



2(d): Consideration - “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise”.

23: What considerations 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.

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 promises to maintain B’s child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) 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.

(j) 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.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860).

24: Agreements void, if considerations and objects unlawful in part – 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.





Illustration

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A’s promise, and the consideration for B’s promise, being in part unlawful.

25: Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law - An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1. — Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2. — An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

- (a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.
- (b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.
- (c) A finds B’s purse and gives it to him. B promises to give A Rs. 50. This is a contract.
- (d) A supports B’s infant son. B promises to pay A’s expenses in so doing. This is a contract.
- (e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.
- (f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A’s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.
- (g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given. The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A’s consent was freely given.

What is consideration?

In Mercantile law, the term 'consideration' is used in the sense of *quid pro quo* which in turn means 'something in return'. This



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'something' may be some benefit, right, interest or profit that may accrue to one party or it may be some forbearance, detriment, loss or responsibility upon the other party. This explanation of consideration was given in a very popular English case of **Currie v Misa (1875) LR 10 Ex 153**. Another simple and good description of 'consideration' is available in **Sir Pollock's definition**. In his book *'Pollock on Contracts'*, he says, "consideration is the price for which the promise of the other is bought, and the promise thus given for value is enforceable".

**Section 2(d)** of the Indian Contract Act defines consideration as when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise.

### **Examples**

1. A agrees to sell his house to B for Rs. 10,00,000. Here B's promise to pay Rs. 10,00,000 is the consideration for A's promise to sell the house and A's to sell the house is the consideration for B's promise to pay Rs. 10,00,000.
2. X promises his debtor Y not to file a suit against him for one year on Y's agreeing to pay him Rs. 100 more. Here the abstinence of X is the consideration for Y's promise to pay.

Thus, all contracts consist of two clearly separable parts (i) the promise, and (ii) the consideration for the promise. A person who makes a promise to do or to abstain from doing something usually does so as a return for some loss, damage, or inconvenience that may have or may have been occasioned to the other party in respect of the promise. The benefit so received or the loss, damage

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or inconvenience so caused is regarded in law as the consideration for the promise. It should be noted that a promise without consideration is purely gratuitous and, however, sacred and morally binding it may be, it cannot create a legal obligation. **"No consideration, no Contract" is the rule of law.** The following two cases prove this point.

**Abdul Aziz v. Masum Ali (1914) 36 All 268:** In this case a person verbally promised the Secretary of the Mosque Committee to subscribe Rs.500 for rebuilding of a mosque. Later, he declined to pay the said amount. Held, there was no consideration and hence the agreement was void.

**Kedarnath Bhattacharji v. Gorie Mahomed, (1887) ILR 14 Cal 64:** In this Case the defendant had agreed to subscribe Rs. 100 towards the construction of a Townhall at Howrah. On the faith of the promise, the Secretary called for plans and entrusted the work to contractors and undertook liability to pay them. Held, the agreement was enforceable being one supported by consideration in the form of a detriment to the Secretary who had undertaken a liability to the contractors on the faith of the promise made by the defendant.

### Legal rules for valid consideration

If one analyses the definition of consideration as per Section 2(d), one may notice certain essential features which are necessary for consideration to be valid and acceptable legally. These features are also known as the legal rules for consideration. Let us now study such rules in detail.

**1. Consideration must move at the desire of the promisor:** To make a contract binding and enforceable, it is not sufficient that there is consideration but also that consideration has been supplied

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at desire of the promisor. Thus, where an act is done at the desire of a third party and not the promisor, that act cannot constitute valid consideration. For example, D constructed a market at the instance of the Collector of a district. The occupants of the shops in the said market promised to pay D a commission on articles sold through their shops. Held, there was no consideration because the money was not spent by the plaintiff at the request of the defendants, but voluntarily for a third person and, thus, the contract was void [**Durga Prasad v Baldeo (1881) ILR 3 All 221**].

