

## VOID AGREEMENTS

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There are certain agreements which have been expressly declared void under certain provisions of the contract Act or any other law. Sec. 2(g) says: "An agreement not enforceable by law is said to be void". There are some agreements which have been specifically or expressly declared as void by the Indian Contract Act

The following types of agreements have expressly been declared void under various Sections of the Indian Contract Act.

1. Agreement, the consideration or object of which is partly unlawful (Section 24).
2. Agreement without Consideration (Section 25)
3. Agreement in restraint of marriage (Section 26).
4. Agreements in restraint of trade (Section 27).
- 5.. Agreements in restraint of legal proceedings (Section 28).
6. Agreement to do Uncertain Agreement (Section 29)
7. Wagering agreement (Section 30).
- 8.. . Impossible agreement (Section 56)

### **1. Agreement, the consideration or object of which is partly unlawful/ Partial Illegality**

Section 24 of the Indian contract Act provides that if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

It is well settled that if several distinct promises are made for one and the same lawful consideration, and one or more of them be such as the law will not enforce, that will not of itself prevent the rest from being enforceable. The test is whether a distinct consideration which is wholly lawful can be found for the promise called in question.

### **2. Agreement without Consideration:(Section 25)**

This section provides that a contract without any consideration would be rendered void unless it is a gift made on account of natural love and affection; it is a time-barred debt, or it is compensation to someone who has voluntarily done something for the promisor.

### **3. Restraint of Marriage (Sec. 26)**

Every agreement in restraint of the marriage of any person, other than a minor, is void (Sec. 26). The restraint may be general or partial. A party may be restrained from marrying at all, or from marrying for a fixed period, or from marrying a particular person, or a class of persons, or not to marry outside a group of families, in all such cases the agreement is void

### **4. Agreement in restraint of trade (Section 27)**

Freedom of trade and commerce is a fundamental right protected by Article 19(g) of the Constitution of India, Just as the Legislature cannot take away individual freedom of trade, so also the individual cannot barter it away by an agreement. Public policy requires that every man shall be at liberty to work for himself and shall not be at liberty to deprive himself or the state of his labour, skill or talent, by any contract that he enters into. Courts, therefore, do not allow any tendency to impose restrictions upon the liberty of an individual to carry on any business, profession or trade. Thus, all agreements in restraint of trade, whether general or partial, qualified or unqualified, are void.

#### **Exceptions**

There are two exceptions to this rule- those created by statutes, and those arising from judicial interpretations of Section 27

#### ***Statutory Exceptions***

**Sale of Goodwill:** The seller of goodwill of a business may agree with the buyer thereof not to carry on a similar business within specified local limits. Such a restraint shall be valid, if limits are reasonable (Section 27). The reasonableness of restrictions will depend upon many factors, such as the area in which the goodwill is effectively enjoyed, the price paid for it and above all, the nature of the business.

For example, a seller of imitation jewelry in England, sold his business to B and promised that for a period of two years he would not deal (a) in imitation jewellery in England (b) in real jewellery in certain foreign countries. The first promise alone was held lawful. The second promise is void and the restraint was unreasonable in point of space and nature of business.

5. **Agreements in restraint of legal proceeding:** Section 28 of the Indian Contract Act regards the following two restraints of legal proceedings as void. An agreement by which a party is restricted absolutely from enforcing his legal rights under, or in respect of any contract by the usual legal proceedings in the ordinary tribunals is void.

For example, a contract contains a stipulation that no action should be brought upon it in case of breach. Such a stipulation would be void because it would restrict both parties from enforcing their rights under the contract in the ordinary tribunals. But, a contract whereby it is provided that all disputes arising between the parties should be referred to the arbitration, whose decision shall be accepted as final and binding on both parties of the contract, is not invalid. Where there are two courts, both of which have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other, does not contravene the provisions of Section 28.

Another type of agreement rendered void by Section 28 is where an attempt is made by the parties to restrict the time within which an action may be brought so as to make it shorter than that prescribed by the law of limitation..

## **6. Uncertain Agreements**

An agreement is called an uncertain agreement when the meaning of that agreement is not certain or capable of being made certain. Such agreements are declared void under Section 29.

