Restatement (Second) of Contracts § 181 (1981)

Restatement of the Law - Contracts

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Restatement (Second) of Contracts

Chapter 8. Unenforceability on Grounds of Public Policy

Topic 1. Unenforceability in General

§ 181 Effect of Failure to Comply with Licensing or Similar Requirement

If a party is prohibited from doing an act because of his failure to comply with a licensing, registration or similar requirement, a promise in consideration of his doing that act or of his promise to do it is unenforceable on grounds of public policy if

(a) the requirement has a regulatory purpose, and

(b) the interest in the enforcement of the promise is clearly outweighed by the public policy behind the requirement.

Comment:

a. Scope. One of the most frequent applications of the general rule stated in § 178 occurs where a party seeks to enforce an agreement although he has failed to obtain a license, to register or to comply with a similar requirement. This Section states a specific version of that general rule as it applies to such cases. Whether there has been a violation of legislation that imposes the requirement is a matter of interpretation of the legislation itself and is beyond the scope of this Restatement.

b. Regulatory purpose. In deciding whether a party can enforce an agreement in spite of his failure to comply with such a requirement, courts distinguish between requirements that have a regulatory purpose and those that do not. The policy behind a requirement that has a regulatory purpose may

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be regarded as sufficiently substantial to preclude enforcement, while the policy behind one that is merely designed to raise revenue will not be. In determining whether a measure has a regulatory purpose, a court will consider the entire legislative scheme, including any relevant declaration of purpose. Common indications of regulation include provisions for examination or apprenticeship to ensure minimum standards on entrance and provisions for the posting of a bond or procedures for license revocation to ensure that standards are maintained.

Illustration:

1. A, an unlicensed broker, agrees to arrange a transaction for B, for which B promises to pay A $1,000. A city ordinance requires persons arranging such transactions to be licensed as a result of paying a fee, with no inquiry into competence or responsibility. A arranges the transaction. Since the licensing requirement is designed merely to raise revenue and does not have a regulatory purpose, enforcement of B's promise is not precluded on grounds of public policy.

c. Balancing where purpose is regulatory. If the court decides that the requirement has a regulatory purpose, it must then weigh the interests favoring enforcement of the promise against the public policy behind the requirement. The factors listed in § 178 are taken into account in this process. If the party who has failed to comply with the requirement has done nothing by way of preparation or performance, the interest in enforcement of the promise is easily outweighed. But if, as is usually the case, he has completely performed and is seeking the promised compensation for that performance, forfeiture to himself and enrichment to the other party may result from a refusal to enforce the other party's promise. In determining the extent to which forfeiture and enrichment will result, a court will consider the possibilities that part of the agreement may be enforceable (see § 183 and Illustration 1 to that section) and that restitution may be available (see § 197 and Illustration 4 to that section). In evaluating the gravity of the public policy involved, the court will look to the interest that the regulation is designed to protect and will give greater weight, for example, to a measure intended to protect the public health or safety than one intended to have only an economic effect. Compare Illustrations 2 and 3. It will consider the magnitude of the penalty provided by the legislature as some indication of the weight that it attached to that interest. It will also take account of the extent to which the misconduct was deliberate or inadvertent. See Illustration 4.

Illustrations:

2. A, an unlicensed plumber, agrees to repair plumbing in B's home, for which B promises to pay A $1,000. A state statute, enacted to prevent the public from being victimized by incompetent plumbers and to protect the public health, requires persons

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doing plumbing to be licensed on the basis of an examination, the posting of a bond, and the payment of a fee, and makes violation a crime. A does the agreed work. A court may decide that the public policy against enforcement of B's promise outweighs the interest in its enforcement, and that B's promise is unenforceable on grounds of public policy. Compare Illustration 1 to § 183.

3. A, an unlicensed milk dealer, promises to deliver to B, a licensed milk dealer, milk for which B promises to pay $20,000. A state statute designed for the purpose of economic regulation of the milk industry provides that "no dealer shall buy or sell milk without a license," and makes violation a misdemeanor punishable by a fine of up to $500 and imprisonment for up to 6 months. A delivers the milk to B, but B refuses to pay the price. In view of all the circumstances, including the discrepancy between the forfeiture by A if B's promise were not enforced and the penalty provided by the statute, a court may decide that the public policy against enforcement of B's promise does not outweigh the interest in its enforcement and that enforcement of B's promise is not precluded on grounds of public policy.

