Chapter 10

Legal Purpose and Proper Form
Section 1

Illegal Agreements

Goal 1: Identify various forms of illegal agreements

Goal 2: Distinguish agreements that, although illegal, the courts will enforce
ILLEGAL AGREEMENTS

• Agreements that involve contracting for an illegal act GENERALLY are void and unenforceable.
1. Illegal Lotteries

Most states either forbid or regulate gambling.

A LOTTERY has 3 elements

• Prize (money to win)
• Chance (luck)
• Consideration (money to play)

Most common form of gambling is a *wager* (bet on the uncertain outcome of an event.)
Various LEGAL forms of Gambling

• Casinos
• Pari-mutual betting (horse betting)
• State-run lotteries
• Bingo and Pull-tab betting (licensed institutions for financing charitable, religious or educational projects.)
2. Agreements to Pay Usurious Interest

Loan companies cannot charge you more interest than what the state maximum. *18% is common max.

A licensed loan company that charges more than the state max is **usury**.

Loan sharks – people who charge a high interest rate for a loan. They are not licensed loaners.
3. Agreements Involving Illegal Discrimination

Holiday Inn Hotel chain agrees with a local Holiday Inn manager to not accept guests of a particular race. *Violates Civil Rights Act of 1964

Someone selling their home cannot refuse a potential buyer because of their race. *Violates 14th amendment
4. Agreements that Obstruct Legal Procedure

You CANNOT make an agreement to delay or prevent justice from being served. This means you CANNOT:

- Bribe witnesses
- Bribe jurors
- Compounding a crime – not informing about or prosecuting a crime.
5. Agreements made W/O a required Competency License

Competency license – persons in a certain occupation must pass exams to perform their job adequately.

Doctors, teachers, pharmacists, lawyers Must have a competency license.

Real estate brokers, insurance agents, and building contractors are subject to that regulation as well.
6. Agreements that Affect Marriage Negatively

Marrying an illegal immigrant for citizenship.

A father promising to pay his daughter to not marry someone.

A boss agreeing to pay his assistant to divorce her spouse.
7. Agreements that Restrain Trade

Unreasonable

Price fixing – competing firms agree on the same $ to be charged for a product/service. Problem?

Bid rigging—competitors who bid on a job agree that one bidder will have the lowest bid. They each take turns with this and set the price really high.

Allocation of Markets – refusing to sell to buyers outside of their geographic location. *Finding a car in Chicago and can’t buy it because you live in Dolton.
Legal Price Fixing

Resale price maintenance –
Suggested retail price

Manufacturer (Coco Cola) can suggest a price and refuse to sell to retailers who will not charge that amount.
8. Agreements NOT to compete

Price fixing and market allocation are agreements to not have competition. *Illegal

When you are hired as an employee to one company, you agree that if you quit/fired you cannot work for the competition. *legal

This is NOT legal if:
- Time period is unreasonable
- Geographic area is unreasonable
When will the Courts Enforce ILLEGAL Agreements?

Most illegal contracts are void and unenforceable. However, when the connection between the illegality and the agreement is slight or a party is relatively innocent of wrongdoing or both, the law will allow restitution (the recovery of your consideration) or the agreement to be enforced in court. Example are:

- Protected Victims
- The excusably ignorant
- Rescission prior to illegal act
- Divisible contracts
Protected Victims

- Blue Sky Laws- prohibits sales of worthless stocks and bonds.

*You get restitution
Ignorant People (Excused)

People who:
- Don’t know the contract is illegal, but
- The other party knows the transaction is illegal, and
- The illegality is minor

*They can either enforce the contract or obtain restitution.
Rescission *Prior to Illegal Act*

Ex: You pay a friend $50 to steal the answer key to a test. You change your mind before he/she does steal it, you take back your $50.

*You get restitution*
Divisible Contracts

Illegal contracts often have **legal** and **illegal** provisions.

If you can break up the contract **(divisible)** you can keep the legal consideration and **eliminate** the illegal part.

If you **CANNOT** separate the legal consideration and eliminate the illegal part the contract is **indivisible**.
DIVISIBLE CONTRACT EX:

A retailer contracts to sell exported coffees. From the various 30 brands of coffees purchased, one brand is illegal in the U.S. The 29 other brands of coffees are legal while the one brand is illegal. Therefore, the contract is divisible. A court would enforce you to pay for the 29 brands of coffee and not pay for the 1 illegal brand.
Unconscionability

The UCC makes unconscionable contracts for the sale of goods subject to the rules for illegality. Such a contract has two elements:

- **Procedural unconscionability** – *HOW contract is created.*
  - Very fine print
  - Light font
  - Fraud
  - Duress
  - Undue influence
  - misrepresentation

- **Substantive unconscionability** – *Unfair terms in the agreement.*
  - High prices
  - One-sided terms
Remedies available for *unconscionable* contracts

- Courts can:
  - Refuse to enforce the contract
  - Enforce the legal part
  - Modify the terms of the contract and make it fair
Section 2

Statute of Frauds

Goal 1: Explain why the Statue of Frauds is necessary and what it requires

Goal 2: Identify the main instances when the Statue of Frauds requires a writing

Goal 3: Understand the rules of contract interpretation
Although oral contracts are usually valid, because they are subject to fraudulent claims, the law requires that several of the most important types of contracts be placed in writing to be enforceable in courts. These types are determined in most states by a LAW entitled the ............
While they were hanging out, Courtney orally agreed to buy an apartment building from Vince. In a later telephone conversation, Courtney promised Vince $100,000 as a down payment on the purchase price with the balance to paid off within 5 years. Vince promise to deliver the deed to the property at the time the down payment was made. Both parties were satisfied that all the terms had been completely negotiated. Later Courtney found a better deal and told Vince she was backing out.