It does not mean, however, that a promisor must get the benefit personally. The consideration may accrue to the third party at the request or desire of the promisor. For example, A, who owes Rs.20,000 to B, persuaded C to pass a promissory note for the amount in favour of B. C promised B that he would pay the amount (by passing on a promissory note), and B credited the amount to A's Account in his books. The discharge of A's account was consideration for C's promise (through C the promisor had not the received benefit). [**National Bank of Upper India Ltd. v. Bansidhar, AIR 1929 PC 297**]

2. Consideration may move from the promisee or any other person:

The second rule as to consideration is that the act which is to constitute consideration may be done by the promisee himself or by any other person. "Any other person" (that is, a person other than the promisee) is technically referred to as stranger to consideration. This is sometimes called as doctrine of constructive consideration. It means, that, as long as there is a consideration for a promise, it is immaterial who has furnished it.

The case of **Chinnaya v. Ramayya (1882) ILR 4 Mad 137** is a good illustration on the point. In this case, A by a deed of gift

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transferred certain property to her daughter, with a direction that the daughter should pay an annuity to A's brother, as had been done by A. On the same day the daughter executed a writing in favour of the brother, agreeing to pay the annuity. Afterwards, she declined to fulfil her promise saying that no consideration had moved from her uncle ('A's brother'). The Court, however, held that the words 'the promisee or any other person' in Section 2(d) clearly show that the consideration need not necessarily move from the promisee, it may move from any other person. Hence. A's brother was entitled to maintain the suit.

3. Consideration may be past, present or future: The words used in Section 2(d) are "has done or abstained from doing" refer to past. Similarly, the words "does or abstains from doing" refer to present, and the words "promises to do or to abstain from doing" refer to future. Accordingly in India, consideration may be past, present or future.

Past Consideration: Past consideration is something wholly done, forborne or suffered before the making of the agreement. For example:

1. A, a minor, was given the benefit of certain services by the plaintiff. The plaintiff rendered those services, not voluntarily but at the desire of A. These services were continued even after majority at the request of A who subsequently promised to pay an annuity to the plaintiff. It was held that the past consideration was a good consideration. (**Sindha v. Abraham (1896) ILR 21 Bom 755**)

2. A renders some services to B at B's request in the month of November. In December B promises to pay A a sum of Rs.100 for his services. The services of A will be past consideration. A can recover the past amount.

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But under English Law past consideration is 'no consideration'. Thus, if the above promise was made in England, it could not have been enforceable.

**Present Consideration:** Consideration which moves simultaneously with the promise is called present consideration. 'cash sales' is an excellent example of the present consideration.

**Future Consideration:** When the consideration is to move at a future date, it is called future or executory consideration. It takes the form of a promise to be performed in the future. For example, A promises B to deliver him 100 bags of wheat at a future date. B promises to pay for it on delivery.

**4. Consideration must be of some value:** Consideration as defined under Section 2(d) of the Indian Contract Act means some act, abstinence or promise on the part of the promisee or any other person which has been done at the desire of the promisor. Should it mean that even a worthless act will be sufficient to make a good consideration if it is only done at the promisor's desire? If, for example, A promises to give his new Maruti car to B, provided B will fetch it from the garage. The act of fetching the car cannot by any stretch of imagination be called a consideration for the promise. Yet it is the only act the promisor desired the promisee to do. Such an act no doubt, satisfies the words of the definition, but it does not catch its spirit. In **Chidambaram Iyer v. P.S. Renga Iyer AIR 1966 SC 193** Justice Subba Rao of Supreme Court observed that consideration shall be "something" which not only the parties regard but the law can also regard as having some value.

Similarly, in **Kulasekara Perumal Pillai v. Pathakutty Thalayal, AIR 1961 Mad 405**, Justice Srinivasan of Madras High Court observed that though the Indian Contract Act does not in

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terms so require, consideration must be good or valuable. It must be real and not illusory.

For example, A promises to pay an existing debt punctually if B, the creditor, gives him some discount. The agreement is without consideration as the discount cannot be enforced as consideration being unreal and illusory.