4. The facts being otherwise as stated in Illustration 2, A had once been licensed but his license had expired the week before because, unknown to him, his clerk had inadvertently forgotten to send in the renewal fee, although the bond had been extended. The court may decide that in all the circumstances including A's ignorance of the fact that he was unlicensed, enforcement of B's promise is not precluded on grounds of public policy.

d. Enforcement by the other party. The rule stated in this Section deals only with the right of the non-complying party to enforce the other party's promise. The enforceability of the non-complying party's promise is governed by the general rule stated in § 178. Regulatory legislation may be designed to protect a class of persons to which the other party belongs against a class to which the non-complying party belongs. See Comment *c* to § 179. In that case the policy behind the legislation will usually best be served by holding the non-complying party liable in damages for any defective performance. See Illustration 5.

Illustration:

5. The facts being otherwise as stated in Illustration 2, A's work is defective. Since the ordinance was enacted to protect a class of persons to which B belongs against a class to which A belongs, enforcement of A's promise is not precluded on grounds of public policy and B can recover damages from A for breach of contract.

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Reporter's Note

This Section is based in part on former § 580(d), but has been expanded because of the continuing importance and proliferation of cases involving licensing and similar requirements. See 6A Corbin, Contracts §§ 1510-15 (1962 & Supp.1980); 15 Williston, Contracts §§ 1763, 1765-74 (3d ed.1972); 2 Palmer, Law of Restitution § 8.3 (1978).

Comment b. Illustration 1 is based on Cope v. Rowlands, 2 M. & W. 149 (Ex. of Pleas 1836); see also Coates v. Locust Point Co., 102 Md. 291, 62 A. 625 (1905).

Comment c. Illustration 2 is based on Lund v. Bruflat, 159 Wash. 89, 292 P. 112 (1930); see also William Coltin & Co. v. Manchester Sav. Bank, 105 N.H. 254, 197 A.2d 208 (1964); Thorpe v. Carte, 252 Md. 523, 250 A.2d 618 (1969); DiGesu v. Weingardt, 91 N.M. 441, 575 P.2d 950 (1978); Illustrations 8 and 9 to former § 580. But cf. Murphy v. Mallos, 59 A.2d 514 (D.C.Ct.App.1948). Illustration 3 is based on John E. Rosasco Creameries v. Cohen, 276 N.Y. 274, 11 N.E.2d 908 (1937); cf. Mountain States Bolt, Nut & Screw Co. v. Best-Way Transp., 116 Ariz. 123, 568 P.2d 430 (Ct.App.1977); Town Planning and Eng'r Assoc. v. Amesbury Specialty Co., 369 Mass. 737, 342 N.E.2d 706 (1976); Shepard v. Finance Assoc. of Auburn, 366 Mass. 182, 316 N.E.2d 597 (1974); Illustrations 5 and 7 to former § 580; see also Hiram Ricker & Sons v. Students Internat'l Meditation Soc., 342 A.2d 262 (Me.1975), app. dism'd, 423 U.S. 1042 (1976). Illustration 4 is based on H.O. Meyer Drilling Co. v. Alton V. Phillips Co., 2 Wash.App. 600, 468 P.2d 1008 (1970), aff'd, 79 Wash.2d 431, 486 P.2d 1071 (1971); cf. Wilson v. Kealakekua Ranch, 57 Hawaii 124, 551 P.2d 526 (1976).

Courts have applied a similar balancing approach when a written document required by a consumer protection or similar statute was not tendered. See, e.g., Amoco Oil Company v. Toppert, 56 Ill.App.3d 595, 14 Ill.Dec. 241, 371 N.E.2d 1294 (1978) (chemical analysis of each fertilizer delivery not rendered; large forfeiture would have resulted; contract enforced); Beaver v. Mulholland, 93 Misc.2d 1117, 403 N.Y.S.2d 994 (1978) (copy of bill for funeral expenses not rendered when arrangements were made; all expenses were approved by close friend of decedent and decedent's estate was relatively large; contract enforced); Brooks v. R.A. Clark's Garage, Inc., 117 N.H. 770, 378 A.2d 1144 (1977) (garage did not render written estimate for automobile repair; statute designed to protect consumers from being overcharged; recovery denied in either contract or restitution).

Comment d. Illustration 5 is based on Hedla v. McCool, 476 F.2d 1223 (9th Cir.1973); Cohen v. Mayflower Corp., 196 Va. 1153, 86 S.E.2d 860 (1955). See also Illustration 7 to former § 601.

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Case Citations - by Jurisdiction

C.A.1
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D.Conn.
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N.Y.Sup.Ct.App.Div.
N.Y.Sup.Ct.
Pa.Super.
Tenn.App.
Wis.App.

