

will produce in a certain period to a certain buyer (an output contract), or a buyer agrees to buy all the goods he will need in a certain period from one seller (a requirements contract), consideration exists. Fifth, love and affection are not consideration.

***** CASE STUDY 13**

FACTS Sokha says to his good friend Hen: "I like you very much, so I offer to give you this new car now. Do you accept?" Hen replies: "Yes."

QUESTION OF LAW Is there consideration in this agreement?

DECISION No. There is no consideration because Hen has no legal detriment--no duty to do anything he did not have to do before.

Consideration exists where all parties to a contract have some new legal detriment, which means doing or promising to do something they were not required to do before. In this case, Sokha promised to give Hen a new car. But Hen did not promise to do anything in return! So there is no consideration. This agreement would not be enforceable in a common law jurisdiction.

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The partial payment of a debt is generally not consideration for the cancellation of the debt. However, some jurisdictions make exceptions in certain situations, such as where there is a good faith dispute about the debt amount; the debtor promises a new substitute performance; or the creditor "cancels" and returns to the debtor written evidence of the debt.

In many jurisdictions, modifications of existing contracts generally require new consideration. But this rule may not apply where a modified agreement is a mutual rescission (canceling of the contract); a party has unforeseen and substantial difficulties in performing; or there is a good faith modification of a sale of goods contract. For instance, in the example above for the sale of a flower--goods--some jurisdictions say that if Samrith and Dara agree in good faith to change the price to 2,000 riels, consideration exists.

There are many exceptions to the general common law rule that consideration is required. Many jurisdictions do not require it for:

- (1) promises to make charitable donations;
- (2) new promises to pay debts discharged in bankruptcy;
- (3) contracts under seal;
- (4) new promises to perform contracts unenforceable because of statutes of limitation;
- (5) new promises to perform contracts unenforceable because of failure to meet writing requirements;
- (6) firm offers for or modifications of sale of goods contracts; or
- (7) promises that meet the requirements of promissory estoppel.

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reasonable value of what they have received--whether they still have it or not--especially in the case of necessities. Incompetent persons can ratify only when they gain capacity.

Contracts intoxicated persons make are generally voidable. The rules about this are similar to those for unadjudicated mentally incompetent persons. However, many courts say contracts of an intoxicated person are valid if the person was voluntarily intoxicated for reasons other than an illness and the other party had no reason to know of the intoxication. So if Sary and Lundy make an agreement while Lundy is voluntarily too drunk on vodka to understand it, and Sary has no reason to know that, the agreement is valid.

Parties convicted of serious crimes may lack full capacity to contract. Such limits generally apply only while such persons are imprisoned.

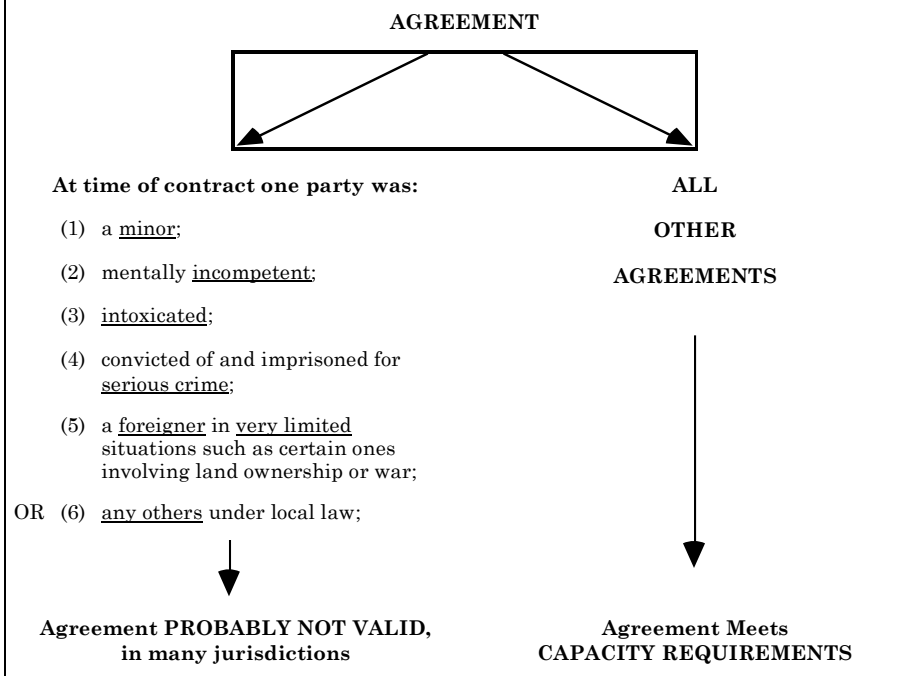
Foreigners generally have full capacity to make contracts. Some jurisdictions limit the ability of foreigners to own land. Many jurisdictions limit the ability of foreigners to make contracts with the jurisdiction's citizens while the foreigner's nation is actually at war with the nation of those citizens.

