

IMMORAL CONTRACTS IN THE CONTEXT OF  
PUBLIC POLICY

## C O N T E N T S

|   | <u>Page</u> |
|---|-------------|
| Preface   | 1           |
| Abbreviations   | 111         |
| Table of Cases Cited  | iv          |
| Table of Statutes   | vi          |
| <br><u>CHAPTER I - PUBLIC POLICY</u>                              |             |
| Scope of Public Policy  | 1           |
| Historical Development of Public Policy                           | 7           |
| Changing Moral Values   | 12          |
| <br><u>CHAPTER II- IMMORAL CONTRACTS.</u>                         |             |
| Classification of Immoral Contracts                               |             |
| a) Cohabitation   | 18          |
| b) Prostitution   | 22          |
| c) Promise of Marriage By A Married Man                           | 25          |
| <br><u>CHAPTER III - LEGAL CONSEQUENCES OF IMMORAL CONTRACTS</u>  |             |
| 1. Where The Contract Cannot Be Enforced<br>And is Therefore Void | 28          |
| 2. Exceptions   |             |
| a) Non Reliance On Contract                                       | 32          |
| b) Non Performance of An Illegal<br>or immoral transaction        | 32          |
| c) Ignorance of The Party   | 35          |

PREFACE:

This project paper is divided into three main parts,  
that is:

- 1) A general outline of public policy  
as regards to its development.
- 2) The general headings under immoral  
contracts that is contracts made with  
prostitutes, for cohabitation and  
to promote sexual immorality.
- 3) The legal consequences of immoral  
contracts (its general rules and exceptions).

This paper did not require much fieldwork. It only  
required research based on articles and decided cases.  
This was done with the great help of the staff at  
the Perpustakaan Tun Abdul Razak, MARA Institute of  
Technology, Shah Alam, Selangor; National Library,  
Kuala Lumpur; The University Malaya Law Library,  
the High Court Library of Johore Bahru, the Muar High  
Court Library and Batu Pahat Magistrate Court  
Library.

This paper will not have been made possible without  
the generous help of the following people concerned.

My gratitude and appreciation to my supervisor,  
Mr. Joginder Singh for his kind guidance, advice

## CHAPTER ONE.

### PUBLIC POLICY

#### The scope of public policy.

The court will not hesitate to declare a contract void if it directly infringes the common law rules, the provision of any statutes or if the contract is considered to be contrary to public policy.

The contract may be declared to be void

- (a) at the point of the formation of the contract, for example, a contract of sale entered into with an enemy alien during a time of war or
- (b) in its performance, for example, breach of copy right or
- (c) in its consideration, for example, payment to induce sexual immorality or
- (d) where the purpose or the object of the contract is illegal, for example the transfer of land to evade income tax.

By virtue of section 10(1) of the Contracts Act, 1950<sup>1</sup> a contract must be made inter alia for a lawful consideration. This should be read along with section 24 of the same Act which provides that,

- "the consideration or object of the contract can be considered lawful unless:
- (a) it is forbidden by law
  - (b) it is of such a nature that it would defeat any law
  - (c) it is fraudulent
  - (d) it involves or implies injury to the person or property of another or
  - (e) it is regarded by the court as immoral or opposed to the public policy".

In the American case of Henningson V Bloomingfield Motors<sup>2</sup>, it was said that the public policy is

"...a term not easily defined. Its significance varies as the habits and needs of a people may vary, it is not static and the field of application is an ever increasing one. A contract or a particular provision therein, valid in one era may be totally opposed to public policy of another".

---

1. Contracts Act, 1950 (Act 136, Revised 1974)  
2. 32 N.J. 358,161 A.2d 69 (1960)