C.A.1

C.A.1, 1993. Cit. in disc. Motor carrier sued unlicensed broker for declaratory judgment that parties' three-year contract was void for illegality. Affirming the district court's judgment that the contract was unenforceable as to the remaining two-year term because defendant had violated the federal statute requiring that brokers be licensed by the Interstate Commerce Commission, this

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court held, inter alia, that enforcement of the contract's unexpired term would subvert the statute's public-protection policy. Paul Arpin Van Lines v. Universal Transp. Services, 988 F.2d 288, 290.

C.A.4

C.A.4, 1987. Cit. in sup., com. (a) cit. in sup. A licensed real estate brokerage corporation entered into contracts with another corporation to procure leases for rental spaces owned by that corporation and to split its commission payments with an unlicensed broker. The real estate corporation sued to enforce the contract for the commissions owed for services the parties agreed had been fully performed. The trial court held that the contract was illegal and directed a verdict against the plaintiff. This court reversed, holding that the affirmative defense of illegality under the relevant statutes did not preclude recovery by a licensed broker on a contract when an unlicensed broker, with whom commissions were shared, performed no services. The court concluded that the benefits of the enforcement of contracts outweighed the benefits to public policy of nonenforcement in this case. Smithy Braedon Co. v. Hadid, 825 F.2d 787, 790.

C.A.7

C.A.7, 1994. Quot. in sup., com. (b), illus. 1 quot. in disc., com. (c) cit. in sup. Nurse staffing agency sued medical center under penalty provision for terminating parties' contract without sufficient notice. This court affirmed the district court's granting of summary judgment for defendant, holding that contract was unenforceable as public policy matter, since defendant paid plaintiff for all services rendered, and plaintiff merely sought recovery of what amounted to penalty for terminating contract without enough notice; especially when contract termination without notice was direct result of plaintiff's failure to procure license required by state law, the court said that interest in permitting plaintiff to collect penalty was outweighed by public health interest furthered by state licensing law. U.S. Nursing Corp. v. Saint Joseph Medical Center, 39 F.3d 790, 792-795.

D.Conn.

D.Conn.2000. Cit. and quot. in sup. Corporate shareholder and president sued a clearing broker for, inter alia, breach of contract after defendant allegedly terminated the clearing agreement without notice. This court granted defendant summary judgment, holding, inter alia, that the clearing agreement was void due to illegality, because plaintiff's transaction of business as an unregistered broker-dealer in the state of Connecticut violated both the federal and Connecticut Uniform Securities Act's registration requirement. Couldock & Bohan, Inc. v. Societe Generale Securities Corporation, 93 F.Supp.2d 220, 228, 232, 233.

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N.D.Ill.

N.D.Ill.1994. Cit. in headnote, cit. and quot. in sup., cit. in ftn. Nursing staff agency that had contracted to supply nurses to hospital during a nurses' strike sued hospital for breach of contract for terminating the contract without giving the requisite seven days' written notice. Granting defendant's motion for summary judgment, the court found the contract unenforceable as against public policy because plaintiff was operating without a license in violation of an Illinois statute regulating nurse agencies when it entered into the contract. U.S. Nursing Corp. v. Saint Joseph Medical Center, 842 F.Supp. 1103, 1104-1106, affirmed 39 F.3d 790 (7th Cir.1994). See above case.

D.N.J.

D.N.J.1991. Cit. in disc. A seller of a video magazine for the promotion of floor coverings sued a floor covering manufacturer for tortious interference with prospective economic advantage. The plaintiff alleged that the defendant pressured its distributors not to buy the plaintiff's video, eventually resulting in the destruction of the plaintiff's business. Granting the defendant's motion for judgment n.o.v., the court held that, since the plaintiff acted in violation of a Connecticut statute requiring it to register with the state and disclose certain financial information, the plaintiff's action for tortious interference with business relationships that might arise as a result of the violation was prohibited by the statute. The court said that the courts of New Jersey, whose law applied to this case, would enforce the policies embodied in the Connecticut statute and bar the plaintiff's action under New Jersey law. Fineman v. Armstrong World Industries, Inc., 774 F.Supp. 225, 242, reversed 980 F.2d 171 (3d Cir.1992).

S.D.N.Y.

S.D.N.Y.1985. Cit. in disc. Plaintiff sued defendant to recover the agreed price for stickers bearing the portrait of a popular entertainer which plaintiff had sold to defendant for resale. The district court granted defendant's motion for summary judgment, holding that the sale and license agreement was illegal and unenforceable because plaintiff never obtained the entertainer's written permission to use his portrait on the stickers. Anabas Export Ltd. v. Alper Industries Inc., 603 F.Supp. 1275, 1277.

W.D.N.Y.