Illustration i. A agrees to sell to B "one hundred tons of oil". The agreement is void for uncertainty since there is no clarity in the agreement what kind of oil was intended.

ii. A agrees to sell B "my white horse for Rs. 5,000 or Rs. 10,000". There being nothing to show which of the two prices was to be given, the agreement is void.

## **7. Wagering Agreement**

Agreements entered into between parties under the condition that money is payable by the first party to the second party on the happening of a future uncertain event, and the second party to the first party when the event does not happen, are called Wagering Agreements or Wager. There should be mutual chance of profit and loss in a wagering agreement. Generally wagering agreements are void.

**Wager means a bet.** It is a game of chance where the probability of winning or losing is uncertain. The chance of either winning or losing is wholly dependent on an uncertain event. Parties involved in a wagering contract mutually agree upon the nature of the agreement that either one will win. Each party stands equally to win or lose the bet.

Illustrations : A and B agree with each other that if it rains on Tuesday, A will pay Rs. 100 to B and if it does not rain on Tuesday, B will pay A Rs. 100. Such an agreement is a wagering agreement and hence is void.

### ***Essentials of a Wager***

**Dependence on Uncertain Event** One of the important essentials of a wagering agreement is that it must depend upon an uncertain event. Event may be past, present or future, but the parties must be unaware of its future or the time of its results or the time of its happening.

**Mutual Chance of Gain or Loss :** Another element of wagering agreement is that each party to the agreement should stand to win or lose as per the result of the uncertain event. If there are no such mutual chances of gain or loss, there is no wager.

**No Other Interest in the Event :** Neither party should have any interest in happening or non-happening of the event other than the sum he will win or lose. If either party has some other interest other than the sum he will win or lose, it will not be a wager..*No*

**Control Over the Event :** The parties to the contract should not have any control over the happening of the event one way or the other. If one party has the events in his hands, the transaction will not be a wager.

**Promise to Pay Money or Money's Worth :**The wagering agreement must

contain a promise to pay money or money's worth. Insurance are not wagers, Insurance contracts are contracts of indemnity. They are entered into, to safeguard the interest of one party to the contract. In this contract, the insured has insurable interest in the property or life. Hence it is not a wager.

### **Distinction between Wagering Agreement and Contract of Insurance**

i. In a wagering agreement, there is no insurable interest, whereas contract of insurance has insurable interest

ii. Wagering agreement is a void agreement, whereas contract of insurance is a valid one.

iii. In a wagering agreement, neither party has any interest in the happening or nonhappening of an event. But in an insurance agreement, both the parties are interested in the subject-matter.

iv. Wagering agreements are conditional contracts, whereas insurance agreements are contracts of indemnity except life insurance contracts which are contingent contracts.

v. The object of a wagering contract is to speculate for money or money's worth, whereas an insurance contract is to protect an interest.

vi. A wagering agreement is just a gamble, whereas a contract of insurance is based on scientific and actuarial calculation of risks.

**Skill Competitions are not wagers :** Skill plays a substantial part for the successful solution of certain competitions. For example, crosswords competitions, picture, puzzles etc.

**Horse Race Competition is not wager :** State Governments may authorise the horse race competition, if it is permitted by the local laws. Thus, agreement to subscribe or contribute towards such prize or sum of money is valid and enforceable.

**Sports Competitions are not wagers:** Sports competitions such as Athletics, Wrestling, Indoor games, Boxing, Football, Cricket, Hockey etc. are not games of chance. It is decided by skill. Hence, they are not wagers.

### **Effects of Wagering Agreements**

In India, wagering agreements have been expressly declared to be void. So it cannot be enforced in any Court of law. Sec. 30 of the Act states 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 by the results of any game or other uncertain event on which any wager is made.

#### ***8. Agreement to do impossible acts***

Agreements to do impossible acts Section 56 of the Indian Contract Act declares that an agreement to do an act impossible in itself is void. Thus, where A agrees with B to discover treasure by magic, the agreement is void. An agreement to do an act impossible in itself should be contrasted from a contract which becomes impossible for performance. Subsequent impossibility renders a contract void when the act becomes impossible.