Is Courtney’s contract with Vince enforceable?
Statute of Frauds

**Within the Statute Of Frauds**
(writing needed)

**Without the Statute of Frauds**
(writing NOT needed)
Contracts \textit{WITHIN} the Statute Of Frauds

- Contracts to buy and sell goods for $500 or more
- Contract to buy and sell real property or any interest in real property
- Contracts that require more than 1 year to complete
- Promises to pay the debt or answer for a legal obligation of another person
- Promises to give something of value in return for a promise of marriage *dowry
Executed Contracts
Contract has been fully performed

Executory Contracts
Contract that has NOT been fully performed
Executory Contract

An executory contract within the Statute of Frauds, but NOT SIGNED or not in writing is unenforceable.

Quasi-Contract

Some element of an enforceable contract is missing, yet courts award money to prevent the unjust enrichment of one party.
Requirements of the Writing

1. Statute of Frauds (State’s Version)  
2. UCC (sales of goods)
6 Essential Elements in a WRITING Required by the Statute of Frauds standards

1. Names of the parties *(Sam and Jane)*
2. Subject matter description *(1914 signed World Series baseball)*
3. Price *(400)*
4. Quantity *(1)*
5. Signature
6. Other essential terms *(terms of payment, method of delivery, methods of financing, etc)*
UCC Requirements

Under the UCC, the writing must indicate only

– The quantity of goods
– That a contract has been created between the parties
Special rules for signatures

Under Statute of Frauds, only the parties who sign may be sued for enforcement. Signatures may be:

– Written
– Stamped
– Engraved
– Printed
Special Rules for Signatures

Under UCC, people who deal with contracts regularly only needs one parties signature and sent to the other. They have up to 10 days to terminate. If after 10 days the receiver has NOT declined, the contract will be considered enforceable.
Types of Contracts *Within the Statute of Frauds*

- **Sales of Goods for $500 or more**
- **Sell an interest in Real Property**
  - Real Property = land + building permanently attached to the land.
  - Requires more than 1 yr to complete (from date of signing)
    - Time begins at the time contract is made, NOT when performance to begin.
Types of Contracts *Within the Statute of Frauds*

- Pay a debt or answer for another’s debt
  - Collateral promise [if you don’t pay, then someone else (dad) will] *Needs writing*
  - Primary promise (Dad will pay rent, you live there, and dad bills you) *no writing needed*
  - **Exception: Main Purpose Rule** – A third party is liable for oral promise to pay another’s debt if the main purpose of the promise serves the promisor’s own interest.

- Marriage as consideration *dowry*
Contract Interpretation

• Integration Clause – “It is agreed that the terms in the written contract constitute the entire and final contract between the parties.”

• Specific Rules
  – Analysis (courts interpret main/principal objective)
  – Conflicting Terms (write a check for $20, but wrote it out for “two dollars”). If one part is ambiguous the courts will enforce the unambiguous expression.
- Words (usage/meaning) plain and normal meaning – prior relationships between parties determines the meaning.
Legal and technical terms are given their technical meaning (assumed to know trade language if both parties are members of same trade)

- Authors of Ambiguity (confusing words). Court will interpret against the author of contract.

- Implied reasonableness (payment in cash, but you accept a check)
Contracts of Adhesion

EX: Buy something with a credit card and are asked to sign the receipt.
The terms in the contract generally favor the seller.
Parol Evidence Rule

• Parol means “word of mouth”
• Evidence means “anything presented as proof at a court trial”

Only the written terms in the contract are enforceable. IF IT’S NOT IN WRITING, IT’S NOT ENFORCEABLE!
Sylvia needed a car to get to and from her new job. She chose one because the dealer said, “This car has a 90-day guarantee, but if it breaks down during the next year we’ll lend you a car for free while it’s being repaired.” Although Sylvia signed a written agreement to buy the car, the writing did not contain the dealer’s promise. Eight months later, when the car broke down, the dealer refused to lend Sylvia a car. The parol evidence rule would prevent Sylvia from relating the dealer’s statement in court.
When asked to sign, follow these guidelines

• Read the ENTIRE text of the document before you sign it.

• If you don’t understand or agree to it, cross it out BEFORE you sign. Have the other party initial the change.

• Don’t be afraid to make changes on a printed form.
• Refuse to sign if you don’t agree with everything contained in the writing.

• If a contract contains a lot of complicated or ambiguous language, consider asking a lawyer to review the agreement BEFORE you sign it.