



1 *Davis v. Savage*, 1946-NMSC-011, ¶ 42, 50 N.M. 30, 168 P.2d 851; *City of Artesia v. Carter*,  
2 1980-NMCA-006, ¶ 12, 94 N.M. 311, 610 P.2d 198. The statute itself may so provide.

3 In many instances, however, the effect of the violation, if proved, must be determined by the court.  
4 In making this determination, the court should balance the public policy that is alleged to have  
5 been violated against the interest in enforcing the contract. *See* Restatement (Second) of Contracts  
6 § 178 (1981); 6A Corbin, Contracts § 1375 (1962); *State ex rel. Balderas v. ITT Educ. Servs.*,  
7 2018-NMCA-044, ¶ 13, 421 P.3d 849. Whether a contract is against public policy is a question of  
8 law for the court to determine from all the circumstances of each case. *Berlangieri v. Running Elk*  
9 *Corp.*, 2002-NMCA-060, ¶ 11, 132 N.M. 332, 48 P.3d 70. The court should examine the subject  
10 matter, object, and purpose of the statute, the wrong or evil which it is intended to remedy or  
11 prevent, and the class of persons sought to be controlled in order to ascertain whether the  
12 legislature intended to invalidate contracts in violation of the statute. *Forrest Currell Lumber Co.*  
13 *v. Thomas*, 1970-NMSC-018, ¶ 15, 81 N.M. 161, 464 P.2d 891; *see also Niblack v. Seaberg Hotel*  
14 *Co.*, 1938-NMSC-018, ¶¶ 15-16, 42 N.M. 281, 76 P.2d 1156; *Douglass v. Mutual Benefit Health*  
15 *& Accident Ass'n*, 1937-NMSC-097, ¶ 25, 42 N.M. 190, 76 P.2d 453.

16 Where a contract is made up of several provisions, one of which is illegal, if the illegal provision  
17 can be eliminated without destroying the symmetry of the contract as a whole, that provision will  
18 be voided, and the remainder of the contract will be enforced. *Forrest Currell*, 1970-NMSC-018,  
19 ¶ 16; *Arch, Ltd. v. Yu*, 1988-NMSC-101, ¶ 14, 108 N.M. 67, 766 P.2d 911; *Garcia v. Bd. of*  
20 *Regents*, 2016-NMCA-052, ¶ 20, 373 P.3d 998.

21 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed  
22 on or after December 31, 2020.]