.3 Fraudulent purpose:

6.1.3 Fraudulent purpose: An agreement, which is entered into to defraud others is unlawful. The agreement is entered by one party to cheat the other party therefore the agreement is void and unlawful right from the beginning.

Illustration

Ramaswamy offered to sell his car with a defective engine to Saloni without disclosing the defect for rupees fifty thousand and Saloni accepted the offer. Hence this is a void agreement, which has been made to defraud Saloni.

Illustration

Ruksana offered to sell her gold plated necklace to jasmine saying that the necklace was pure gold. Jasmine accepted to buy it. Hence this is an unlawful agreement that is void.

Case law 4

**Manni Ram vs. Purshottam Lal
A.I.R. 1930 All 732**

Manni Ram the plaintiff knew that the railway company would not grant him a contract therefore he entered into a contract with Purshottam (the defendant) that he should put forward an application for the contract and after the contract was granted, he shall serve as the real contractor. It was held that the object of the agreement was to commit fraud upon the railway company and therefore the agreement was void.



1 (F) Legality of Objects

Check Your Progress

Illegal Contract

Rohan asked Sanjay to kill Javed for rupees five lakh and Sanjay accepted the offer.

Is this a valid contract?

Yes
 No

Feedback
This is incorrect. An agreement to do what law has prohibited is unlawful.

Read the question carefully, then answer the questions by clicking the appropriate option.

Illegal Contract

Mohan offered to steal Anjali's car and give it to Mohit for rupees fifty thousand. Mohit accepted the offer.

Is this a valid contract?

Yes
 No

Read the question carefully, then answer the questions by clicking the appropriate option.

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6.1.4 Involving injury to person or property of another

6.1.4 Involving injury to person or property of another: An agreement, which is made with the objective to injure a person or the property of a person is said to be unlawful.

Illustration

Sita's mother who was undergoing an operation needed blood, of the O negative group. Sulochana agreed to donate blood provided Sita agreed to serve for the rest of her life as a maid in Sulochana's house. Sita agreed to do so. This is an unlawful agreement.

Case law 5

Ram Sarup vs. Bansi Mandar I.L.R. (1915) 42 Cal. 742

In this case Ram Sarup the borrower of the money was made to execute a bond requiring him to do manual labour for Bansi Mandar the lender until repayment and to agree to pay a heavy penalty on default in the form of an exorbitant rate of interest. It was held that that the agreement contained in the bond amounted to slavery and therefore such an agreement was opposed to public policy and thus void.

(i) Immoral: An agreement whose object or consideration is immoral is unlawful. Morality means ethics, principles and virtue and what is moral depends upon the standards prevailing in a particular place. What may be moral at one place may be immoral at another. What is immoral has not been defined by the Indian Contract Act. Immorality depends on the norms accepted by the society at a particular point in time.

Illustration

Sonu wanted to marry Devika, and Geetha was a good friend of Devika. Sonu asked Geetha to persuade Devika to marry him. He also gave Devika rupees twenty thousand as consideration. Geetha could not persuade Devika to marry Sonu. Sonu asked Geetha to return the consideration. But the agreement was void as the object of the agreement was immoral and so Sonu could not claim the consideration.

Case law 6

Bai Vijli vs. Nansa Nagar (1885) 10 Bom. 152

Bai Vijli (the plaintiff) advanced a loan to Nansa Nagar (the defendant), who was a married woman, to obtain divorce from her husband and then marry him. It was held that the object of the agreement was immoral and therefore the plaintiff was not entitled to recover the loan advanced from the defendant.

(ii) Opposed to public policy: The concept of public policy is a changing concept, it keeps on changing from one generation to another and from one period of time to another.

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Case law 7

Oil and Natural Gas Corporation Ltd. Vs. AW Pipes Ltd (2003) A.I.R. S.C. 2629

In this case the Supreme Court of India observed that the concept of public policy is a vague concept and it is used sometime in a narrow sense and sometimes in wide sense depending upon the context in which it appears.