**5. Consideration must be Legal:** Consideration which is not legal, naturally, has no value in the eyes of the law and, therefore, cannot be a real consideration.

**Distinguish between stranger to a contract and stranger to consideration?**

We have learnt that in India, consideration is permitted to be supplied by any person and it need not necessarily be supplied by the promisee himself. Thus, the concept of 'stranger to consideration' is a valid and acceptable concept. However, a stranger to the consideration must be distinguished from a stranger to a contract. A stranger to a contract means a person who is not a party to the contract. Such a person cannot even in India, bring a valid suit. For example, A who is indebted to B, sells his property to C and C promises to pay off the debt to B. In case C fails to pay, B has no right to sue C being stranger to the contract.

**Exceptions**

The aforesaid rule that a stranger to a contract cannot sue is, however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

1. In the case of trusts, the beneficiary may enforce the contract. In **Khwaja Muhammad Khan v. Hussaini Begum, (1910) 37 IA 152 (PC)**, H sued her father-in-law K to recover Rs.15,000 being

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the arrears of allowance called Kharchi-i-Pandan – betel box expenses (Pinmoney) payable to her by K under an agreement made between K and H's father, in consideration of H's marriage to K's son D. Both H and D were minors at the time of marriage. The Privy Council held the promise to be enforceable by H.

2. On the same principle, the provision of marriage expenses of female members of a Joint Hindu Family entitles the female member to sue for such expenses on a partition between male members (**Rakhmabai v. Govind (1904) ILR 29 Bom 279**).

3. In the case of an acknowledgement of liability or part performance thereof, a stranger to the contract may sue. Where X receives money from Y for payment to Z and acknowledges to Z that he holds the money for him, X becomes liable to Z and can be sued by him. [**Gregory & Parker v. Williams (1817) 3 Mer 582**]

4. In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of the family who originally had not been parties to the settlement, may enforce the agreement. [**Shuppu Ammal v. Subramaniam, (1910) ILR 33 Mad 238**]

5. In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract. [**Krishna Lal Sadhu v. Pramila Bala Dasi, AIR 1928 Cal 518**].

### **What is meant by adequacy of consideration?**

In fact, adequacy of consideration is always the lookout of the promisor. Courts do not see whether every person making the promise has recovered full return for the promise. Thus, if 'A' promises to sell a house worth Rs. 8,00,000 for Rs. 80,000 only, the inadequacy of the price in itself shall not render the transaction void. But where a party pleads coercion or undue influence or fraud, inadequacy of consideration will also be a piece of evidence

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to be looked into. For example, B agrees to sell a horse worth Rs. 1,000 for Rs. 10. B denies that his consent to the agreement was freely given. The inadequacy of consideration is a fact which the Court should take into account in considering whether or not B's consent was freely given. **Section 25 (Explanation 2)** of Indian Contract Act also states that an agreement to which the consent of the party is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

What is the legality of agreements without consideration?

As discussed earlier, as per Section 10 of the Indian Contract Act consideration is an important element for a contract to be valid. Section 25 echoes this view and declares a contract without consideration as void. However, it also recognises certain exceptions. Besides, section 185 also provides for a case where a contract without consideration shall be valid. Thus, the circumstances under which a contract, in spite of no consideration, may be enforceable are stated below:

1. Agreements in writing and registered: An agreement made without consideration is valid if it is:

- a) expressed in writing,
- b) registered (under the law for the time being in force for registration of documents),
- c) made on account of natural love and affection, and
- d) is between parties standing in a near relation to each other.

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For example, an elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. The agreement was put to writing and was registered. Held, the agreement was valid. [**Venkataswamy v. Rangaswamy (1903) 13 Mad LJ 428**)

One should note that for an agreement to be valid under this clause, the agreement must be the result of natural love and affection. Nearness of relation by itself does not necessarily import natural love and affection. Thus, where a Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable [**Rajlukhy Dabee v. Bhootnath Mookerjee (1900) 4 CWN 488 (Cal)**]

2. Promise to compensate—Section 25(2): A promise made without consideration is valid if

- a) it is a promise to compensate (wholly or in part).
- b) the person to be compensated has already done something voluntarily, or has done something which the promisor was legally compellable to do.