W.D.N.Y.1989. Cit. in ftn. A hearing aid manufacturer sued a distributor for breach of contract, inter alia. The defendant argued that the contract should not be enforced because it contravened

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a state statute and was therefore an illegal contract. The court entered judgment for the plaintiff, holding that the policies expressed in the hearing aid statute did not override the policies in favor of holding the parties to their bargain, which had been fully performed by the plaintiff at substantial expense. Marketing Specialists, Inc. v. Bruni, 129 F.R.D. 35, 45, decision affirmed 923 F.2d 843 (2d Cir.1990).

E.D.N.C.

E.D.N.C.2004. Cit. but not fol., cit. and quot. in ftn., cit. in case cit. in disc. Insurance broker sued underwriter for stop-loss reinsurance policies, seeking unpaid commissions from an alleged contract whereby plaintiff solicited business for defendant. This court granted defendant summary judgment, holding that plaintiff could not recover commissions for the insurance policies it referred to defendant because plaintiff had acted as a reinsurance intermediary with respect to those policies but was not licensed as a reinsurance intermediary. The court stated that, although other states had considered the Restatement Second of Contracts § 181, North Carolina Supreme Court had adopted Restatement First of Contracts § 580, and that § 580 still applied in North Carolina. Marker & Associates, Inc. v. J. Allan Hall & Associates, 314 F.Supp.2d 555, 561, 562.

Ariz.App.

Ariz.App.1989. Quot. in disc., coms. (b) and (c) cit. in sup. Tenants, who used their leased premises as a bakery, sued their landlord for lost profits, inter alia, when they surrendered possession of the premises after a fire damaged the building. The trial court entered judgment on a jury verdict for the plaintiffs. Affirming in part, reversing in part, and remanding, this court held that, although the plaintiffs used the property for business purposes, they could not recover for lost profits during the time that they operated the business without a license from the county health department. The court stated that the plaintiffs' failure to comply with the county health department licensing statute made their claim against the landlord unenforceable because of the interest in protecting the public health through inspection and licensing. Thomas v. Goudreault, 163 Ariz. 159, 786 P.2d 1010, 1020.

Cal.App.

Cal.App.2004. Cit. and quot. in sup., quot. in ftn. United States citizens who contracted with Chinese, Taiwanese, and American corporations to build manufacturing plant in Iran for production of computer products sued corporations for breach of contract after defendants ceased doing business in the computer industry. Trial court granted defendants summary judgment. Affirming, this court held that plaintiffs could not legally establish their claim, because the contract was illegal and against public policy of California pursuant to executive orders and

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federal regulations that prohibited trade with Iran without a license. Kashani v. Tsann Kuen China Enterprise Co., Ltd., 118 Cal.App.4th 531, 542, 550, 558, 559, 13 Cal.Rptr.3d 174, 180, 187, 194.

Cal.App.1987. Cit. in disc. A contractor violated the state's fair practices act by hiring a subcontractor for a public works project without obtaining the city's consent. Subsequently, when the subcontractor sued the contractor for work performed on a second, unrelated public works project, the defendant cross-claimed for damages under the prior illegal contract. The trial court found for the subcontractor, but held that the contractor was entitled to set off its claim on the prior contract against the amount awarded to the subcontractor on the second contract. This court reversed in part, holding that the subcontractor's breach of an illegal contract did not afford the contractor a basis for a setoff. R.M. Sherman Co. v. W.R. Thomason, Inc., 191 Cal.App.3d 559, 236 Cal.Rptr. 577, 580.

Conn.

Conn.1999. Quot. in sup. Unlicensed lenders of secondary-mortgage loan brought foreclosure action against borrowers. The trial court granted in part plaintiffs' motions for summary judgment and rendered a judgment of strict foreclosure; the appellate court affirmed. Reversing and remanding with directions, this court held that a secondary mortgage issued by an unlicensed lender in violation of Connecticut law was unenforceable in a foreclosure action. Solomon v. Gilmore, 248 Conn. 769, 792, 731 A.2d 280, 293.

Conn.App.

Conn.App.2000. Cit. in headnote and disc., cit. in case quot. in disc., quot. in ftn. Restaurant lessor sued lessees to collect the balance due on a promissory note. Trial court entered judgment for lessees. This court affirmed, holding, inter alia, that the note was unenforceable, because its execution was integral to an illegal transfer of lessor's liquor license to lessees. Zenon v. R.E. Yeagher Management Corporation, 57 Conn.App. 316, 327, 748 A.2d 900, 907, 908.

D.C.App.

