

## UNIT 6

## LEGALITY OF OBJECT AND CONSIDERATION

## COVERAGE

1. Legality of Object
2. Legality of Consideration

## LEGALITY OF OBJECT &amp; CONSIDERATION

## LEGALITY OF OBJECT AND CONSIDERATION

<b>Meaning</b>	<p>Object means the purpose of the contract and consideration means something in return. The object and consideration of contract should be lawful. It is considered lawful unless it is forbidden by law or is fraudulent or involves or implies injury to the person or property of other or is immoral or opposed to public policy.</p> <p>The object and consideration of the contract are unlawful in the following cases:</p> <ol style="list-style-type: none"> <li>i. Forbidden by law</li> <li>ii. Defeating provisions of law and rules</li> <li>iii. Injury to the person or property of another</li> <li>iv. Immoral</li> <li>v. Fraudulent</li> <li>vi. Agreement opposed to public policy</li> </ol>
<b>Forbidden by Law</b>	<p>If the object or the consideration of an agreement is forbidden (i.e. Prohibited) by law, the agreement is void. An act is said to be forbidden by law when it is punishable either by the criminal law of the country or by special legislation.</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. A promises to drop a 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.</li> <li>2. A promises to obtain for B an employment in the public services and B promises to Pay Rs 100,000 to A. The agreement is void as the consideration for it is unlawful.</li> </ol>
<b>Defeating the provision of law and rules</b>	<p>Where an object or a consideration of any contract is such that it is not really prohibited by law but it would defeat any law or rules, the contract will be void.</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. A borrowed Rs 100,000 from Y and agreed not to raise any objection as to the limitation and that Y may recover the amount even after the expiry of limitation period. This agreement is Void as it defeats the provisions of the limitation set in MCCA. Therefore it is void.</li> </ol>
<b>Injury to the person or property of another</b>	<p>If the object or consideration of any contract is to cause injury to others or their properties, then the contract is said to have been void.</p> <p><b>Example:</b></p> <ol style="list-style-type: none"> <li>1. A gave Rs. 10,000 to B on the condition that B destroys his neighbour's house. Here, the object of the agreement to destroy the property of another person so it is void.</li> </ol>

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<b>Immoral</b>	<p>As per Section 517 (f) of MCCA, a contract concluded for immoral purpose or against public morality or public order is void.</p> <p><b>Example</b></p> <p>1. A lent money to B to obtain divorce from her husband. B took the money. This agreement is void because the object is immoral.</p>
<b>Fraudulent</b>	<p>Any object or consideration of fraudulent nature makes the contract void.</p> <p><b>Example</b></p> <p>1. A and B 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.</p>
<b>Agreement opposed to public policy</b>	<p>The object and consideration of the contract must not be detrimental or opposed to public policy. However it is not easy to define the term 'Public Policy' with any degree of precision because public policy by its very nature is highly uncertain and keeps on fluctuating with the passage of time. An agreement which conflicts with morals of the time and contravenes any established interest of society may be said to be opposed to public policy.</p>

## AGREEMENT OPPOSED TO PUBLIC POLICY

<b>Agreement of trading with enemy</b>	<p>An agreement made for trading with enemy is illegal as it is opposed to public policy.</p>
<b>Agreement for stifling prosecution</b>	<p>Stifling of prosecution means agreeing in consideration of receiving a pecuniary or other advantage, to abstain from prosecuting a person for an offense. Stifling prosecutions are illegal as it is an abuse of justice.</p> <p><b>Example</b></p> <p>1. A offers Rs. 5,00,000 to B if he does not participate in criminal proceedings against his son. This agreement is for stifling prosecution, hence, illegal.</p>
<b>Agreement interfering with course of justice</b>	<p>An agreement whose object is to influence delivery of justice is opposed to public policy and is illegal.</p> <p><b>Example</b></p> <p>1. A is a witness in a case. B offers him Rs.10,000 for not appearing as a witness in the court. This agreement is illegal.</p>
<b>Agreement in restraint of personal freedom</b>	<p>Right to personal freedom is a constitutionally guaranteed right. Any agreement that restrains personal freedom is illegal.</p> <p><b>Example</b></p> <p>X borrowed Rs 100,000 from Y on the promise that he would not, without the Y's written permission leave job. Dispose of his property or change his residence. It was held that the agreement was void.</p>

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<b>Agreement in restraint of trade</b>		Every person has a right to carry on any trade or occupation. An agreement in restraint of trade is void to that extent.
<b>Agreement in restraint of marriage</b>		An agreement in restraint of marriage, except other than minor is void because it is opposed to public policy.
<b>Agreements creating Monopoly</b>		<p>An agreement creating monopoly is void because it is opposed to public policy and Competition Promotion and Market Protection Act, 2063 (2007).</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. A local body granted a monopoly to X to sell vegetables in a particular locality. This agreement is void on the ground of being opposed to public policy.</li> </ol>
<b>Agreements in nature of Maintenance and Champerty</b>		<p>Maintenance is an agreement whereby one party having no interest in suit, agrees to assist another to maintain suit.</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. X promises to pay Y Rs 5,000 if Y files a suit against Z. This is a maintenance agreement.</li> </ol> <p>Champerty is an agreement whereby one party agrees to assist another in recovering property and in turn is to share in the proceeds of the action.</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. X agreed to pay Rs 10,000 to Y to enable him to file a suit for the recovery of his property and Y promised to give him 3/4<sup>th</sup> share in the property, if recovered. This agreement was held to be champertous and void.</li> </ol>
<b>Sale of public offices and titles</b>		<p>Agreement for sale of public offices and title is also known as trafficking (buy, sell or procure) of public office. These agreements are opposed to public policy and hence illegal.</p> <p><b>Example</b></p> <ol style="list-style-type: none"> <li>1. A offers Rs. 10,00,000 to a public officer, inducing him to retire from his office so that his son may join the office. This is illegal contract.</li> <li>2. A offers Rs. 5,00,000 to B who has filed his candidature for a public office. This is illegal agreement as it is opposed to public policy.</li> </ol>