Check your Progress



An agreement is opposed to public policy when it is against public interest or harmful to the welfare of the public. There is no precise definition of public policy. Public policy just means an act, which is injurious to the interest of society. If an agreement is against the social or economic interest of the community is considered as opposed to public policy. Following are some cases where the agreements are considered to be against the public policy:

(1) Agreement to stifle prosecution:

The main purpose of the judiciary is to punish the guilty. Agreements which are made to save the guilty from being punished are agreements to stifle prosecution and thus opposed to public policy.

Illustration

Sunder killed Jeetendra and Anita witnessed the killing. Anita was offered rupees two crores to give false witness. This agreement is unlawful and opposed to public policy.

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Case law 8

Windhill Local Board vs. Vin (1890) 45 Ch. D. 357

In this case it was held that any compromise to frustrate an action against a criminal would be deemed to be unlawful. Acceptance of consideration to make a compromise to frustrate action against a criminal will amount to taking a bribe. Thus such agreements are stifle prosecution and hence are unlawful.

(2) Agreement of maintenance and champerty

Maintenance means aiding a party in civil proceedings by providing financial or other assistance without having any interest in the litigation. Such intermeddling is unlawful. Champerty means aiding a party in civil proceedings to receive a share in the gain made in the proceedings. Champerty is a kind of a bargain where one party is to assist the other in recovering the property and then sharing the proceeds of the action. When the person assisting and the person assisted have a common interest in the proceedings maintained, then it is not unlawful.

Illustration

Raghuveer and Rakesh were two brothers. Their father died without writing a will. After their father died Rakesh occupied the ancestral property without letting Raghuveer having any share in the property. Raghuveer was quite poor and did not have enough money to fight the case. Sukul was a rich man and he promised Raghuveer to finance his Court case against Rakesh provided Rahguveer would make him a joint owner in the property once he won the case. The agreement between Sukul and raghuveer is unlawful because it is an agreement of champerty.

Case law 9

Khaja Moinuddin Khan vs. S.P. Ranga Rao A.I.R. 2000 A.P. 344.

In this case there was an agreement between Khaja Moinuddin and Ranga Rao where they decided that Moinuddin would finance Ranga Rao's litigation for acquisition of land and in return if Ranga Rao won the land then he would pay 40% of the total compensation of the land to Khaja Moinuddin or alternatively would pay 40% of the sale proceeds if the land was sold. It was held that the said agreement was champertous in nature and so was void.

(3) Trading agreement with an enemy

It is unlawful and against public policy for men to trade with other men who are citizens of an enemy country i.e. one with which the country with whom the country is at war. They can very well enter into agreements after the war has ended but any contract entered into before the war becomes void during the war.

Illustration

Rahim a merchant in Iraq had a business associate Thomas in the USA. They both had business dealings with each other. When America declared war with Iraq as a result all

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the contracts between Rahim and Thomas became void.

Case law 10

Ertel Bieber & Co. vs Rio Tinto Co. (1918) A.C. 260.

In this case it was held that if agreements with the enemy country are not made unlawful, then the commercial transactions between the two countries might have the effect of promoting the economic interest of the enemy country and prejudicing the interest of one's own

Check your Progress

Stifle prosecution

00 : 00 : 00

Time's up.

Type the appropriate letters in the asterisk cells and click Submit to verify your answer.

(4) Marriage brokerage contracty

These are contracts under which a person agrees to materialize a marriage between two people on some consideration. The consideration may be in cash or kind and taking consideration amounts to a brokerage for fixing a marriage between two people and therefore the agreement becomes unlawful.



Figure 6.5 Fixing a marriage

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Illustration

Rana Raushan Singh agreed to get his son married to the daughter of Raghuvver Singh provided Raghuvver Singh transferred 10 acres of land in the name of Rana Raushan Singh. The marriage was solemnized but Raghuvver Singh did not transfer the property. As the agreement is opposed to public policy and hence void. Rana Raushan Singh cannot sue Raghuvver for breach of contract.