D.C.App.2000. Cit. in ftn., com. (c) quot. in disc. Company sued financial services corporation that had acted as a real estate broker, seeking a declaratory judgment that the parties' agreement was void and unenforceable because defendant was not licensed, as required by the Brokerage Act. Federal district court granted plaintiff summary judgment. Answering a certified question from the federal court of appeals, this court held, inter alia, that disgorgement of compensation paid to an unlicensed real estate broker was not automatic, that the circumstances of each case determined whether disgorgement was required to vindicate the public policy underlying the statute, and that

public policy and equitable considerations demonstrated that disgorgement was not appropriate in this case. Remsen Partners, Ltd. v. Stephen A. Goldberg Co., 755 A.2d 412, 415, 417-418.

D.C.App.1995. Cit. in diss. op., com. (b) quot. in disc. and cit. in diss. op., illus. 1 cit. in diss. op., illus. 2 quot. in disc. and cit. in ftn. in diss. op. Home improvement contractor sued to establish mechanic's lien on homeowners' home, seeking to recoup balance owed for work performed under contract. Trial court granted homeowners summary judgment on ground that contractor was not licensed when it entered into the contract. This court affirmed, holding that contractor forfeited right to recover for work performed on either a contract or a quantum meruit theory. It stated that the purpose of the home improvement licensing requirements as a whole was clearly regulatory, and that it would not view the final step of obtaining the license in abstraction from the entire legislative scheme of home improvement licensure. Dissent argued that contract was not void and that contractor could seek restitution, because it had done all that was necessary to qualify for the requisite license, except pay the licensing fee, before it entered into contract and received any advance payments. It argued that a license requirement that was designed to raise revenue did not preclude enforcement of an agreement made by one who has failed to pay for a required license. Cevern, Inc. v. Ferbish, 666 A.2d 17, 21, 22, 26.

Fla.App.

Fla.App.2011. Quot. in sup. Contractor brought a breach-of-contract claim, inter alia, against drywall and stucco subcontractor hired to work on four projects in county; subcontractor counterclaimed for breach of contract, conversion, and foreclosure of its liens. The trial court granted summary judgment for contractor, holding that, because subcontractor was unlicensed in the county, the subcontracts were void and unenforceable, even though the licensing ordinance did not provide for the penalty of unenforceability. Reversing, this court held that material questions existed as to whether the public policy behind the licensing ordinance clearly outweighed the interest in allowing subcontractor to enforce contractor's promise; the trial court erred in failing to consider the arms' length, professional nature of the relationship between the parties, as well as other relevant factors, along with competing policy concerns. MGM Const. Services Corp. v. Travelers Cas. & Sur. Co. of America, 57 So.3d 884, 889.

Ill.

Ill.2005. Quot. in sup. Professional services corporation of licensed podiatrists sued health insurer for, inter alia, breach of its agreement to pay for treatment of insured patients. The trial court granted summary judgment for insurer and the appellate court affirmed, on grounds that plaintiff's failure to maintain a certificate of registration issued by the department of professional regulation rendered the agreement unenforceable. Reversing and remanding, this court held that

the registration requirement was merely an administrative mechanism by which professionals could provide services in the corporate form. The court noted that the agreement would only be unenforceable on public policy grounds if the requirement had a regulatory purpose that clearly outweighed the interest in enforcing the agreement. Chatham Foot Specialists, P.C. v. Health Care Service Corp., 216 Ill.2d 366, 297 Ill.Dec. 268, 837 N.E.2d 48, 57.

Ill.App.

Ill.App.2011. Quot. in case quot. in diss. op. Company sued exclusive brokerage agent that successfully sold its assets, seeking a declaration that the parties' contract was void because defendant failed to register its services with the state of Illinois and, accordingly, plaintiff was entitled, under the state's Brokers Act, to recover all fees paid to defendant. The trial court granted defendant's motion to stay the proceedings and compel arbitration. This court affirmed, holding that the issue of whether or not the agreement was void ab initio was, in the language of the arbitration provision, a "controversy, dispute, or claim between the parties relating to the agreement" that had to be arbitrated. The dissent argued that not only the putative agreement as a whole, but each and every provision of the agreement, including the arbitration clause, made in consideration of the promise by a nonlicensed party to provide business broker services was void as against public policy under the Brokers Act. LRN Holding, Inc. v. Windlake Capital Advisors, LLC, 409 Ill.App.3d 1025, 350 Ill.Dec. 776, 949 N.E.2d 264, 275.

