

BUSINESS LAW

UNIT 1: The Indian Contract Act, 1872

TOPIC- EXPRESSLY DECLARED VOID AGREEMENTS

EXPRESSLY DECLARED VOID AGREEMENTS

A void agreement means an agreement not enforceable by law. It means that the parties to such an agreement cannot take legal recourse to force the other party to perform it or be bound by it. Such agreements are **void abinitio** i.e void from the beginning. Such agreements are useless, nullity or completely devoid of any legal consequences. **Also as per Sec.65, no restitution \ restoration of benefits received is allowed in case of expressly declared void agreements.** We are already aware of some of the void agreements such as

- Agreements by minors or persons of unsound mind(Sec.11)
- Agreements made under bilateral mistake regarding some essential fact(Sec.20)
- Agreements whose object or consideration is unlawful(Sec.23)
- Agreements partly illegal partly legal and illegal part can't be separated (Sec.24)
- Agreements made without consideration(Sec.25)

In addition to these, there are certain other **expressly declared void agreements specified in Sec.26- 30 of the Indian Contract Act, 1872 .**

EXPRESSLY DECLARED VOID AGREEMENTS UNDER SEC. 26- SEC.30

• Agreements in restraint of marriage(Sec.26)

Any agreement by which a person is restrained ,either wholly or partially ,from getting married, is void. Thus an agreement not to marry at all or not to marry for a fixed period, or not to marry a particular person, or not to marry from a certain class of persons are all void agreements.

Exceptions- The following restraints are held valid

- Agreement restraining the marriage of a minor is valid.
- Promise to marry a particular person is valid(It is commitment and not restraint)
- Any agreement, wherein penalty is imposed on remarriage, is held valid .

CASE - Rao Rani vs Gulab Rani *

Here the two co-widows agreed that if any of them remarried, she would forfeit her share in the deceased husbands ' properties. Held, the agreement was enforceable and valid since it does not restrain them from remarrying.

EXPRESSLY DECLARED VOID AGREEMENTS UNDER SEC. 26- SEC.30

• Agreements in restraint of trade(Sec.27)

Any agreement by which a person is restrained from carrying any lawful business, trade or profession is to that extent void.

Exceptions- The following restraints are held to be valid

- Sale of goodwill -wherein seller of goodwill is restrained from carrying on similar business within specified local limits for specified period **provided the restraint is reasonable in point of time and space.**

Goldsoil vs Goldman- C, a seller of imitation jewellery in London sells his business to D and promises that for a period of 2 years he would not deal: (a) in imitation jewellery in England, (b) in real jewellery in England, and (c) in real/ imitation jewellery in certain foreign countries. The first promise alone was held lawful and the other two promises ,namely (b) and (c) were held void as they were unreasonable in point of space and nature of business.

- Partners agreements eg. restrictions among existing partners, or on retiring partners, or on outgoing partner who sells goodwill or on partners anticipating dissolution -that they will not carry similar business as that of firm is valid provided restraint is reasonable
- Trade combinations- Any agreement among traders or manufacturers the purpose of which is to regulate business and not restrain it ,is valid.eg. agreement to pool profits and output, agreement to not sell below a certain price etc. Similarly Exclusive dealing agreements or Franchise agreements are held valid. But agreement to create monopoly is void .
- Negative stipulations in service agreements- Any agreement restraining a person **during the term of agreement** not to take service with anyone else is valid. But agreement restricting the freedom of occupation for some period ,**after the termination of service**, is void.

Bhahamputra Tea co. vs Scarth- S, an employee of of a Tea Company ,agreed not to employ or engage himself in any similar business within 40 miles from Assam, for a period of 5 years from date of termination of his service, was held as the agreement in restraint of trade and profession and hence void.

EXPRESSLY DECLARED VOID AGREEMENTS UNDER SEC. 26- SEC.30

- **Agreements in restraint of legal proceedings(Sec.28)**

An agreement by which a party is restricted **absolutely** from taking legal proceedings or time within which he can enforce his contract rights is **curtailed** irrespective of time allowed under Limitation Act, is void.

Exceptions

- Parties agreeing to refer existing or future disputes to arbitration is held valid
- Parties agreeing not to file an appeal in higher court is held valid
- Parties agreeing to select one of the two equally competent courts for filing suit is valid

- **Agreements the meaning of which is uncertain(Sec.29)**

Agreements, the meaning of which is not certain or capable of being made certain are void. If the terms of agreement are vague, indefinite, confusing, ambiguous, then the agreement is void. However, an agreement which contains a mechanism or machinery to ascertain a vague term is held valid. eg. A agrees to sell his car to B at a price to be fixed by C , is held to be valid as price is capable of being made certain by referring to C.

EXPRESSLY DECLARED VOID AGREEMENTS UNDER SEC. 26- SEC.30

• Agreements by way of wager(Sec.30)

Wagering agreements are ordinary betting agreements wherein parties have **equal chances of winning or losing a bet of money or moneys worth** on happening of some **uncertain future** event in which they have no proprietary interest .eg. lotteries, gambling .Since these agreements are void, no suit can be brought to recover anything alleged to be won or entrusted to any person to abide the result of any game. NOTE- In **Gujarat and Maharashtra, wagering agreements are not only void but also illegal.**So in these states, even transactions collateral to wagers are void.

Exceptions

- A bet on **horse race carrying a prize of ₹500 or more** is valid
- Commercial transactions- agreement involving sale\ purchase of commodities or shares market transactions with intention to actually deliver goods\shares is valid
- Games of skills- such as painting competitions\ talent hunts\ athletic competitions\quizzes\ crossword puzzles etc. where prizes are awarded on the basis of skills, talents , knowledge and intelligence of the participants are valid (**As per Prize Competition Act,1955 games of skill are not wagers provided the prize money does no exceed ₹1000**)
- Insurance Contracts are valid and are not wagers as here, the policy holder has **insurable interest** in the uncertain event upon which insurance money is payable; insurance contracts are based on **scientific and actuarial calculation of risks** and such contracts are **beneficial to public** .

• **Agreements contingent on impossible events(Sec.36)** - Agreements contingent\ dependent on happening of an impossible event, are void.eg. A money lender agrees to give loan to borrower provided two straight lines meet.

• **Agreements to do impossible acts(Sec .56)** - An agreement to do impossible act is void.eg. A agrees to give 5 lakh rupees to B if B runs at a speed of 500 km per hour.

INSURANCE CONTRACTS vs WAGERING AGREEMENTS

Insurance Contracts	Wagering Agreements
<ul style="list-style-type: none">• These are valid contracts i.e. binding and enforceable	<ul style="list-style-type: none">• These are void agreements i.e. not binding and not enforceable
<ul style="list-style-type: none">• The holder of an insurance policy must have an insurable interest in the event/ subject matter i.e. in the life and property to be insured .	<ul style="list-style-type: none">• Here parties do not have any proprietary interest in the event. Stake is the only interest of the parties
<ul style="list-style-type: none">• Thus insurance contracts are entered into to indemnify the party for the loss incurred on the happening of certain event.	<ul style="list-style-type: none">• Such contracts are entered into to make easy money by betting.
<ul style="list-style-type: none">• These are regarded as beneficial to the public.	<ul style="list-style-type: none">• These are not regarded as beneficial ..rather they are condemned in the society.
<ul style="list-style-type: none">• Contracts of insurance are based on scientific and actuarial calculations of risk .	<ul style="list-style-type: none">• Wagering agreements are basically gambling and there is no scientific calculation of risks.