Examples

1 A finds B's purse and gives it to him. B promises to give Rs. 100 to A, This is a valid contract even though A was not engaged for the purpose by B and. therefore, consideration did not move at the desire of B, the promisor.

2 A supports B's infant son without asking. B promises to pay A's expenses for so doing. Once again, this is a contract.

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**3. Promise to pay a debt barred by limitation act—Section**

**25(3):** A promise to pay a debt barred by Limitation Act shall be valid without consideration because legally it remains no longer claimable. One should know that a debt becomes barred under the Limitation Act, if the same is not claimed within a period of 3 years. However, a promise to pay a time barred debt (wholly or in part) shall be valid if

- i) the promise is put into writing
- ii) signed by the debtor or his agent, and
- iii) relates to a debt which the creditor might have enforced payment of but for the law of limitation.

For example, X owes Y Rs. 800, but the debt is time barred. X signs a written promise to pay Rs. 600 on account of the debt. This is a valid contract (Section 25).

**4. Completed gifts:** The rule no consideration, no contract does not apply to completed gifts. These need not be the result of natural love and affection or near relation, but the gifts must be complete. (**Explanation 1 to Section 25**). Completed gifts mean gifts made and accepted. However, a promise to gift is not valid.

**5. Agency:** For creation of an agency, no consideration is required. You should note that, however, if no consideration has passed to the agent, he is only a gratuitous agent and is not bound to do the work entrusted to him, although if he begins the work, he must do it to the satisfaction of his principal (**Section 185**).

**6. Charity:** If a person promises to contribute to charity and on this faith the promisee undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid

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[**Kedarnath Bhattacharji v. Gorie Mahomed, (1887) ILR 14 Cal 64**].

To sum up, an agreement without consideration shall be valid in the following cases:

1. If the agreement is in writing and registered resulting from natural love and affection between persons in near relationship.
2. If it is a promise to compensate for something voluntarily done for the promisor.
3. If it is a written promise to pay a debt barred by the law of limitation.
4. If it is a promise with regard to completed gifts, i.e., gifts made and accepted by the other.
5. If it relates to creation of an agency.
6. If it is a promise to contribute to charity and with this faith, the promisee undertakes a liability.

**Discuss the legality of object and consideration.**

In most of the cases, the words 'Object' and 'Consideration' mean the same thing. But in some cases they may be different. For example, where money is borrowed for the purpose of the marriage of a minor, the consideration for the contract is the loan and the object is the marriage. We have already noted that an agreement will not be enforceable if its object or the consideration is unlawful. According to **section 23** of the Act, the consideration and the object of an agreement are unlawful in following cases:

- 1. If it is forbidden by law:** If the object or the consideration of an agreement is the doing of an act forbidden by law, the agreement is void. An act or an undertaking is forbidden by law

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when it is punishable by the criminal law of the country or when it is prohibited by special legislation derived from the legislature.

**Examples**

i) A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back [**Chandra Sreenivasa Rao v. Korrapati Raja Rama Mohana Rao AIR 1952 Mad 579**].

ii) A promises to drop prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful [**Illustration (h) to Section 23**].

**2. If it defeats the provisions of any law:** If it is of such a nature that if permitted, it would defeat the provisions of any law. In other words if the object or the consideration of an agreement is of such a nature that, though not directly forbidden by law, it would defeat the provisions of the law, the agreement is void. For example, 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 the understanding with A, becomes the purchaser and agrees to convey the estate to A for 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 (**Illustration (i) to Section 23**).

**3. If it is fraudulent:** An agreement with a view to defraud others is void. For example, A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void as its object is unlawful.

