

1 **13-835. Illegality; enforceability of contractual obligations.**

2           There was in force in the State of New Mexico at the time this contract was entered into a  
3 certain [statute] [ordinance] [regulation] which provided:

4           *(set out statutory language)*

5           [If you find that \_\_\_\_\_ violated this statute, then \_\_\_\_\_  
6 ~~was excused from performing [his] [her] obligations under the contract.~~]

7           If [making the contract] [performing the contract] [violated] [would violate] the [statute]  
8 [ordinance] [regulation], then \_\_\_\_\_ (*name of defendant*) is excused from [his] [her] [its]  
9 obligation[s] under the contract.

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**USE NOTES**

12           This instruction is to be used when the defendant has asserted that the making or  
13 performance of the contract violated public policy as expressed in a statute, ordinance, or  
14 regulation and there is evidence to support a finding that the violation occurred. Before the  
15 instruction is given, however, the court must determine as a matter of law that the public policy  
16 allegedly violated is of sufficient importance to justify invalidating the contract. Where the  
17 evidence warrants, the court should instruct on excuse or justification with respect to violation of  
18 the statute or ordinance as provided in UJI 13-1503 NMRA.

19 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,  
20 effective for all cases pending or filed on or after December 31, 2020.]

1           **Committee commentary.** — A contract made or performed in violation of a statute may  
2 be unenforceable on public policy grounds. *See DiGesu v. Weingart*, 1978-NMSC-017, ¶ 7, 91  
3 N.M. 441, 575 P.2d 950[~~(1978)~~ (~~violation of liquor license regulation~~)]; *Granger v. Caviness*,  
4 1958-NMSC-106, ¶¶ 6, 10, 64 N.M. 424, 329 P.2d 439; *Davis v. Savage*, 1946-NMSC-011, ¶ 42,  
5 50 N.M. 30, 168 P.2d 851; *City of Artesia v. Carter*, 1980-NMCA-006, ¶ 12, 94 N.M. 311, 610  
6 P.2d 198. The statute itself may so provide.

7           In many instances, however, the effect of the violation, if proved, must be determined by  
8 the court. In making this determination, the court should balance the public policy that is alleged  
9 to have been violated against the interest in enforcing the contract. *See* Restatement (Second) of  
10 Contracts § 178 (1981); 6A Corbin, Contracts § 1375 (1962); *State ex rel. Balderas v. ITT Educ.*  
11 *Servs.*, 2018-NMCA-044, ¶ 13, 421 P.3d 849. Whether a contract is against public policy is a  
12 question of law for the court to determine from all the circumstances of each case. *Berlangieri v.*  
13 *Running Elk Corp.*, 2002-NMCA-060, ¶ 11, 132 N.M. 332, 48 P.3d 70. The court should examine  
14 the subject matter, object, and purpose of the statute, the wrong or evil which it is intended to  
15 remedy or prevent, and the class of persons sought to be controlled in order to ascertain whether  
16 the legislature intended to invalidate contracts in violation of the statute. *Forrest Currell Lumber*  
17 *Co. v. Thomas*, 1970-NMSC-018, ¶ 15, 81 N.M. 161, 464 P.2d 891 [~~(1970)~~]; *see also Niblack v.*  
18 *Seaberg Hotel Co.*, 1938-NMSC-018, ¶¶ 15-16, 42 N.M. 281, 76 P.2d 1156 [~~(1938)~~]; *Douglass v.*  
19 *Mutual Benefit Health & Accident Ass'n*, 1937-NMSC-097, ¶ 25, 42 N.M. 190, 76 P.2d  
20 453 [~~(1937)~~].

1           Where a contract is made up of several provisions, one of which is illegal, if the illegal  
2 provision can be eliminated without destroying the symmetry of the contract as a whole, that  
3 provision will be voided, and the remainder of the contract will be enforced. *Forrest Currell*, 1970-  
4 NMSC-018, ¶ 16; *Arch, Ltd. v. Yu*, 1988-NMSC-101, ¶ 14, 108 N.M. 67, 766 P.2d 911; *Garcia v.*  
5 *Bd. of Regents*, 2016-NMCA-052, ¶ 20, 373 P.3d 998.  
6 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed  
7 on or after December 31, 2020.]