

A Brief Discussion on Nature of Illegality

Sarah Pauly

Assistant Professor, Department of Law, Presidency University, Bangalore, India,
Email Id-sarah.pauly@presidencyuniversity.in

ABSTRACT:

The idea of illegality is one that is crucial to several legal disciplines, including contract law, criminal law, and administrative law. The concept of illegality is complex and encompasses a variety of acts, agreements, or conduct that is seen to be against the law, public policy, or cultural standards. This abstract examines the core ideas of illegality while showing the many ways it might emerge and have an impact in various legal circumstances. Legality in contract law refers to the inclusion of an illegal or forbidden factor that renders a contract unenforceable. Contracts that contradict public policy, such as those that attempt to get around regulations or engage in unfair competition, or those involving illicit actions like fraud or drug trafficking, may lead to this. Contractual violations often result in their annulment, leaving the parties without legal recourse and maybe susceptible to fines or obligations. The term "illegality" in criminal law refers to conduct that contravenes existing criminal laws. Criminal offences include a broad spectrum of behaviour, including theft, violence, or white-collar crimes like embezzlement or money laundering. They may vary from small infractions to major felonies. Criminal law recognises that certain behaviours are damaging to people or society as a whole, necessitating punishment or remedial action to preserve peace and protect the general welfare.

KEYWORDS:

Contractual Clauses, Illegality, Legal Compliance, Trade Provisions.

I. INTRODUCTION

A key idea in the study of law, the notion of illegality refers to the forbidding of participating in actions that are against the law and public policy. When used in legal settings, the term "illegality" describes activities or agreements that are seen as illegal, invalid, or unenforceable because they break pre-existing rules of conduct. In order to appreciate the ramifications of illegality in relation to other fields of law, such as contract law, criminal law, and administrative law, it is essential to understand the nature of illegality [1], [2].

Illegality may take many various forms, from outright breaking of stated laws to less obvious transgressions of moral or public policy. It includes a broad variety of behaviours include taking part in illegal activity, breaking a contract, breaking the law, or doing anything that is seen to be against the general welfare or social order. The study of laws, court rulings, and community norms is often necessary because to the complicated and multidimensional nature of illegality. The enforcement and validity of commercial agreements are significantly influenced by the concept of illegality in the framework of contract law [3], [4]. A contract may be declared invalid or unenforceable by the courts if it is shown to be associated with unlawful activity or to be against public policy. This guarantees that contracts that are intrinsically destructive, dishonest, or detrimental to society as a whole are not supported by the law.

In addition, illegality has a wider definition than only contract law. The idea that committing crimes has legal repercussions, such as fines, imprisonment, or other types of punishment, is essential to criminal law. Administrative law also uses the idea of illegality to control how government agencies behave and make sure that stated policies are followed. A thorough analysis of legal systems, moral principles, and community norms is necessary to comprehend the nature of illegality. It entails determining how specific decisions or agreements will affect the general welfare of society, individual rights, and the smooth operation of a fair and equitable society. The legal system seeks to maintain order, safeguard individual rights, and advance societal welfare by identifying and correcting illegality. In the talks that follow, we will examine the many aspects of illegality in various legal settings, analysing its ramifications and potential legal recourses in situations involving unlawful conduct or agreements [5], [6].

II. DISCUSSION

Even if a contract is well-written, it could nevertheless include a clause that is illegal by definition, such one that calls for breaking into a building to steal. The concept of implementing such an agreement would undoubtedly be rejected by the courts, but there are certain activities that, according to public policy, should not be enforced since they are against the interests of society. As can be seen below, there are certain contracts that are by their very nature unlawful when they are established, and this isn't necessarily the case with evident criminal action [7], [8].

Other contracts start out legally, but the manner they are carried out makes them unlawful. Sometimes a contract is unlawful due to a legislation. In *Re Mahmoud and Ispahani* (above), this was the situation. Other times, a contract is prohibited by common law. In the following instance, this was true. Any unquestionably unlawful contract shall be null and invalid. A contract that isn't truly criminal but harms the state by impeding the administration of justice, encouraging sexual immorality, stealing money from the government, or encouraging corruption in public life won't be legally binding and won't be upheld in court. Contracts like wagering agreements, agreements that are harmful to marriage, and agreements that restrict commerce may be permitted to exist even if they are not legally prohibited [9], [10].

Restraint of trade in illegalities

Contractual clauses or agreements that limit a person's ability to participate in trade, profession, or commercial activities are referred to as restraints on commerce. Restraint of trade provisions are subject to legal review to make sure they do not contravene laws or public policy, even if they may be legitimate and enforceable in certain situations. Provisions prohibiting trade restraints that break the law or entail illicit activity are deemed unenforceable. A contract is automatically deemed to be against public policy and invalid if it limits a person's ability to engage in commerce or employment, unless it can be justified in some other manner. This sort of restriction is often seen in employment contracts and agreements that govern the purchase or sale of businesses. The party desiring to include it must convince the court that it is a fair term, both between the parties and in the public interest, in order to convince the court that a provision which restricts commerce and prohibits a person from working should not be invalid.

