

**Reprint
as at 1 September 2017**



Illegal Contracts Act 1970

Public Act 1970 No 129
Date of assent 1 December 1970
Commencement 1 December 1970

Illegal Contracts Act 1970: repealed, on 1 September 2017, by section 345(1)(g) of the Contract and Commercial Law Act 2017 (2017 No 5).

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An Act to reform the law relating to illegal contracts

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

1 Short Title

This Act may be cited as the Illegal Contracts Act 1970.

2 Interpretation

In this Act, unless the context otherwise requires,—

Act means any Act of the Parliament of New Zealand; and includes any Act of the Parliament of England, of the Parliament of Great Britain, or of the Parliament of the United Kingdom, which is in force in New Zealand

court means, in relation to any matter, the court, tribunal, or arbitral tribunal by or before which the matter falls to be determined

enactment means any provision of any Act, regulations, rules, bylaws, Order in Council, or Proclamation; and includes any provision of any notice, consent, approval, or direction which is given by any person pursuant to a power conferred by any Act or regulations

property means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property.

Section 2 **Act**: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Section 2 **court**: replaced, on 19 December 2002, by section 3 of the Illegal Contracts Amendment Act 2002 (2002 No 82).

3 Illegal contract defined

Subject to section 5, for the purposes of this Act the term **illegal contract** means any contract governed by New Zealand law that is illegal at law or in equity, whether the illegality arises from the creation or performance of the contract; and includes a contract which contains an illegal provision, whether that provision is severable or not.

Section 3: amended, on 19 December 2002, by section 4 of the Illegal Contracts Amendment Act 2002 (2002 No 82).

4 Act to bind the Crown

This Act shall bind the Crown.

5 Breach of enactment

A contract lawfully entered into shall not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of any enactment, unless the enactment expressly so provides or its object clearly so requires.

6 Illegal contracts to be of no effect

- (1) Notwithstanding any rule of law or equity to the contrary, but subject to the provisions of this Act and of any other enactment, every illegal contract shall be of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract:

provided that nothing in this section shall invalidate—

- (a) any disposition of property by a party to an illegal contract for valuable consideration; or
- (b) any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) applies—

if the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.

- (2) In this section, **disposition** means—

- (a) any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity:
- (b) the creation of a trust:
- (c) the grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property, whether at law or in equity:
- (d) the release, discharge, surrender, forfeiture, or abandonment, at law or in equity, of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:
- (e) the exercise of a general power of appointment in favour of any person other than the donee of the power:
- (f) any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of that person's own estate and to increase the value of the estate of any other person.

Section 6(2): replaced, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

7 Court may grant relief

- (1) Notwithstanding the provisions of section 6, but subject to the express provisions of any other enactment, the court may in the course of any proceedings, or on application made for the purpose, grant to—

- (a) any party to an illegal contract; or

- (b) any party to a contract who is disqualified from enforcing it by reason of the commission of an illegal act in the course of its performance; or
 - (c) any person claiming through or under any such party—
such relief by way of restitution, compensation, variation of the contract, validation of the contract in whole or part or for any particular purpose, or otherwise howsoever as the court in its discretion thinks just.
- (2) An application under subsection (1) may be made by—
- (a) any person to whom the court may grant relief pursuant to subsection (1); or
 - (b) any other person where it is material for that person to know whether relief will be granted under that subsection.
- (3) In considering whether to grant relief under subsection (1), and the nature and extent of any relief to be granted, the court shall have regard to—
- (a) the conduct of the parties; and
 - (b) in the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly provided for any breach thereof; and
 - (c) such other matters as it thinks proper;
- but shall not grant relief if it considers that to do so would not be in the public interest.
- (4) The court may make an order under subsection (1) notwithstanding that the person granted relief entered into the contract or committed an unlawful act or unlawfully omitted to do an act with knowledge of the facts or law giving rise to the illegality, but the court shall take such knowledge into account in exercising its discretion under that subsection.
- (5) The court may by any order made under subsection (1) vest any property that was the subject of, or the whole or part of the consideration for, an illegal contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings.
- (6) Any order made under subsection (1), or any provision of any such order, may be made upon and subject to such terms and conditions as the court thinks fit.
- (7) Subject to the express provisions of any other enactment, no court shall, in respect of any illegal contract, grant relief to any person otherwise than in accordance with the provisions of this Act.

Section 7(3): amended, on 19 December 2002, by section 5 of the Illegal Contracts Amendment Act 2002 (2002 No 82).

8 Restraints of trade

- (1) Where any provision of any contract constitutes an unreasonable restraint of trade, the court may—
- (a) delete the provision and give effect to the contract as so amended; or

- (b) so modify the provision that at the time the contract was entered into the provision as modified would have been reasonable, and give effect to the contract as so modified; or
 - (c) where the deletion or modification of the provision would so alter the bargain between the parties that it would be unreasonable to allow the contract to stand, decline to enforce the contract.
- (2) The court may modify a provision under paragraph (b) of subsection (1), notwithstanding that the modification cannot be effected by the deletion of words from the provision.

9 Jurisdiction of District Courts

[Repealed]

Section 9: repealed, on 19 December 2002, by section 6 of the Illegal Contracts Amendment Act 2002 (2002 No 82).

9A Jurisdiction of Disputes Tribunals

[Repealed]

Section 9A: repealed, on 19 December 2002, by section 6 of the Illegal Contracts Amendment Act 2002 (2002 No 82).

10 Application of Act

This Act shall apply to contracts whether made before or after the commencement of this Act:

provided that nothing in section 6 shall apply to contracts made before the commencement of this Act.

11 Savings

- (1) Except as provided in section 8, nothing in this Act shall affect the law relating to:
- (a) contracts, or provisions of contracts, which are in restraint of trade; or
 - (b) contracts, or provisions of contracts, which purport to oust the jurisdiction of any court, whether that court is a court within the meaning of this Act or not.
- (2) *[Repealed]*
- (3) Nothing in this Act shall affect the rights of the parties under any judgment given in any court before the commencement of this Act, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this Act.

Section 11(2): repealed, on 3 October 1975, by section 6(7) of the Domestic Actions Act 1975 (1975 No 53).

Reprints notes

1 *General*

This is a reprint of the Illegal Contracts Act 1970 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 345(1)(g)

Insolvency Act 2006 (2006 No 55): section 445

Illegal Contracts Amendment Act 2002 (2002 No 82)

Constitution Act 1986 (1986 No 114): section 29(2)

Domestic Actions Act 1975 (1975 No 53): section 6(7)