Case law 11

Dholidas Vs. Fulchand (1898) 22 Bom. 658

In this case it was held that if the father of a boy or a girl is to be paid some money in consideration of his agreement to give his son or daughter in marriage, the agreement is opposed to public policy and therefore void.

(5) Agreement tends to injure the public service Agreements to buy a public office through bribing are against public policy.

Such agreements are not only opposed to public policy but are also unlawful. Anybody found to be accepting bribes is punishable. Such agreements hinder free and fair selection of qualified persons for an office.

Illustration

Sandhya applied for the job of a teacher in a public school. She promised to pay Mrs Puri, the principal, rupees fifty thousand for selecting her for the post. Interviews were held and Sandhya was selected, but she did not pay Mrs Puri the promised amount. Mrs Puri cannot claim the money because the agreement is void as it is opposed to public policy.

Case law 12

N.V.P. Pandian Vs. M.M. Roy AIR 1979 Mad. 42

Pandian paid a sum of rupees 15,000 to Roy for using his influence in the selection committee to get a seat for Pandian's son in a medical college. Pandian's son could not get a seat so Pandian filed a suit against Roy for the recovery of money. It was held that the agreement was opposed to public policy and was void. Therefore Pandian was not entitled to claim the money back.

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Check your Progress

Marriage brokerage

1. On the occasion of marriage of his son Ranjan with Raman's daughter Seema, Mr. Lal demanded car. The marriage was solemnized but Mr. Raman did not provide

- Yes
- No

Submit

Feedback:

Select your answers to the questions from the choices provided. Pay special attention to the feedback you receive on the right. Good luck!



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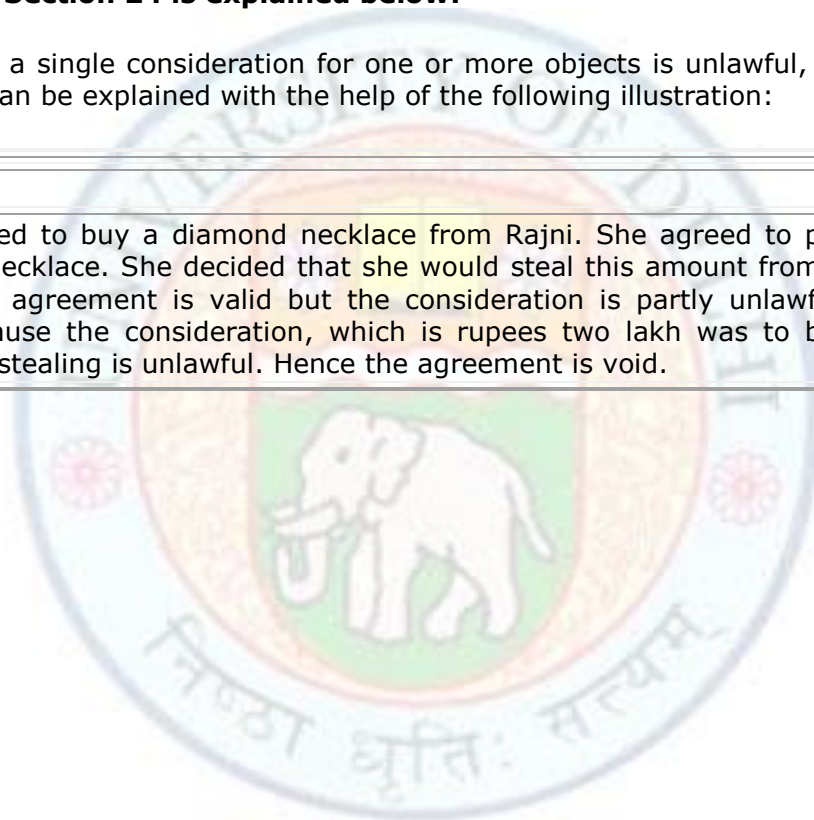
6.2 Considerations and Objects That are Unlawful in Part

An agreement having an unlawful object or an unlawful consideration is void. Section 24 of the Indian Contract Act states "that if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void. However, if there are two parts in a contract and the consideration or the object of one part is unlawful and if that part can be separated from the other part, which is lawful, then the lawful part of the contract is enforceable in the Court. If the two parts are inseparable and it is not possible to separate the lawful from the unlawful, then the whole agreement is void".