Reasonability may be impacted by a number of variables, each of which may in turn rely to some degree on its own unique set of circumstances. The following is a discussion of trade constraint in connection to unlawful activities:

Unlawful Restraint of Trade: Trade restrictions that are against the law or entail illicit activity are often not enforced. Such clauses would be deemed invalid and unenforceable, for instance, if a contract calls for a party to do unlawful actions or participate in criminal activities, such as fraud, anticompetitive behaviour, or other illegal acts.

Public Policy Considerations: Trade restraint clauses that are found to be against public policy are likewise unenforceable. Although public policy concerns differ throughout countries, they all typically work to safeguard the public interest, encourage fair competition, and guarantee people's right to participate in legal commercial activity. Often regarded against public policy, clauses that unnecessarily limit competition, establish monopolies, or damage consumer interests may not be enforced. It might sometimes be unfair for an employee to quit and then utilise their insider information to work for a rival if they knew the secret components of a product or the inner workings of a company.

Safeguarding a variety of clients

In order to prevent clients of the first business from switching to the competitor and making it impossible for the first business to have a reasonable chance of continuing, restrictions are frequently placed on a person's ability to work for an immediate competitor after leaving employment. The Court of Appeal stated obiter in the case of *Lansing Linde v. Kerr* (1991) that the term might embrace customer names just as readily as chemical formulas. There can be a time limit or a limitation on where you can go. Compare the next instances. The limitation in the first instance was deemed to be excessively broad, however limits were permitted in the next three cases due to the nature of the job and the necessity to safeguard the employer's capacity to continue doing business without losing clients. The most recent instance demonstrates how too much restraint may bring to disaster!

Serving the public is necessary.

The court may approve a limitation in cases when a company is sold and the public needs to be serviced by such firms in order for the restriction to be valid. Depending on the condition and size of the market, this could be taken into account. In exchange for taking on the position, an employee could have deliberately and voluntarily decided to accept a constraint and a financial incentive. The court will maintain the constraint if it involves a worker who isn't particularly vulnerable and may freely bargain. If there are exclusive dealing arrangements, such as when an employee or contractor signs an agreement exclusively to work for one specific individual or to provide or get goods from one firm referred to as solus agreements, it must be shown that these arrangements are fair.

A trade restriction that is deemed to be unreasonable shall be null and unlawful insofar as it violates public policy. In light of this, the whole contract may not necessarily be invalid. If the objectionable provision can be deleted without changing the contract's core meaning, severance can be an option. The court could be willing to remove the offensive language while keeping the contract's overall meaning. The "blue pencil test" is used in this situation, in which the unjust portion of the agreement is removed by the court while keeping the other portions, which are still enforceable, in place. However, there seems to be a minor relaxation of this rigid approach by interpreting the problematic phrase in a manner that makes it acceptable see *Littlewoods v. Harris* (1978). Traditionally, the courts won't modify the contract in any way.

Non-Compete Agreements: Non-compete agreements are a typical kind of trade-restricting clause. Within a certain geographic region and for a predetermined amount of time after the end of an employment or commercial connection, these agreements often limit a person's capacity to compete with their former employer or participate in comparable business activities. Non-compete agreements must abide by the law and the public interest in order to be enforceable, even if they are acceptable in terms of their scope, length, and geographic restriction.

Exemptions and Limitations: Some countries have particular laws or regulations that control measures that hinder commerce, as well as exemptions from or restrictions on how effectively they may be enforced. The validity of restriction of trade provisions may be subject to certain standards set down in these laws, such as consideration, reasonableness, or the existence of a genuine, protectable interest on the part of the party seeking enforcement. It's crucial to review local laws and ordinances to learn about the precise requirements in a certain area.

Consequences of Unenforceable Restraint of Trade: If a restriction of trade clause is determined to be unenforceable because it is unlawful or goes against public policy, the clause itself may be invalidated and the parties may be freed from their duties under it. However, if the other terms of the agreement are valid and adhere to other contractual criteria, they could still be upheld. Contract law restraint of trade clauses must be meticulously designed and examined to guarantee their legality and enforceability. When signing contracts containing such clauses, it is wise to have legal counsel, particularly if there are any questions about whether they comply with the law or public policy.

A clause's capacity to be enforced, its rationality, and its adherence to the law are only a few of the considerations that determine whether it constitutes a restriction of commerce. The applicability of legislation and judicial interpretation decide whether a restriction of commerce provision is enforceable. Courts will evaluate the clause's legality in light of its rationality, ability to safeguard legitimate corporate interests, and conformity with public policy. A restriction of trade provision may have legal repercussions for the parties concerned if it is determined to be enforceable. The activities of the party subject to the restriction may be limited by a legal and enforceable restraint of trade provision. For instance, it can forbid a former employee from launching a comparable firm or working for a rival organisation within a certain time limit and geographic region. By restricting competition, the provision seeks to safeguard the interests of the party imposing the limitation.

