

The owner of a gun store had been doing business with a hunter for many years. The hunter entered the gun store and spoke to the owner about purchasing a new hunting rifle on credit. The hunter disclosed that he intended to use the rifle on a turkey-hunting trip that weekend even though it was two weeks before turkey-hunting season began. The hunter left with the rifle after signing a written agreement to pay for the rifle in 12 monthly installments.

The rifle functioned well on the hunter's trip, during which a friend advised the hunter that he could avoid paying for the rifle because the contract was illegal. The hunter took the friend's advice and never paid any installments.

If the store owner sues for breach of contract, will he be likely to prevail?

- A. No, because the store owner failed to disaffirm the contract's illegal purpose before giving the hunter possession of the rifle.
- B. No, because the store owner knew that the hunter intended to use the rifle for an illegal purpose.
- C. Yes, because a contract to sell a rifle is not, in and of itself, illegal.
- D. Yes, because the store owner substantially performed and did not sell the rifle in order to further the hunter's illegal purpose.

Explanation:

Recovery for breach of illegal contract

Expectation damages

(full value of lost performance)

- Party justifiably ignorant of illegality*
- Party substantially performed & lacked illegal purpose
- Contract separable into legal / illegal parts *or*
- Contract illegal due to violation of licensing requirement designed only to raise revenue

Restitution damages

(reasonable value of benefit conferred)

- Party justifiably ignorant of illegality*
- Party less culpable than other party *or*
- Party withdrew before illegal purpose achieved & did not engage in serious misconduct

*Recovery on this basis is barred if other party is *also* justifiably ignorant.

An **illegal contract** arises when one or both parties' purpose, formation, or performance is against the law. These contracts are usually **void**, and there is no recovery for breach. However, an **exception** arises if one party **lacked an illegal purpose** and **substantially performed** under the contract. That party may recover **expectation damages** for breach—even if he/she knew of the other party's illegal purpose.* This is true **unless**:

- the performing party took **action to further the other party's illegal purpose** *or*
- the illegal purpose involves **grave social harm** (eg, threat to human life).

Here, the contract was illegal because the hunter's purpose was to use the rifle to hunt outside the mandated turkey-hunting season. However, the store owner substantially performed by giving the hunter the rifle and had no illegal purpose of his own. And though the store owner knew of the hunter's illegal purpose, the store owner took no action to further it (**Choice B**). Additionally, hunting two weeks out of season does not involve grave social harm. Therefore, the store owner will likely prevail in a breach-of-contract suit.

*If the performing party was unaware of the other party's illegal purpose, then no further analysis is necessary.

(Choice A) The store owner did not need to disaffirm the contract's illegal purpose—eg, by telling the hunter not to use the rifle on the upcoming hunting trip. It is enough that the store owner did not act to further the hunter's illegal purpose and there was no threat of grave social harm.

(Choice C) A contract to sell a rifle is not, in and of itself, illegal (absent statutory restrictions—not seen here). But the contract is still illegal because the hunter intended to use the rifle for an illegal *purpose*.

Educational objective:

Illegal contracts are usually void and there is no recovery for breach. However, a party who substantially performed and lacked an illegal purpose may recover—even if he/she knew of the other party's illegal purpose—unless (1) the performing party took action to further that illegal purpose or (2) the purpose involves grave social harm.

References

- Restatement (Second) of Contracts § 182 (Am. Law Inst. 1981) (explaining the effect of performance under a contract when the other party's purpose is illegal).