



DOCTRINE OF “PARI DELICTO”

Dear Friends,

“Pari Delicto” means in “Equal Fault,” in case of an agreement when both parties involve in fraud against each other or both parties to be blamed for fraud and recovery of damages to the plaintiff is barred due to his participation in the fraud.

A Latin phrase commonly used in tort and contract law which means “in equal fault.” This is doctrine states that there is a bar to a plaintiff’s recovery of damages for a wrong the plaintiff participated in and serves as an equitable defense. Courts are therefore reluctant to award relief to plaintiffs who have unclean hands. In pari delicto is similar to but distinct from the related concepts of contributory negligence and comparative negligence.

In addition, if the parties in a suit are found liable in pari delicto as joint tortfeasors, the potential remedies available to them are restricted. Due to the fact that both parties were equally responsible for committing a tort, indemnity is not available to them as a remedy though each party may seek contribution from the other, or if an involved party is vicariously liable for another and must pay more than their proportional share, they may seek contribution from that other party.

However, joint tortfeasors who are not in pari delicto may generally be entitled to indemnification from the other party. Also, if the tortfeasors in either scenario violated some equitable norm, then the clean-hands doctrine may further restrict the award of any equitable remedies.

WIKIPEDIA- *In pari delicto (potior/melior est conditio possidentis), Latin for “in equal fault (better is the condition of the possessor)”, is a legal term used to refer to two persons or entities who are equally at fault, whether the malfeasance in question is a crime or tort. The doctrine is subject to a number of exceptions, including that the plaintiff must be an active, voluntary participant in the wrongful conduct, the plaintiff's wrongdoing must be at least substantially equal to or greater than that of the defendant, the “adverse interest” exception, and the “innocent insider” exception.*

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



IN CASE OF INSURANCE CONTRACTS: *in case of illegal insurance policies , premium paid cannot be recovered if involved parties are “Pari Delicto” or both are equally blamed. But this doctrine should be used with caution. If parties are not in Pari Delicto, and if blame apportioned to an insurance company more than the fault of other party i.e., the insured in this case the premium paid is allowed to be refunded to the insured or other party.*

Harse Vs. Pearl Life Assurance Co. (1903) 2KB 92- *plaintiff has taken insurance policy on the life of his mother after being convinced by insurance agent of the Company. The plaintiffs in believe that Insurance Agent of the Insurance company knows Insurance Law and without having insurable interest in the life of his mother taken insurance policy. In this case the court has allowed refund of premium to the plaintiff. In this case the parties to the agreement are not considered as “Pari Delicto”. The above decision reversed , and it was held that assuming the policy to be illegal and void for the lack of Insurable Interest the representation made by the agent having been made innocently the parties were in “Pari Delicto” and premium could not be recovered.*

Shan Lal Mitra Vs. Amarandu Nth Bose [1895) 23 Cal 460]- *This rule is also applicable in India and it has been held that where a contract is set aside on the ground of illegality the plaintiff in order to recover the money paid by him under contract must show that the defendant was more to blame than plaintiff.*

SECTION 30 OF INDIAN CONTRACT ACT, 1872 PROVIDES THAT: -

AGREEMENTS BY WAY OF WAGER ARE VOID; *and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made." Exception in favour of certain prizes for horse-racing.*

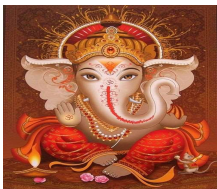
—This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race.

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



—This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race." Section 294A of the Indian Penal Code not affected.

—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply."

PLEASE NOTE THAT- this rule will not apply when parties are not at "Pari Delicto", when the plaintiff has acted "under circumstances of oppression, imposition, hardship, undue influence or great inequality of condition or age so that his guilt is far less than that of his associate in the offence.

Atkinson Vs. Denby (1860)6 H & N 778: 7 H&N 934- a debtor offered a composition of five shillings in the pound but one of the creditors would not agree to this unless he was paid pound 50 more. The debtor paid the amount and successfully sue the creditor to recover it. The Court said;

"it is true that both parties are in "Delicto" because of the act is a fraud upon the other creditors, but it is not "Par Delictum", because one has power dictate and other no alternative but to submit."

SECTION 35(b) OF SPECIFIC RELIEF ACT, 1963 provides that person may sue to rescind a contract where contract is unlawful for cause not apparent on its face, and the defendant is more to blame than plaintiff.

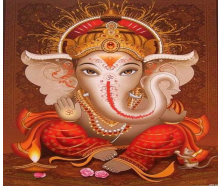
Example suppose Mr. An advocate convinced Mrs. B a widow to transfer her property in Mr. A name to defraud her creditors, in this case the contract is liable to be rescinded because in this case both parties are not at equally fault and are not at "Pari Delicto" and hence Mrs. B is entitled to have instrument of title rescinded.

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



Anand Prakash Om Prakash Vs. Oswal Trading Agency, AIR 1976 Del 24 it was held that “the true test for determining whether or not plaintiff and defendant were in “Pari Delicto” is by considering whether the plaintiff would make out his case otherwise than through the medium and by aid of illegal transaction to which he himself was a party.”

