

~~~~~

**26: Agreement in restraint of marriage, void** – Every agreement in restraint of the marriage of any person, other than a minor, is void.

**27: Agreement in restraint of trade, void** – Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—Saving of agreement not to carry on business of which good-will is sold.— One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

**28: Agreements in restraint of legal proceedings, void** – Every agreement,—

(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.

Exception 1.— Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2.— Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Exception 3.—Saving of a guarantee agreement of a bank or a financial institution.—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation. —

(i) In Exception 3, the expression “bank” means—

(a) a “banking company” as defined in clause (c) of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(b) “a corresponding new bank” as defined in clause (da) of section 5 of the Banking Regulation Act, 1949(10 of 1949);

(c) “State Bank of India” constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

(d) “a subsidiary bank” as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959(38 of 1959);

(e) “a Regional Rural Bank” established under section 3 of the Regional Rural Banks Act, 1976(21 of 1976);

(f) “a Co-operative Bank” as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949(10 of 1949); (g) “a multi-State co-operative bank” as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949(10 of 1949); and

(ii) In Exception 3, the expression “a financial institution” means any public financial

~~~~~

~~~~~

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| institution within the meaning of section 4A of the Companies Act, 1956(1 of 1956).]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p><b>29: Agreements void for uncertainty</b> – Agreements, the meaning of which is not certain, or capable of being made certain, are void.</p> <p>Illustrations</p> <p>(a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.</p> <p>(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.</p> <p>(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.</p> <p>(d) A agrees to sell to B “all the grain in my granary at Ramnagar”. There is no uncertainty here to make the agreement void.</p> <p>(e) A agrees to sell B “one thousand maunds of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.</p> <p>(f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.</p> |
| <p><b>30: Agreements by way of wager void</b> – 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 the result of any game or other uncertain event on which any wager is made.</p> <p>Exception in favour of certain prizes for horse-racing. —This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.</p> <p>Section 294A of the Indian Penal Code not affected. —Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.</p>                                                                                                                                                                                                                                                                                                                                                                                     |

## What kind of agreements have been declared as void?

**Section 2(g)** of the Indian Contract Act defined a void agreement as, "an agreement not enforceable by law". Some agreements are *void ab initio* which means that they are unenforceable right from the time they are made. For example, you learnt that an agreement with a minor or a person of unsound mind is void-ab-initio. Such an agreement does not become a contract at all.

There may, however, be some agreement which, when made, are enforceable (i.e., they are contracts) but later, due to development of certain circumstances or change in circumstances, the contract

~~~~~

~~~~~  
becomes unenforceable. When they become unenforceable, they are called '*void contracts*'. For example, A agrees to sell B a ship load of sugar on its way from Cuba to India. Due to heavy storm, the sea water enters the ship and the whole sugar gets wet. This makes the contract void as A cannot compel B to accept wet sugar in place of sugar saying it is the same sugar, only its form having changed. So also, B cannot insist A to deliver him the agreed sugar or else pay damages.

Then, there are certain agreements which have been expressly *declared void* under certain provisions of the contract Act or any other law. The following types of agreements have expressly been declared void under various sections of the Indian Contract Act.

1. Agreements by or with persons incompetent to contract (sections 10 & 11).
2. Agreements entered into through a mutual mistake of fact between the parties (section 20).
3. Agreement, the object or consideration of which is unlawful (section 23).
4. Agreement, the consideration or object of which is partly unlawful (section 24).
5. Agreement made without consideration (section 25).
6. Agreements in restraint of marriage (section 26).
7. Agreements in restraint of trade (section 27).
8. Agreements in restraint of legal proceedings (section 28).
9. Uncertain agreement (section 29).
10. Wagering agreement (section 30).
11. Impossible agreement (section 56).

~~~~~

In earlier chapters we have already read about agreements in items 1 to 5 listed above. We shall, now study the rest of the 'void agreements' i.e., items 6 to 11.

### **What is agreement in restraint of marriage?**

According to **section 26** of the Indian Contract Act, every agreement in restraint of the marriage of any person, other than a minor, is void. The restraint may be general or partial. Thus, the 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. In **Lowe v. Peers (1768) 98 ER 160 (KB)**, the defendant covenanted that he would not marry anyone other than the plaintiff and agreed to pay her ₹1,00,000 if he married another woman. The court held the agreement void as being in restraint of marriage.

However, a penalty upon remarriage may not be construed as a restraint of marriage. Thus, an agreement between co-widows that if either of them remarries she will forfeit her share in the deceased husband's property is not an agreement in restraint of marriage within Section 26 of the Indian Contract Act. The agreement does not prohibit remarriage; it merely provides a consequence upon remarriage. [**Rao Rani v. Gulab Rani, AIR 1942 All 351**].