The main goal of a restraint of trade provision is to safeguard the party imposing the restriction's legitimate business interests. These interests may include preserving a competitive edge, sustaining customer connections, or protecting trade secrets and private information. The restriction is intended to stop the person subject to it from acting in a way that might jeopardise their commercial interests. Legal repercussions may result from a party's violation of a lawful and enforceable restriction of commerce provision. The party wishing to enforce the

provision may file a lawsuit, demanding damages for any injury incurred as a result of the breach as well as remedies like injunctions to stop the party violating the restriction from participating in the prohibited activity.

Restraint of trade provisions must be fair and appropriate in order to be enforced. Courts often evaluate the clause's reasonableness by taking into account aspects including its length, geographic reach, and the types of activity it restricts. The provision might be declared unenforceable or only partly upheld if a judge finds that it is too onerous or goes beyond what is required to safeguard legitimate business interests. Public policy issues must be taken into account when drafting restraint of trade provisions. A provision that is regarded to be against public policy, such as one that unduly restricts competition or interferes with a person's right to employment, may not be enforced or have a restricted impact. It's crucial to remember that a restriction of commerce clause's impact might change based on the particular situation, the applicable law, and the clause's exact language. To comprehend the possible ramifications of a restriction of trade provision in a particular contractual setting, it is important to obtain legal counsel.

Exclusive Dealing Arrangements

Exclusive dealing arrangements are contracts between a distributor or retailer and a supplier, wherein the distributor or retailer commits to exclusively buy or distribute the supplier's goods. These agreements are often utilised across a number of sectors and may have positive and negative legal ramifications. Contractual agreements that provide exclusivity to a certain supplier or manufacturer are known as exclusive trading arrangements. The objective is to provide the supplier a specific sales channel and market presence while also ensuring a steady supply of goods or services to the distributor or retailer. Exclusive trade agreements may provide the parties a number of advantages. For the provider, it provides a dependable and reliable distribution network, greater control over the positioning and advertising of the product, improved brand loyalty, and maybe bigger sales volumes. It may provide the distributor or retailer access to special or distinctive items, preferred pricing or discounts, marketing assistance, and protection against competition.

Exclusive trading agreements are scrutinised by the law, especially in light of antitrust and competition regulations. Although laws differ across countries, they all usually work to safeguard consumer welfare, guarantee fair competition, and stop anti-competitive behaviour. Exclusive dealing agreements may be challenged as anti-competitive or anti-consumer practises if they unreasonably limit competition or damage consumer interests.

Exclusive dealing agreements that restrict the introduction or growth of other suppliers or rivals may give rise to anti-competitive concerns about market foreclosure. Antitrust laws may be used to challenge an arrangement if it severely limits competition, restricts market access, or has anti-competitive consequences. Exclusive business agreements involving major market players may be given more scrutiny if they are abusing their position of power. It may be deemed an abuse of a dominant position, which is forbidden under competition rules in many countries, if a dominant provider uses its market dominance to enforce exclusive commitments that exclude competition or hurt smaller rivals. Exclusive trading agreements may have pro-competitive arguments, despite the fact that they may also give rise to anti-competitive problems. Exclusive trade agreements, for instance, might stimulate efficiency, investment, innovation, and higher standards for goods or services. These arguments may be taken into account by courts and competition regulators when determining the legality of such agreements.

A case-by-case study is required to determine if exclusive dealing agreements are legitimate, taking into account variables such market power, market circumstances, length, scope, and possible anti-competitive consequences. Whether the agreement has the potential to hurt competition, customers, or the market as a whole is assessed by courts and competition regulators. If it is shown that an exclusive dealing agreement violates competition laws or unreasonably restricts competition, the parties concerned may be held accountable. These might take the form of penalties, compensation, restraining orders, or directives to change or end the agreement. It's crucial for parties thinking about exclusive dealing agreements to have legal counsel to guarantee compliance with local competition laws and regulations. Parties may negotiate the difficulties and possible hazards involved with exclusive dealing relationships by being aware of the legal environment and any potential repercussions.

III. CONCLUSION

As it pertains to the enforcement and validity of contracts, the idea of illegality has a profound impact on contract law. When a contract's subject matter, goal, or formation is contrary to the law or public policy, the contract is said to be illegal. Depending on the jurisdiction and the particulars of the case, there are different legal consequences for contracts. An illegitimate contract is often regarded as invalid *ab initio*, which means it is handled as if it never occurred. An unlawful contract cannot be enforced by the parties or given legal recourse. Courts may also, if feasible, preserve the legal aspects of a contract while refusing to enforce any part of it that is contaminated by illegality. When dealing with questions of contract illegality, it is crucial to get legal counsel since each situation's particulars may have a big impact. It is essential for parties to have a thorough understanding of the nature of illegality and how it affects contracts in order to make wise choices and guarantee legal compliance.

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