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Illustration: Where Agreements May Fail to Meet Capacity Requirements



*** **ADDITIONAL REFERENCE:** Chapter 4 ("Capacity") contains a more complete discussion of the general requirement of capacity.

1.4d To Be Valid, a Contract Must Satisfy Legal Requirements as to Legality

Agreements that violate specific statutes or public policy are generally void and unenforceable. By "specific statute," this text means a statute that discusses the actual subject matter of the agreement, such as the sale of opium. "Public policy" basically means the promotion of the good of society. It may apply where no specific statute forbids the making or performance of the agreement.

Agreements that violate specific statutes--criminal or civil--are generally not enforceable. Such statutes may include:

- (1) criminal and tort statutes;
- (2) gambling statutes;
- (3) usury statutes;
- (4) regulatory licensing statutes; and
- (5) unreasonable restraint of trade statutes.

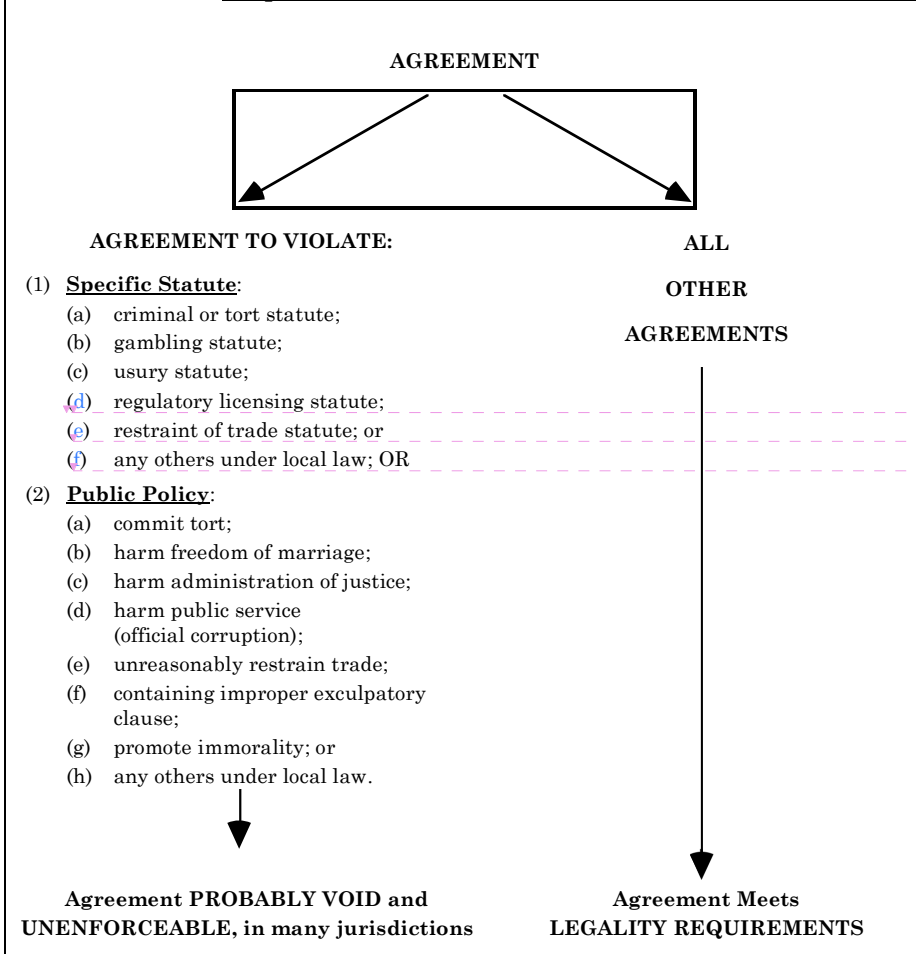
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Courts will not enforce agreements to commit crimes or torts. Torts are non-contractual civil wrongs, which civil law jurisdictions define in statutes, but common law jurisdictions often define in court precedent.