Similarly, a stipulation in a Nikahnama authorising a Muslim wife to dissolve the marriage upon the husband's contracting a second marriage is valid. Such a clause does not amount to an agreement in restraint of marriage and is therefore not void under Section 26 of the Indian Contract Act. A divorce pronounced by the wife pursuant to such delegated authority (Talaq-e-Tafwid) is valid. [**Badu v. Badarannessa AIR 1919 Cal 640**]

~~~~~

## **What is agreement in restraint of trade?**

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.

**Sir George Jessel, M.R. in Printing and Numerical Registering Co. v. Sampson (1875) LR 19 Eq 462** said as follows: "If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice."

In India, the law on the subject is contained in **section 27** which reads: "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void." Thus, all agreements in restraint of trade, whether general or partial, qualified or unqualified, are void.

**Exclusive supply agreement held void:** In Patna City 29 out of 30 manufacturers of combs agreed with R to supply him combs and not to anyone else. Under the agreement R was free to reject the goods if he found there was no market for them. Held, the agreement amounted to restraint of trade and was thus void. [**Sheikh Kalu v. Ram Saran Bhagat, (1909) 13 CWN 388**].

**Post-employment restraint void:** J, an employee of a company, agreed not to employ himself in a similar business within a distance of 800 miles from Madras after leaving the company's service. *Held*, the agreement was void. [**Oakes & Co. v. Jackson, (1876) ILR 1 Mad 134**]

~~~~~

**Agreement to cease business held void:** A and B carried on business of braziers in a certain locality in Calcutta. A promised to stop business in that locality if B paid him Rs. 900 which he had paid to his workmen as advance. A stopped his business but B did not pay him the promised money. Held, the agreement was void and, therefore, nothing could be recovered on it. [**Madhub Chunder Poramanick v. Rajcoomar Doss, (1874) 14 Beng LR 76**].

### **What are exceptions to agreement in restraint of trade?**

Following are the exceptions to the agreement in restraint of trade:

**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**). Please note that 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 jewellery 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 [**Goldsohl v. Goldman [1915] 1 Ch 292 (CA)**].

**Restraints in partnership:** There are four provisions under the Partnership Act which recognise agreements in restraint of trade as valid. Accordingly, partners may agree that:

~~~~~

~~~~~

a) A partner shall not carry on any business other than that of the firm while he is a partner [section 11(2) of the Indian Partnership Act, 1932].

b) A partner on ceasing to be a partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. The agreement shall be valid only if the restrictions are reasonable [section 36(2) of the Indian Partnership Act, 1932].

c) Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits. Such an agreement shall be valid provided the restrictions imposed are reasonable (section 54 of the Indian Partnership Act, 1932).

d) A partner may, upon the sale of the goodwill of a firm, make an agreement that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. Any such agreement shall be valid if the restrictions imposed are reasonable [section 55(3) of the Indian Partnership Act, 1932].

**Trade Combinations:** Business combinations with the idea of regulating business and not restraining it have been held to be desirable in public interest. Restraints imposed by such associations are, therefore, not to be declared void on grounds of restraint of trade. In the case of **Haribhai Manekji v. Sharaf Ali, ILR (1897) 22 Bom 861**, four ginning factories entered into an agreement fixing uniform rate for ginning cotton and pooling their earnings to be divided between them in certain proportions. The Bombay High Court held the agreement to be valid and enforceable.

~~~~~

~~~~~  
But the Courts would not allow a restraint to be imposed disguised as trade regulations. Thus, an agreement between certain persons to carry on business with the members of their caste only (**Vaithelinga v. Saminada, ILR (1878) 2 Mad 44**), and an agreement to restrict the business of sugar mill within a zone allotted to it, have been held void (**Carew & Co. Ltd. v. North Bengal Sugar Mills Co. Ltd., ILR (1951) 2 Cal 386**).

**Exclusive Dealing Agreements:** Reasonable agreements to deal in the products of a single manufacturer or to sell the whole produce to a single dealer have been upheld to be valid and not in restraint of trade. Thus, the following agreements were upheld as enforceable:

i) An agreement by a manufacturer of dhotis to supply 1,36,000 pairs of certain description to the defendant and not to sell goods of that kind to any other person for a fixed period [**Carlill's Nephews & Co. v. Ricknauth Bucktearmull ILR (1881) 8 Cal 809**].

ii) An agreement by a person to sell all the salt manufactured by him to a firm for five years (**Mackenzie v. Sriramiah (1890) 13 Mad. 472**).

iii) An agreement by a person to sell all the mica produced by him to the plaintiffs, and not to any other firm nor to keep any in stock (**Subba Naidu v. Hajee Badsha Sahib, ILR (1902) 26 Mad 168**).