Ill.App.2000. Quot. in disc. Executrix of decedent's estate sued, among others, insurer and securities company, alleging breach of fiduciary duty, constructive fraud, and negligence arising out of decedent's financial dealings with defendants. The trial court compelled arbitration based on arbitration clause in decedent's "customer profile" form. Reversing and remanding, this court held, inter alia, that the fact that defendants' salesperson was not registered under the Illinois Securities Law (ISL) when he procured the customer profile voided the profile and its arbitration clause, since the registration requirements of the ISL reflected a significant public policy to protect the public in the purchase and sale of securities. Aste v. Metropolitan Life Ins. Co., 312 Ill.App.3d 972, 245 Ill.Dec. 547, 553, 728 N.E.2d 629, 635.

Ind.App.

Ind.App.1985. Cit. in disc. A landlord sued two prospective tenants to recover rent and damages under a one-year lease. The tenants never took possession of the premises, which were not registered as a residence and did not have an occupancy permit, as required by the housing code. The tenants tried to find a subtenant. A subsequent inspection of the premises by the code enforcement officer revealed that the house did not comply with the housing code. The tenants decided, therefore, that they could not legally find a subtenant and concluded that the lease was

void. The trial court found for the landlord; this court reversed. The court concluded that the municipal requirements that the house be registered and have an occupancy permit were measures designed to promote public welfare. Because the landlord violated these measures, said the court, he would not receive the benefit of his bargain to collect rent from the tenants. Noble v. Alis, 474 N.E.2d 109, 112.

Iowa

Iowa, 2000. Quot. in case quot. in disc., subsec. (b) and com. (c) quot. in disc. Private investigator sued insured driver to recover a contingent fee based on investigator's assistance in negotiating a settlement of insured's personal injury claim. District court affirmed the small claims court's judgment allowing the contingent fee. This court reversed and remanded, holding that, because the investigator was not a licensed attorney, the contingent-fee contract was against public policy and could not be enforced. The investigator's negotiation of an underinsured motorist claim settlement was the practice of law, because it required the exercise of professional judgment. Bergantzel v. Mlynarik, 619 N.W.2d 309, 311, 317.

Iowa, 2000. Quot. in sup., cit. in case cit. in sup., com. (c) quot. in sup. Grain elevator owner sued grain seller for breach of contract. Trial court entered judgment on jury verdict for plaintiff, but the appellate court reversed, holding that plaintiff, which lacked a grain-dealer license, could not enforce the contracts. This court affirmed and remanded for entry of judgment for defendant, holding that the public policy behind the grain-dealer-licensing legislation requirement outweighed any interest in enforcement of the contracts, thereby making defendant's contractual promises unenforceable. Moreover, because plaintiff's lack of a license was serious and was due to its own deliberate acts, and there was a direct connection between plaintiff's misconduct and subsequent surrender of its license and its inability to legally perform the contracts, only a refusal to enforce the contracts would further the supporting policy. Mincks Agri Center, Inc. v. Bell Farms, Inc., 611 N.W.2d 270, 274, 275, 277, 278, 281.

Iowa, 1999. Cit. in headnote, cit. generally in disc., cit. and quot. in disc. Buyer of seller's membership interest in an entity involved in a Colorado casino operation sued seller for anticipatory breach of the stock agreement. Trial court construed the agreement as requiring the buyer to perform by July 31, 1995, and concluded that provisions of the Restatement (Second) of Contracts barred his claim of anticipatory breach. This court reversed and remanded, holding that the trial court's erroneous construction of the stock agreement as requiring the buyer to obtain Division of Gaming approval by July 31, 1995, led it to erroneously conclude that Restatement (Second) of Contracts §§ 181 and 254 barred buyer's claim of anticipatory breach. Fausel v. JRJ Enterprises, Inc., 603 N.W.2d 612, 614, 617, 621, 622.

Mass.

Mass.1992. Cit. in ftn. Sellers of automobile dealerships sought a judgment that broker who successfully procured buyers for dealerships was not entitled to commissions because it was not a licensed real estate broker as required by state law. After jury awarded damages to broker, trial court granted in part sellers' motion for judgment n.o.v. and awarded broker commissions only on tangible personal property interests. Granting direct appellate review, this court reversed in part and remanded. Where broker informed sellers that it was not a licensed real estate broker, and sellers responded that license would not be necessary because sale would be structured as sale of corporate stock and not of real estate, broker's reliance on that representation was reasonable and sellers were estopped to use state statute to deny commissions to broker. Turnpike Motors v. Newbury Group, 413 Mass. 119, 126, 596 N.E.2d 989, 993.