*** CASE STUDY 15 FACTS Serey and Chhay agree to rob the Foreign Jade Bank and divide the money equally. Then they rob the Bank. But after the robbery, Chhay refuses to give Serey his share of the loot! Serey asks the court for help. QUESTION OF LAW Will the court enforce this agreement? DECISION No. The court will not enforce this agreement because it is an agreement to commit a crime--an illegal agreement. Agreements to commit crimes are void and unenforceable. In this case, Serey and Chhay agreed to rob a bank. That is a crime. So this agreement is not enforceable, and the court will not enforce it for Serey.
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Many courts do not enforce gambling agreements. Gambling is often banned or regulated by statute. Some jurisdictions will not enforce gambling agreements even if the gambling is legal! Of course, such courts would be refusing to enforce on the basis of public policy. So if Sovath and Thida bet illegally on the result of a soccer match, the agreement could not be enforced.

Usurious loan agreements cannot be enforced beyond the legal interest rate. Different jurisdictions may enforce such agreements at the legal rate, at no rate (0%), or not at all. So if Sovath loaned Thida money at 50% interest

Illustration: Where Agreements May Fail to Meet Legality Requirements

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*** **ADDITIONAL REFERENCE:** Chapter 5 ("Legality") contains a more complete discussion of the requirement of legality.

1.4e To Be Valid, a Contract Must Satisfy Legal Requirements as to Formality

In many jurisdictions, contracts must meet certain formality requirements to be enforced. The most important are writing requirements.

In general, both written and unwritten contracts can be enforced. But all important contracts should be written. This provides better evidence. And

document differs from the parties' prior oral agreement, in which case the court might reform the writing to reflect the prior agreement.

So mistakes can result in agreements that are void or voidable. Parties can generally rescind (cancel) such agreements and get restitution.

*** **CASE STUDY 17**

FACTS Phally and Molika negotiate and sign a long English-language agreement in which Phally agrees to buy Molika's hotel. Later, Phally learns that the written agreement says that the hotel's huge generator is not included in the contract! Phally tries to avoid the contract, saying his English is not strong and he never knew that the "no generator" term was part of the contract.

QUESTION OF LAW Can Phally avoid this contract on the basis of unilateral mistake?

DECISION Probably not. It is unlikely that Phally can meet all the requirements to avoid this contract, since in this case it appears that he basically failed to read the written agreement carefully enough, and failed to have it explained to him.

A party can avoid an agreement where a unilateral mistake is basic and about a material fact; the party did not assume the risk of the mistake; and either the other party knew of or caused it, or enforcement would be unconscionable. But parties generally assume the risk of failing to read a written agreement carefully.

Here, Phally signed an agreement to buy a hotel without knowing the agreement did not include the hotel generator. Phally probably assumed the risk of this mistake, since it seems that he failed to read the agreement carefully. There is no evidence that this is an adhesion contract, or that the parties had a different prior agreement about the generator. Phally probably cannot avoid this contract.

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Most agreements resulting from misrepresentations of material facts are voidable. A misrepresentation is a statement that is not in accord with the facts. Misrepresentations may be fraudulent (intentional) or innocent (unintentional).

Agreements resulting from misrepresentation about the formation of the agreement are void. What this text calls "misrepresentation about the formation" occurs where the victim of the misrepresentation did not have a reasonable chance to know the basic nature of the agreement--as might happen where the other party deceived the victim about what he was signing!