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**4. If it involves or implies injury to the person or property of another:** If the object of an agreement is to injure the person or property of another, it is void. For example, A borrowed Rs. 100 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once. Held, the contract was void (**Ram Sarup v. Bansi Mandar, ILR (1915) 37 All 369**).

**5. If the Court regards it as immoral or opposed to public policy:** An agreement whose object or consideration is immoral or is opposed to the public policy, is void. For example, A let a cab on hire to B, a prostitute, knowing that it would be used for immoral purposes. The agreement is void (**Pearce v. Brooks, (1866) LR 1 Ex 213**).

### **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 consideration for a single object, is unlawful, the agreement is void. For example, A promises to supervise the business on behalf of B, a licensed manufacturer of some permissible chemicals and some contraband items. B promises to pay A a salary of Rs. 10,000 per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

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. According to Justice Wiles, the general rule is that, where you cannot sever the illegal from the legal part of a

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covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.

### **What agreements are opposed to public policy?**

It is very difficult to define the term 'public policy' with any degree of precision because 'public policy', by its very nature, is highly uncertain and fluctuating. It keeps on varying with the habits and fashions of the day, with the growth of commerce and usage of trade. In England, Lord Halsbury in case of **Janson v. Driefontein Consolidated Mines Ltd. [1902] AC 484 (HL)**, observed "that categories of public policy are closed, and that no court can invent a new head of public policy." **Section 23** of the Indian Contract Act, however, leaves it open to court to hold any contract as unlawful on the ground of being opposed to public policy.

In simple words, it may be said that an agreement which conflicts with morals of the time and contravenes any established interest of society, it is void as being against public policy. Thus, an agreement which tends to be injurious to the public or against the public good is void as being opposed to public policy. According to Mulla, "Agreements may offend against the public policy, or tend to the prejudice of the State in time of war (trading with the enemies, etc.), by tending to the perversion or abuse of municipal justice, (stifling prosecution, champerty, maintenance) or in private life by attempting to impose inconvenient and unreasonable restrictions on the free choice of individuals in marriage or their liberty to exercise any lawful trading or calling."

### **Heads of Public Policy**

The commonly accepted grounds of public policy include:

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1. Trading with Enemy: All contracts made with an alien (foreigner) enemy, unless made with the permission of the Government, are illegal on the ground of public policy.

2. Agreements for stifling prosecution: Contracts for compounding or suppressing of criminal charges for offences of a public nature are illegal and void. The Law states "you cannot make a trade of your felony (crime), you cannot convert a crime into a source of profit". It is observed in **Sudhindra Kumar v. Ganesh Chandra, AIR 1933 Cal 418**, that no court of law can countenance or give effect to an agreement which attempts to take the administration of law out of the hands of the judges and put it in the hands of private individuals. For example, A knowing that B has committed a murder, obtains a promise from B to pay him (A) Rs. 1,00,000 in consideration of not exposing B. This is a case of stifling prosecution and the agreement is illegal and void.

3. Contracts in the nature of champerty and maintenance: In England agreement of 'maintenance' and 'champerty' are void on the ground of their being opposed to public policy. 'Maintenance' means the promotion of litigation in which a person has no interest of his own. In other words, where a person agrees to maintain a suit, in which he has no interest, the proceeding is known as Maintenance. Thus, maintenance tends to encourage speculative litigation. 'Champerty' is a bargain whereby one party is to assist another in recovering property and, in turn, is to share in the process of the action. Under English Law, both of these agreements are declared illegal and void. Indian Law is different. In **Raja Venkata Subhadrayamma Garu v. Sree Pusapathi Venkatapathi Raju Garu AIR 1925 PC 95**, the Privy Council held that champerty and maintenance are not illegal in India, and that Courts will refuse to enforce such agreements only when they

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are found to be extortionate and unconscionable and not made with the *bonafide* object of assisting the claims of the person unable to carry on litigation himself. In other words, only those agreements which appear to be made for purposes of gambling in litigation and for injuring or oppressing others, by encouraging unholy litigation, will not be enforced, but not all agreements of champerty or maintenance. Thus, an agreement to render services for the conduct of litigation in consideration of payment of 50 per cent of the amount recovered through Court would be legally enforceable. But, where it was found that the value of the part of the estate promised to be conveyed amounted to Rs. 64,000 in return for Rs. 12,000 which was to be spent by the financier on the prosecution of an appeal in the Privy Council, it was held that although the agreement was *bonafide*, it could not be enforced, the reward being extortionate and unconscionable.