Each part of Section 24 is explained below:

If any part of a single consideration for one or more objects is unlawful, the agreement is void. This can be explained with the help of the following illustration:

Illustration
Cynthia wanted to buy a diamond necklace from Rajni. She agreed to pay rupees two lakh for the necklace. She decided that she would steal this amount from her aunt. The object of the agreement is valid but the consideration is partly unlawful. It is partly unlawful because the consideration, which is rupees two lakh was to be procured by stealing, and stealing is unlawful. Hence the agreement is void.



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Check your Progress

Match the following

1. Match the pairs by clicking on an item in the left column and then clicking on an item in the right column.

Match the following

Forbidden by law

Injurious to society

Void agreements

Prohibited by law

Immoral

Agreement with a minor

Opposed to public policy

Ethics, principles and values

Attempt the questions and scroll down to click the Submit button for results.

If any one or any part of any one of several considerations for a single object is unlawful, the agreement is void. This is explained with the illustration below:

Illustration

Cynthia wanted to buy a diamond necklace from Rajni. Rajni agreed to sell the necklace to Cynthia provided Cynthia paid rupees fifty thousand in cash and slapped Cynthia's neighbor Agatha. There are two parts in the consideration. One of the parts, namely which is slapping the neighbor is unlawful; therefore the agreement is void.

If there are two parts in a contract and the consideration or the object of one part is unlawful and if that part can be separated from the other part, which is lawful, then the lawful part of the contract is enforceable in the Court. This is explained with the illustration below:

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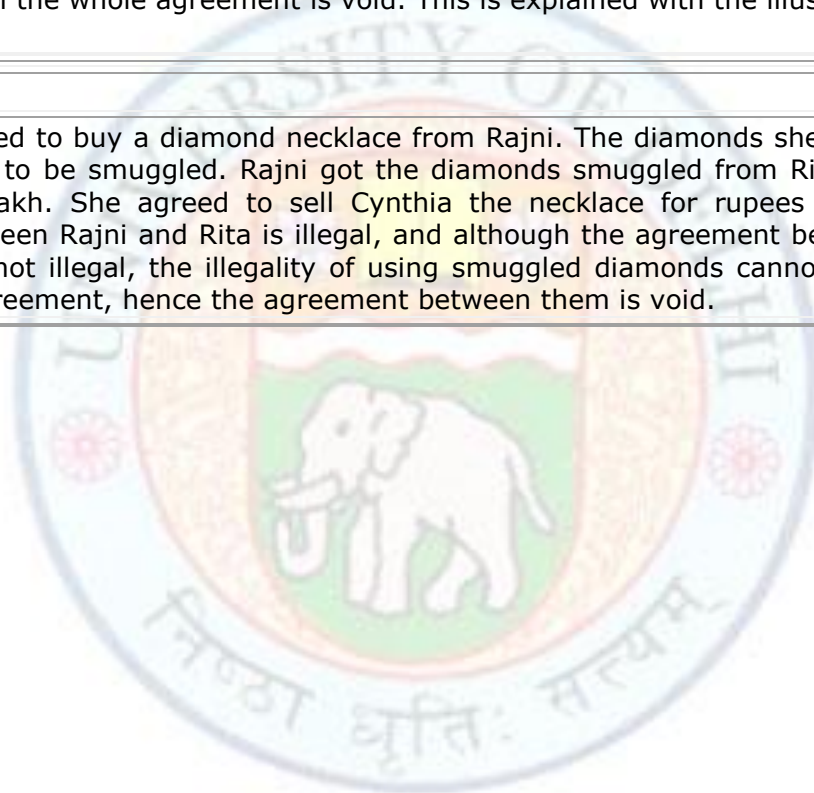
Illustration

