Title:
IV.7.1 - Invalidity of contract that violates good morals ("boni mores")

Content:
No. IV.7.1 - Invalidity of contract that violates good morals (boni mores)
A contract that violates good morals ("boni mores") is void.

Commentary:
1 The Principle that a contract violating boni mores or "good morals" is void provides the moral underpinning of transnational commercial law. Violation of good morals means much more than that the contract is unreasonable as between the parties or unfair. Rather, the concept of good morals relates to fundamental values of society and is not of a purely legal nature. It includes basic legal, as well as economic, ethical, moral, and social values that the individuals of the relevant community generally consider binding and crucial for their peaceful coexistence in that community. Such fundamental values of morality and justice arise from and are based on a broad social consensus and thus shape the morality of a community. Good morals, therefore, involve a broad and objective standard. They relate to the social morality of a community, not to the individual morality of the judge or arbitrator who decides a given case.

2 The Principle that a contract that violates boni mores is void serves as a limit of the parties' freedom of contract in order to protect and preserve the aforementioned basic values of the international community. The conflict with good morals may be caused by the conclusion of the contract, by the performance to be rendered under the contract by one of the parties or by both of them or by the purpose for which the contract was concluded. Often, the violation of good morals results from a combination of the contents of the contract and surrounding circumstances. The broadness of the concept entails that it has numerous aspects, such as protection of the economic independence of the weaker contracting party, prohibition of malicious exploitation of a position of power, prohibition of entering a contract out of indecent or mischievous consideration, or the prohibition of creating illegal obligations that give an incentive to crime.

3 In international business, these fundamental transnational values are part of transnational public policy. They include the prohibition of crimes against humanity, racial discrimination, child labor, slavery, torture, terrorism, money laundering and drug trafficking. Also, contracts which are concluded in violation of an embargo that results from a resolution of the United Nations and is thus based on a broad consensus of the international community of nation states, is void because it violates transnational boni mores expressed in that embargo resolution. The Principle that a contract involving the payment of bribes is void is another specific example of this general Principle.

4 If the contract violates good morals, the judge or arbitrator has no discretion. He must regard the contract as void irrespective of the intention and the knowledge of the parties. This follows from the fundamental nature of the values involved and from the fact that the judge or arbitrator serves as a guardian of these fundamental values.