Mass.1980. Cit. in sup. (Cit. section 323 of the Tentative Drafts, which is now section 181 of the Official Draft.) The plaintiffs were assessed by the Internal Revenue Service for a deficiency. They granted a power of attorney to the defendant accountant to proceed with the IRS on their behalf. Acting for the plaintiffs, the defendant was unsuccessful in administrative proceedings and advised bringing an action in state court. At that time, the parties entered a contingent fee agreement. In order to bring the state court action the defendant hired an attorney although a definite arrangement concerning the payment of the attorney's fees was not made at that time. Judgment was entered in favor of the government. The plaintiffs agreed to appeal and the appeal was handled by the defendant and the attorney. The plaintiffs were successful on appeal. The government's check was endorsed by the defendant who then forwarded his check for a lesser amount to the plaintiffs. His fee amounted to one-third of the savings to the plaintiffs and from this amount he paid the attorney. The written contingent fee agreement between the plaintiffs and the defendant provided for a fee of twenty-five per cent of the savings and the defendant explained the difference as being in accordance with an oral agreement he had made with the plaintiffs at the time of the appeal. The plaintiffs denied such an oral agreement. The plaintiffs sought to set aside the fee agreement entirely as illegal because the defendant had engaged in the practice of law without a license and to recapture the fee paid. The trial court found that the defendant had interposed himself between a client and his attorney and that was unlawful, but held that the defendant was entitled to the reasonable value of his services, which the jury determined as the amount provided for in the original contingent agreement. This court affirmed and found that although the illegality was serious, it was not so serious to cause forfeiture of the reasonable value of the defendant's fees, which the jury reasonably fixed at the original, agreed upon amount. Where a promise is unenforceable on grounds of public policy, restitution is not available unless this would cause unreasonable forfeiture. Joffe v. Wilson, 381 Mass. 47, 407 N.E.2d 342, 348.

Mass.1978. Subsec. (b), and com. (c) cit. in sup. (Cit. section 323 of the Tentative Drafts, which is now section 181 of the Official Draft.) Plaintiff, a nonprofit corporation licensed as a private

investigator in New York, sought payment for investigative services rendered under a written contract with defendant Massachusetts corporation engaged in pari-mutuel harness racing. A lower court denied recovery because plaintiff had no license to conduct a private detective business in Massachusetts, and plaintiff appealed. This court reversed, holding that plaintiff was entitled to recover for services rendered through the effective date of defendant's termination of the contract; it was sufficient sanction that no recovery of damages for breach of the executory portion of the contract was allowed. The court also found that the failure of plaintiff to obtain the required license was sufficiently material to justify defendant in cancelling its contract with plaintiff, and even if defendant cancelled the contract for some other reason, that fact would not impair the justification. Nonetheless, the breach was not so material that defendant was entitled to receive a gift of plaintiff's services. Harness Tracks Security, Inc. v. Bay State Raceway, 374 Mass. 362, 373 N.E.2d 353, 356.

Mass.App.

Mass.App.1997. Cit. in headnote, quot. in disc. A lessee sued a lessor, alleging breach of a lease agreement and violation of consumer protection statutes. A jury awarded plaintiff damages, but the trial court granted defendant's motion for judgment n.o.v. This court affirmed, holding, inter alia, that plaintiff's contract claim was barred because the lease agreement was predicated upon an illegal transfer of the defendant's liquor license. The court stated that to permit the plaintiff to recover under its illegal arrangement would reward it for its illegal conduct and would contravene public policy by elevating the plaintiff's private interests over those of the public. The requirement that a vendor of alcoholic beverages obtain a license from proper authorities was always at least in part for the protection of the public. Hastings Associates v. Local 369 Bldg. Fund, 42 Mass.App.Ct. 162, 675 N.E.2d 403, 406, 415.

Mo.App.

Mo.App.1992. Cit. in sup. Defendant licensed electrical contractor agreed, in exchange for $10,000, to obtain a city work permit for plaintiff, unlicensed electrical contractor, so that plaintiff could continue his work on a city construction project. Defendant obtained the permit, but plaintiff paid him only $1,000. In an action brought by plaintiff, defendant counterclaimed for the balance due under the agreement. Plaintiff's claims were dismissed, and the trial court entered judgment for defendant on his counterclaim. Reversing, the court of appeals held that because the agreement violated a city ordinance prohibiting the assignment of permits to unlicensed persons, it was illegal and therefore unenforceable. Rice v. James, 844 S.W.2d 64, 69.

N.J.

