

An insurance company issued an insurance policy to a homeowner. The policy failed to contain certain coverage terms required by a state insurance statute. When the homeowner suffered a loss due to a theft that was within the policy's terms, the insurance company refused to pay, claiming that the policy was unenforceable because it violated the statute.

Will the homeowner likely succeed in an action against the insurance company to recover for the loss?

- A. No, because the insurance policy is not a divisible contract.
- B. No, because the insurance policy violated the statute.
- C. Yes, because the homeowner belongs to the class of persons intended to be protected by the statute.
- D. Yes, because the insurance policy will be strictly construed against the insurance company as the drafter.

Explanation:

Contracts unenforceable on public-policy grounds

Common examples:

- Contracts unreasonably restraining **trade**
- Contracts discouraging or restraining **marriage**
- Contracts for **sexual intercourse**
- Contracts for committing a **tort**
- Contracts encouraging **breach of a fiduciary duty**
- Contracts excusing liability for intentional, knowing, or reckless **misconduct**

A **contract** that **violates the law** is often unenforceable on public-policy grounds. But there is an exception to this rule when the contract violates a law **designed to protect the party seeking to enforce** the contract. In that case, the contract is **enforceable** so as to avoid frustrating the public policy behind the statute.

Here, the homeowner's insurance policy violated the state insurance statute by failing to contain certain coverage terms. That statute was intended to protect insureds like the homeowner, and the public policy behind the statute will be frustrated if the insurance company is allowed to escape liability for the homeowner's loss. Therefore, the insurance policy is enforceable, and the homeowner will likely succeed **(Choice B)**.

(Choice A) Some contracts are divisible, meaning that they can easily be separated into legal and illegal parts so that recovery is available on the legal part(s) only. But a contract entered into in violation of a statute need not be divisible for a court to enforce it.

(Choice D) Although contracts are generally construed against the drafter, this rule matters only when there is a dispute involving the interpretation of ambiguous contract language (not seen here).

Educational objective:

When a contract violates a law that was designed to protect the party seeking to enforce the contract, the contract can be enforced to avoid frustrating the public policy behind the statute.

References

- Restatement (Second) of Contracts § 178 (Am. Law Inst. 1981) (when a contract is unenforceable on public policy grounds).
- Restatement (Second) of Contracts § 179 cmt. c (Am. Law Inst. 1981) (when refusal to enforce frustrates public policy).

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