

The Passionate Shepherd

As you like it.

I. Read the case and answer the following question:

Is it, and should it be, the task of the court to take account of immorality as well as illegality?

Armhouse Lee Ltd v Chappell (1996) CA



The defendants were pornographers. Their business included the operation of telephone sex lines at premium rates. The plaintiffs acted as advertising agents for the defendants. In this action, the plaintiffs sued for the sums outstanding for their advertising services, payment of which was resisted by the defendants on the grounds that the advertising contracts were vitiated by illegality.

Held the advertising contracts were enforceable and the pornographers must pay for their advertisements. *Per* Simon Brown LJ:

On any view of the law, public policy still precludes the enforcement of contracts for the promotion of an undoubtedly immoral purpose such as prostitution. *Pearce v Brooks* [9.2.1] remains good law.

However, his lordship held that 'lewd discussion over the telephone offering sexual excitement in return for payment' was not tantamount to prostitution. His lordship continued as follows:

I readily accept that contracts for a sexually immoral purpose are contrary to public policy and that contracts tending to promote sexual immorality are illegal and unenforceable... Necessarily, however, for that principle to apply, the court cannot avoid the question: what for this purpose is sexual immorality? Clearly it encompasses prostitution. That, as stated, is settled law. No less clearly..., it would include, for example, bestiality or paedophilia. But does it include sexual arousal over the telephone, even accepting that the premium rates charged make that a service for reward?...In my judgment, it is plain that no generally accepted moral code condemns these telephone sex lines. On the contrary, society appears not merely to have accepted their existence but to have placed them under the express control of an independent body, ICSTIS, who publish a detailed code of practice governing both the services themselves and all associated promotional material... Returning then to the essential question raised on this part of the case—is a contract for the advertising telephonic sexual arousal for reward contrary to public policy? I would answer firmly in the negative. Tempting though it is, I do not do so on the broad basis that the courts are courts of law and not of morals and leave it at that. That, I am persuaded, would be an impermissibly simplistic response to this appeal. There are occasions when perforce the court must grapple with concepts of morality.