

Study unit 3

C/P

legality of contracts of lease

1) General Principle of Legality

A requirement that the conclusion, performance & object of a contract must be lawful also applies to lease. A contract is unlawful when its conclusion, performance & object is forbidden by statutory or common law, or is contrary to public interest or good morals. ✓

Madame X - Brothel:

In this case a lease contract would be illegal & void (1) - If requirements of National Credit Act 34 of 2005 are not met

(2) - If premises are let to be used as a brothel in terms of Act 23 of 1957

(3) - If lease contravenes a common law rule such as requirement in respect of certainty of rent.

2) Consequences of Illegality

The contract is illegal & ∴ void & unenforceable
A court will not enforce an illegal lease, when
? of illegality is an issue, the onus of proof is
on the party alleging it.

3) EX TURPI CAUSA NON ORITUR ACTIO - means
"From an immoral cause no action arises."
ABSOLUTE RULE OF LAW - NO EXCEPTIONS

Madame X paid her rent for 1 building from which she runs 1 brothel ^{this} makes no difference because performance does not render 1 contract legal. 1 court will not enforce 1 contract

1 unlawfulness of 1 contract means

- 1 party ≠ suffered damages as a result of 1 contract
May not claim damages from 1 other party by relying on 1 contract & one party may not claim performance from 1 other.

4) The Par Delictum Rule

It seems unfair to allow 1 lessor to keep 1 rent paid in terms of an illegal contract
Eg Madame X rents a luxury home from Y to run a brothel, Y knows that she wants to run a brothel & charges her very high rent of 30 000 per month & 60 000 deposit.
Because 1 contract is void restitution should be granted, this rule is based on unjustified enrichment. Another rule which prevents 1 lessee from claiming 1 rent is (in pari delicto potior est conditio possidentis - where 2 parties are both guilty & one who is in possession is in 1 stronger position)

In pari rule may sometime operate very harshly (regards ↓ plaintiff)

Relaxation of In Pari Delictum Rule

The underlying thought behind In Pari delictum rule is that a party who has acted disgracefully by executing a performance should not be allowed to recover such performance. Thus where a party to an unlawful contract has performed but his/her performance is not disgraceful/he, she can recover that which he/she has performed from the other party. In Pari delictum rule is applied as a general rule to which an exception must be made whenever "simple justice bet man & man demands it".

STUDY UNIT 4

THE OBLIGATIONS OF A LESSOR

When a contract of lease is concluded, the parties are bound by those obligations which they have expressly or impliedly undertaken or which law imposes upon them in the absence of such express or implied agreement.

A lessor is obliged: (1) to make available or deliver the use or enjoyment of the property (2) to refrain from disturbing the lessee's use & enjoyment of the property (3) to place & maintain the property in the condition agreed upon (4) To warrant against eviction.

If a lessor fails to fulfil one of the above - breach of contract
Failure to deliver - Mora Debitoris

Delivery of Defective performance - positive malperformance
Delivery to someone other than the contracted lessee - Repudiation
Failure to prevent eviction - positive malperformance