

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 15 September 1970.

Words struck out by the Committee are shown with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Riddiford

ILLEGAL CONTRACTS

ANALYSIS

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A BILL INTITULED

An Act to reform the law relating to illegal contracts

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Illegal Contracts Act 1970.

2. Interpretation—In this Act, unless the context otherwise requires,—

10 "Act" means any Act of the General Assembly; and includes any Act of the Parliament of England, of the Parliament of Great Britain, or of the Parliament of the United Kingdom, which is in force in New Zealand:

15 "Court" means the Supreme Court or a Magistrate's Court that has jurisdiction under section 9 of this Act:

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“Enactment” means any provision of any Act, regulations, rules, bylaws, Order in Council, or Proclamation; and includes any provision of any notice, consent, approval, or direction which is given by any person pursuant to a power conferred by any Act or regulations: 5

“Property” means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property. 10

3. “Illegal contract” defined—Subject to section 5 of this Act, for the purposes of this Act the term “illegal contract” means any contract that is illegal at law or in equity, whether the illegality arises from the creation or performance of the contract; and includes a contract which contains an illegal provision, whether that provision is severable or not. 15

4. Act to bind the Crown—This Act shall bind the Crown. 20

5. Breach of enactment—(1) A contract lawfully entered into shall not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of any enactment, unless the enactment expressly so provides or its object clearly so requires. 25

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(2) A contract the object of which or of any provision of which is the doing of an act that is prohibited by any enactment shall be illegal, unless the enactment otherwise provides or its object otherwise requires. 30

6. Illegal contracts to be of no effect—(1) Notwithstanding any rule of law or equity to the contrary, but subject to the provisions of this Act and of any other enactment, every illegal contract shall be of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract: 35

Provided that nothing in this section shall invalidate—

(a) Any disposition of property by a party to an illegal contract for valuable consideration; or

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(b) Any disposition of property made for valuable consideration by—

5 (i) A person who became entitled to the property under a disposition by a party to the illegal contract; or

(ii) A person who became entitled to the property through a person to whom subparagraph (i) of this paragraph applies—

New

(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this proviso applies—

15 if the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.

20 (2) In this section the term “disposition” has the meaning assigned to that term by section 2 of the Insolvency Act 1967.

7. Court may grant relief—(1) Notwithstanding the provisions of section 6 of this Act, but subject to the express provisions of any other enactment, the Court may in the

25 course of any proceedings, or on application made for the purpose, grant to—

(a) Any party to an illegal contract; or

30 (b) Any party to a contract who is disqualified from enforcing it by reason of the commission of an illegal act in the course of its performance; or

(c) Any person claiming through or under any such party—

35 such relief by way of compensation, variation of the contract, validation of the contract in whole or part or for any particular purpose, or otherwise howsoever as the Court in its discretion thinks just.

(2) An application under subsection (1) of this section may be made by—

40 (a) Any person to whom the Court may grant relief pursuant to subsection (1) of this section; or

- (b) Any other person where it is material for that person to know whether relief will be granted under that subsection.
- (3) In considering whether to grant relief under subsection (1) of this section the Court shall have regard to— 5
- (a) The conduct of the parties; and
- (b) In the case of a breach of an enactment, the object of the enactment and the gravity of the penalty expressly provided for any breach thereof; and 10
- (c) Such other matters as it thinks proper; but shall not grant relief if it considers that to do so would not be in the public interest.
- (4) The Court may make an order under subsection (1) of this section notwithstanding that the person granted relief entered into the contract or committed an unlawful act or unlawfully omitted to do an act with knowledge of the facts or law giving rise to the illegality, but the Court shall take such knowledge into account in exercising its discretion under that subsection. 15
- (5) The Court may by any order made under subsection (1) of this section vest any property that was the subject of, or the whole or part of the consideration for, an illegal contract in any party to the proceedings or may direct any such party to transfer or assign any such property to any other party to the proceedings. 20 25
- (6) Any order made under subsection (1) of this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.
- 8. Restraints of trade**—(1) Where any provision of any contract constitutes an unreasonable restraint of trade, the Court may— 30
- (a) Delete the provision and give effect to the contract as so amended; or
- (b) So modify the provision that at the time the contract was entered into the provision as modified would have been reasonable, and give effect to the contract as so modified; or 35
- (c) Where the deletion or modification of the provision would so alter the bargain between the parties that it would be unreasonable to allow the contract to stand, decline to enforce the contract. 40

(2) The Court may modify a provision under paragraph (b) of subsection (1) of this section, notwithstanding that the modification cannot be effected by the deletion of words from the provision.

5 **9. Jurisdiction of Magistrates' Courts**—(1) A Magistrate's Court shall have jurisdiction to exercise any of the powers conferred by any of the provisions of sections 7 and 8 of this Act in any case where—

10 (a) The occasion for the exercise of the power arises in the course of any civil proceedings (other than an application made for the purposes of subsection (1) of section 7 of this Act) properly before the Court;

15 (b) The value of the consideration for the promise or act of any party to the contract is not more than \$2,000; or

20 (c) The parties agree, in accordance with section 37 of the Magistrates' Courts Act 1947, that a Magistrate's Court shall have jurisdiction to hear and determine the application.

(2) For the purposes of section 43 of the Magistrates' Courts Act 1947, an application made to a Magistrate's Court pursuant to subsection (1) of section 7 of this Act shall be deemed to be an action.

25 *New*

9A. Application of Act—This Act shall apply to contracts whether made before or after the commencement of this Act: Provided that nothing in section 6 of this Act shall apply to contracts made before the commencement of this Act.

30 **10. Savings**—(1) Except as provided in section 8 of this Act, nothing in this Act shall affect the law relating to:

(a) Contracts, or provisions of contracts, which are in restraint of trade; or

35 (b) Contracts, or provisions of contracts, which purport to oust the jurisdiction of any Court, whether that Court is a Court within the meaning of this Act or not.

(2) Nothing in this Act shall affect the right of any person to bring an action for breach of promise of marriage and
40 every such action shall be heard and determined as if this Act had not been passed.

New

(3) Nothing in this Act shall affect the rights of the parties under any judgment given in any Court before the commencement of this Act, or under any judgment given on appeal from any such judgment, whether the appeal is commenced before or after the commencement of this Act. 5