THE RULE OF LAW GENERALLY PROVIDES THAT- money paid or property delivered under an unlawful agreement cannot be recovered by, nor the agreement set aside at the suit of either party, unless nothing has been done in the execution of the unlawful purpose beyond the payment or delivery itself and the agreement is not positively criminal or immoral; or unless the agreement was made under such circumstances as between the parties that, if otherwise lawful, it would be voidable at the option of the party seeking relief or in case of an action to set aside the agreement unless, in the judgement of the court, the interest of third person require that it should be set aside.

Further a well-established test for determining whether money or property which has been parted with in connection with the illegal transaction can be recovered in the court of justice, is to ascertain whether the plaintiff, in support of his case, or as a part of his cause of action, necessarily relied upon the illegal transaction; if he requires aid from illegal transaction to establish his case, the court will not entertain his case.

The doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily by their free will joined hands to flout the law for their mutual gain.

SECTION 23 OF THE INDIAN CONTRACT ACT, 1872 –

WHAT CONSIDERATION AND OBJECTS ARE LAWFUL, AND WHAT NOT.

The consideration or object of an agreement is lawful, unless—

" it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or

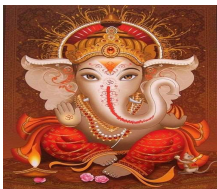
opposed to public policy.

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations."

(d) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral."

(e) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter and would so defeat the object of the law."

Section 23 of the Contract Act, 1872 – imposes some restrictions on the absolute freedom of citizen in the matter of entering into contracts and subjects his rights to overriding considerations of public policy and the others enunciated under it. Where a statute prohibits a thing not merely for the purpose of revenue but also for the protection of public, a contract in the contravention of such prohibition shall be void. Mere possibility of transgression of law is no ground to brand agreement as opposed to public policy. The agreement must be shown to be ex-facie illegal or capable of being performed only by unlawful means.

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



PLEASE NOTE THAT- where misrepresentation or breach of the warranty is caused by the mistake or fraud of the company's agent in misleading the assured or inserting false particulars in the proposal the policy is avoided under certain circumstances and is the assured himself has been innocent the insurers must apart from special condition return the premium paid by the assured under insurance contract. This rule does not apply where there was collusion of the assured with the agent for insurance policy and this have to be proved by the insurance company.

SECTION 64 OF THE INDIAN CONTRACT ACT, 1872

Consequences of rescission of a voidable contract.—When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he had received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

IN CASE OF AN INSURANCE CONTRACT- an insurer seeking to cancel a fraudulent contract , they must either offer to pay the premium back or submit to any terms which the court may impose in granting such relief. To hold otherwise would be to let the insurers affirm and deny the contract in one breath.

Section 64 of the Indian Contract Act, 1872 -provides that when a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he had received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received. It means that an insurer is to return premium received under contract of insurance ,if it rescinds contract.

SECTION 65 OF THE INDIAN CONTRACT ACT, 1872

Obligation of person who has received advantage under void agreement, or contract that becomes void.

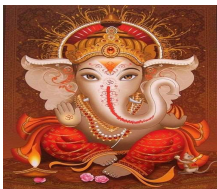
—When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



Illustrations

(a) A pays B 1,000 rupees, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

IT MEANS THAT – a party exercising his option to rescind is entitled to be restored so far as possible to his former position. Non-disclosure of material facts in case of a contract of insurance which comes to the knowledge of an insurance company during subsistence of the contract may have effect of rescinding it. Where in respect of one contract presumption of foul play arises from the position of the parties, the contract can be rescinded. The entire contract should be rescinded in "toto" not only a part of the contract.

SECTION 31 OF THE SPECIFIC RELIEF ACT, 1963

When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

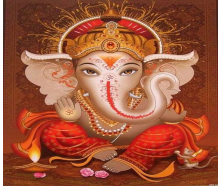
A well settled law in the field of insurance is that contracts of insurance including the contracts of life assurance are contracts of "Utmost Good Faith" (*uberrimae fidei*) and every facet of materiality must be disclosed, otherwise there is good ground for rescission. And this duty to disclose continues up to the conclusion of the contract and covers any material alternation in the character of the risk which may take place between the proposal and the acceptance.

FCS DEEPAK P. SINGH

(B.Sc., LLB, FCS, AIII, CIAFP, CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com



CONCLUSION: *provisions of Section 23 of the Indian Contract Act, 1872 specified the cases in which an agreement /contract will be treated and void or illegal. Any contract in which both parties are at fault and the contract is illegal or opposition of public policy or void , then parties to the agreement do not have rights to recover any consideration paid under the contract. In case of an insurance contract “ Doctrine of Pari Delicto” applies only in case when both insured and insurance company are at fault and amount paid as premium under the contract is not recoverable. In cases where an illegal contract of insurance was entered into and assured is ignorant of the law and is included to enter into it by fraudulent misrepresentation of the law by the agents of insurance company the parties are not in Pari Delicto and the assured may recover premium back.*

DISCLAIMER: *the article presented here is only for sharing knowledge and information with the readers. The views are personal ,shall not be considered as professional advice. In case of necessity do consult with professional.*

FCS DEEPAK P. SINGH

(B.Sc., LLB ,FCS ,AIII ,CIAFP ,CRMP)

Mobile No. +91 9920830041

Email ID: cs.deepakpsingh@gmail.com