Cynthia wanted to buy a diamond necklace from Rajni. Rajni agreed to sell Cynthia the necklace for rupees fifty thousand. Cynthia agreed to buy the necklace but she did not have money so she asked Rajni to give her the necklace on credit. Cynthia promised to return the money to Rajni with interest in five years. Cynthia happened to be a minor. She took the necklace and did not pay the money to Rajni. There are two parts in the contract. In one part Cynthia is a buyer and Rajni a seller. Here Cynthia is a beneficiary and an agreement with a minor who is a beneficiary is a valid contract, therefore this part of the contract is valid. However in the second part of the contract Rajni is the creditor and Cynthia a debtor. An agreement with a minor is valid only if he/she is a beneficiary. In this case the minor is a debtor hence the agreement is void. Hence Cynthia is under no obligation to return the money.

If the two parts are inseparable and it is not possible to separate the lawful from the unlawful, then the whole agreement is void. This is explained with the illustration below:

Illustration

Cynthia wanted to buy a diamond necklace from Rajni. The diamonds she wanted in the necklace had to be smuggled. Rajni got the diamonds smuggled from Rita in Dubai for rupees one lakh. She agreed to sell Cynthia the necklace for rupees two lakh. The contract between Rajni and Rita is illegal, and although the agreement between Cynthia and Rajni is not illegal, the illegality of using smuggled diamonds cannot be separated from their agreement, hence the agreement between them is void.



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Check Your Progress

Practical Problem

Ghungroo gave rupees fifty thousand to Anil to beat up her neighbor Krishna. Anil does not beat Krishna.

Is Anil liable for the promise he made to Ghungroo?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.



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Practical Problem

Rani sold her mobile to Kavya without disclosing that its speaker is defective.

Is this a valid contract?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.

Practical Problem

Sandhya had her birthday party on the terrace. She hired Rocky the DJ to play music in the party at night. She paid him rupees five thousand for playing music at night. Rocky played music

Is Rocky liable to return the money?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.

1 (F) Legality of Objects

Practical Problem

Rakesh promised to marry his son with Ramu's daughter provided he paid rupees five lakh in cash. Ramu agreed to pay but soon after the marriage Ramu refused to pay the money.

Can Rakesh sue Ramu for breach of contract?

- Yes
- No

Read the question carefully, then answer the questions by clicking the appropriate option.



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Practical Problem

Ghanshyam had applied for the job of a schoolteacher and to get the job he paid the head master of the school rupees ten thousand. Ghanshyam did not get the job.

Can Ghanshyam get the money back from the head master?

- Yes
- No

Read the question carefully, then answer the questions by clicking the appropriate option.



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Glossary



The screenshot shows a web-based glossary interface. At the top, the word "Glossary" is displayed in a bold, black font. Below it, there is a search bar containing the text "Balance Sheet" and a "Search For" label to its right. Underneath the search bar is a horizontal menu of letters from A to Z, with the letter "B" highlighted in a yellow box. Below the menu is a list of terms: "A Priori", "Abatement", "Above the Line", "Absolute Title", "Balance Sheet", "Bed and Breakfast", "Book Value", "Broker", and "Cartel". The term "Balance Sheet" is highlighted with a light green background. To the right of the list is a vertical scrollbar. Below the list is a text box containing the definition: "A statement of assets and liabilities, plus owners equity and reserves at a specific date." At the bottom of the interface, there is a bold instruction: "Click each term to know its definition."



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References

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Kuchhal M.C. (2005): *Business Law*, fourth edition, Vikas Publishing House, Delhi

For more information refer the following **websites**

http://en.wikipedia.org/wiki/Illegal_agreement

<http://www.reportbd.com/articles/40/5/Legality-of-Object-and-Consideration/Page5.html>

