

ASPEN PARALEGAL SERIES

Jeffrey A. Helewitz

Basic Contract Law for Paralegals
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Chapter 5

LEGALITY OF SUBJECT MATTER
AND CONTRACTUAL CAPACITY

Chapter Objectives

In this chapter you will:

- Discuss the concept of the legality of the subject matter
- Define *malum in se*
- Define *malum prohibitum*
- List the sic types of contracts that come under the Statute of Frauds
- Discuss what is meant by “usury”
- Explain the concept of “contractual capacity”
- Differentiate between infants and minors
- Know which types of contracts a minor cannot avoid
- Discuss the effect of alcohol and drugs on a person’s contractual capacity
- Apply the concepts of legality and capacity to your everyday life

Legality of Subject Matter

- Not all laws involve heinous actions, and the law has divided “illegality” into two broad categories.
- The **first category** contains laws that support the very nature and fabric of society. Violation of these rules go against all public policy, and contracts violating them are completely void and unenforceable.
- The **second category** includes minor illegalities, those laws created by statute that bar actions which are not, in and of themselves, morally reprehensible. Contracts that violate this second category may still permit the injured party some form of quasi-contractual relief.

Malum in Se

Contracts that violate public policy and are deemed bad in and of themselves.

Malum Prohibitum

Contracts that are not morally reprehensible or against public policy but are still minor violations of the law—a prohibited wrong, or something prohibited by statutory regulation.

Contracts That Violate the Statute of Frauds

- Contracts for an interest in realty
- Contracts that are not to be performed within one year
- Contracts in consideration of marriage
- Guarantees
- Sale of goods valued at over \$500
- Executors' promises to pay the decedent's debts

Usury

- ▶ **Usury laws** regulate the legal rate of interest that can be charged for extending credit.
- ▶ A contract for the loan of money that indicates a rate of interest above the legal limit is *malum prohibitum* because it is usurious and therefore unenforceable.

Contractual Capacity

The parties' legal ability to enter into a binding contractual relationship

Four Major Areas of Contractual Capacity

- Age
- Mental capacity
- Alcohol
- Drugs