4. Agreements for the sale of public offices and titles: Traffic by way of sale in public offices and appointments obviously tends to the prejudice of the public service by interfering with the selection of the best qualified persons. Such sales are; therefore, unlawful and void.

Examples

1. A promises to pay B Rs. 5,000 if B secures him an employment in the public service. The agreement is void.
2. Similarly, where A promises to pay a sum to B in order to induce him to retire so as to provide room for A's appointment to the public office held by B, the agreement is void (**Saminatha Aiyar v. Muthusami Pillai (1907) ILR 30 Mad 530**).

5. Agreements in restraint of parental rights: According to law, the father is the guardian of his minor child. After the father, the

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right of guardianship vests in the mother. This right cannot be bartered away by any agreement. Thus the authority of a father cannot be alienated irrevocably and any agreement purporting to do so is void. For example, a father having two minor sons agreed to transfer their guardianship in favour of Mrs. Annie Besant and also agreed not to revoke the transfer. Subsequently, he filed a suit for recovery of the boys and a declaration that he was the rightful guardian, the court held that he had the right to revoke his authority and get back the children [**Giddu Narayanish v. Annie Besant, (1914) ILR 38 Mad 610 (FB)**].

**6. Agreements in restraint of marriage:** Under Section 26, every agreement in restraint of the marriage of any person other than a minor is void.

**7. Marriage brokerage or brokerage contracts:** A marriage brokerage contract is one in which, in consideration of marriage, one or the other of the parties to it, or their parents or third parties receive a certain sum of money. Accordingly, dowry is a marriage brokerage and hence unlawful and void.

In the case of **Venkata Krishnaiah v. Venkatachalam, (1904) ILR 27 Mad 28**, a sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. Held, such a promise amounted to a marriage brokerage contract and was void.

Similarly, where a purohit was promised a certain sum of money in consideration of procuring a second wife for the defendant, it was held that the promise was opposed to public policy and, thus, void (**Vaithyanathan v. Gangaraju (1893) ILR 17 Mad 9**).

In the above case, if marriage had been performed and the money remains unpaid, it cannot be recovered in a Court of Law. But, if

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the money had been paid and marriage also performed, the money cannot be got back.

**8. Agreements in restraint of legal proceedings:** Section 28 specifies two kinds of agreements as void: (i) an agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract by the usual legal proceedings in the ordinary tribunals, and (ii) an agreement which limits the time within which the contractual rights may be enforced.

**9. Agreements interfering with course of justice:** Any agreement for the purpose or to the effect of using improper influence of any kind with judges or officers of justice is void.

**10. Agreements in restraint of trade:** In India, agreements in restraint of trade, whether the restraint is total or partial, are declared void under Section 27.

**11. Agreements tending to create monopolies:** Being opposed to public interest, the contracts tending to create monopolies are void. For example, in **District Board of Jhelum v. Harichand AIR 1934 Lah 474** a local body granted a monopoly to A to sell vegetables in a particular locality. Held, the agreement was void.

**12. Agreement in restraint of personal liberty:** Agreements which unduly restrict the personal freedom of persons are void and illegal being against-public policy. For example, X, the debtor, borrowed money from Y, the money lender, on the promise that he would not, without his written consent, leave his job, borrow money, dispose of his property or change his residence. Held, the agreement was void and illegal as it restricted the personal freedom of X. [**Harwood v. Miller's Timber and Trading Co. Ltd. [1917] 1 KB 305**]

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