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N.J.1989. Cit. in disc. An out-of-state employment agency that did not comply with the applicable state's licensing requirements before entering into a contract to provide services to an in-state employer sued to recover a permanent employee placement fee from the employer. The trial court granted summary judgment to the plaintiff, but the intermediate appellate court reversed and remanded, holding that the licensing requirement applied to out-of-state employment agencies and that the agency's failure to comply barred enforcement of the contract. Reversing, this court held that its ruling requiring out-of-state agencies that conducted business in the state to comply with the statute's licensing requirements would be applied prospectively. The court stated that it would have been unjust to require the plaintiff to forfeit a substantial fee for the services it rendered to the defendant. Accountemps v. Birch Tree Group, 115 N.J. 614, 560 A.2d 663, 669.

N.Y.Sup.Ct.App.Div.

N.Y.Sup.Ct.App.Div.1984. Cit. in disc. The plaintiff sued a garage owner to recover possession of her vehicle and moved to dismiss a counterclaim for the cost of repairs on the ground that the garage was not registered as required by statute. The trial court denied the plaintiff's motion, and this court affirmed. It held that if a statute does not provide expressly that its violation will deprive the parties of their right to sue on the contract and the denial of relief is wholly out of proportion to the requirements of public policy or appropriate individual punishment, the right to relief will not be denied. Thistle v. Englert, 479 N.Y.S.2d 921, 922.

N.Y.Sup.Ct.

N.Y.Sup.Ct.2009. Illus. 5 quot. in sup. Unlicensed home improvement contractor sued homeowners to recover payments due in connection with a construction project, and homeowners counterclaimed for breach of contract. This court granted summary judgment for homeowners on contractor's claims and denied summary judgment for contractor on homeowners' counterclaims, holding, inter alia, that the contract was unenforceable, not rescinded, due to contractor's unlicensed status, and thus, although contractor was not entitled to recover from homeowners for breach of contract or in quantum meruit as a matter of public policy, homeowners could recover from contractor for breach of contract. The court explained that, while a rescinded contract was effectively declared void from its inception, a contract rendered unenforceable by public policy vis-à-vis an unlicensed home improvement contractor was not, and homeowners could still recover damages. Vanguard Const. & Development Co., Inc. v. Polsky, 24 Misc.3d 854, 879 N.Y.S.2d 300, 303.

Pa.Super.

Pa.Super.1995. Quot. in disc., cit. in headnote. Persons who had agreed to refer customers to an insurance agent in return for a share of commissions on his sales of life insurance policies sued for an accounting of commissions due. Agent argued that he should not be held to the contract because plaintiffs were not licensed to sell variable life insurance. Trial court granted the accounting and awarded plaintiffs 25% of any discovered commissions. This court affirmed, holding, inter alia, that the public policy concerns of the provisions cited by the agent were satisfied and did not operate to void the otherwise enforceable agreement entered by the parties. The public policy advanced by the provisions was the preclusion of insurance sales to the public by unlicensed, and therefore untrained, inexperienced, and possibly unscrupulous individuals; here, all the sales were made by a licensed and highly experienced agent. Rapp v. Lorch, 446 Pa.Super. 458, 667 A.2d 240, 242.

Tenn.App.

Tenn.App.2010. Cit. in treatise quot. in sup. Motor carrier sued alleged broker that arranged shipping for shipper, seeking a declaration that it had not contracted to pay defendant a commission on loads it hauled for shipper. After a nonjury trial, the trial court found that, while there was a contract between the parties, the contract was illegal and unenforceable because defendant lacked a broker's license. Vacating and remanding, this court held that the lack of a license did not prevent defendant from recovering for plaintiff's breach of contract. The court cited controlling precedent and the Restatement Second of Contracts, which recognized an exception to the general rule that illegal contracts were not enforceable when forfeiture was required neither by the licensing statute nor by the policy underlying that statute if necessary to avoid unreasonable penalties and forfeitures; if this court was correct that defendant was a broker, penalties were available through the governing agency. Christenberry Trucking & Farm, Inc. v. F & M Marketing Services, Inc., 329 S.W.3d 452, 464.

Wis.App.

Wis.App.2006. Cit. in treatise and quot. in sup., com. (a) cit. in disc. (general cite). Employee-placement agent sued client for breach of contract after defendant failed to pay the fee required for a successful placement. The trial court granted summary judgment for plaintiff. Affirming, this court held, inter alia, that the parties' fee agreement was not void based on plaintiff's delinquent payment of its $5 employment-agent registration fee, and thus defendant was required to pay the monies owed under the contract. The court reasoned in part that the public policy behind the amended statute governing agent registration did not outweigh the unjust enrichment that would occur if defendant was relieved of its $24,300 obligation, particularly where delinquent registration caused no discernible societal damage. Kleewood, Inc. v. Hart Design & Mfg., Inc., 297 Wis.2d 805, 727 N.W.2d 87, 92.

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