iv) An agreement by a buyer of goods for the Calcutta market not to sell them in Madras has been upheld as valid. However, where a manufacturer or supplier, after meeting all the requirements of a buyer, has surplus goods to sell, he cannot be restrained from selling them to others (**Shaikh Kalu v. Ram**

~~~~~

**Saran Bhagat, (1909) 13 CWN 388**). Similarly, exclusive dealing agreements are valid only if their terms are reasonable and do not unreasonably restrict competition (**Esso Petroleum Co. Ltd. v. Harper's Garage (Stourport) Ltd., [1968] AC 269 (HL)**).

**Service Agreements:** An agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else or, directly or indirectly, take part in or promote or aid any business in direct competition with that of his employer is valid. For example, in **Charlesworth v. MacDonald, (1898) 23 QBD 310** where A agreed to become assistant for three years to B who was a doctor practising at Zanzibar. It was agreed that during the term of the agreement A was not to practise on his own account in Zanzibar. After one year, A started his own practice. Held, the agreement was valid and A could be restrained by an injunction from doing so.

These days it is a common practice to appoint trainees. A service bond is normally got signed whereby the trainee agrees to serve the organisation for a stipulated period. Such agreements, if reasonable, do not amount to restraint of trade and hence are enforceable. But an agreement to restrain an employee from competing with his employer after the termination of his employment may not be allowed by the courts. Thus, in the case of **The Brahmaputra Tea Co. Ltd. v. E. Scarth, (1885) ILR 11 Cal 545**, where an attempt was made to restrain a servant from competing for 5 years after the period of service, the court disallowed it.

**What agreements are in restraint of legal proceedings?**

~~~~~

~~~~~  
Section 28 declares certain agreements in restraint of legal proceedings to be void. The following are the principal categories:

**1. Restriction on Legal Proceedings:** 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, if a contract contains a stipulation that no action shall be brought upon it in case of breach, such a stipulation is void because it prevents the parties from enforcing their contractual rights through ordinary courts.

However, an agreement providing that disputes arising between the parties shall be referred to arbitration and that the arbitrator's decision shall be final and binding is valid. Such an agreement does not oust the jurisdiction of the courts altogether, since courts retain supervisory powers under the Arbitration and Conciliation Act, 1996.

A contract may contain a double stipulation that disputes between the parties shall be settled by arbitration and that neither party shall enforce his rights in a court of law. Such a stipulation is valid so far as it requires disputes to be referred to arbitration. However, the latter part, which seeks to exclude altogether the jurisdiction of the courts, is void because it amounts to an absolute restraint on legal proceedings.

The restriction prohibited by Section 28 must be absolute. Therefore, where two or more courts have jurisdiction to try a suit, an agreement between the parties that disputes shall be brought only before one of those courts does not contravene Section 28. Such a clause merely selects one among several competent forums and does not deprive the parties of legal

~~~~~

remedies. [**A. Milton & Co. v. Ojha Automobile Engineering Co., ILR 57 Cal 1280**]

**2. Restriction as to Limitation of Time:** Section 28 also renders void an agreement that restricts the time within which a party may enforce his rights so as to make it shorter than the period prescribed by the law of limitation. For example, since a suit for breach of contract may ordinarily be brought within three years from the date of breach, a contractual clause providing that no action shall be brought after two years is void.

Further, by virtue of the Indian Contract (Amendment) Act, 1997, Section 28 also invalidates agreements that extinguish the rights of any party or discharge any party from liability on the expiry of a specified period so as to restrict the enforcement of rights. Consequently, contractual clauses providing for forfeiture, extinction of rights, or discharge of liability upon the failure to commence legal proceedings within a stipulated period are generally void if they have the effect of curtailing the statutory period of limitation.

**1. Restriction on Legal Proceedings:** 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. 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. The courts have power, in spite of such a stipulation, to set aside the decision of the arbitrator on grounds of misconduct on the part of the arbitrator.

A contract may contain a double stipulation that any dispute between the parties should be settled by arbitration, and neither party should enforce his rights under it in a court of law. Such stipulation would be valid as regards its first branch (i.e., all disputes between the parties should be referred to arbitration, because that stipulation itself would not have the effect of ousting the jurisdiction of the courts. But the latter branch of the stipulation (i.e., neither party should enforce his rights under it in a court of law) would be void because by that the jurisdiction of the court would be necessarily excluded. Further, it should be noted that the restriction imposed upon the right to sue should be absolute in the sense that the parties are precluded from pursuing their legal remedies in the ordinary tribunals. Thus, 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 (**A. Milton & Co. v. Ojha Automobile Engineering Co., ILR 57 Cal 1280**).

**2. Limitation of Time:** 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. For

example, according to the Indian Limitation Act, an action for breach of contract may be brought within three years from the date of breach. If a clause in an agreement provides that no action should be brought after two years, the clause is void.

### **What are 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. For example, 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. Again, A agrees to sell B "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.

In the case of **Guthing v. Lynn (1831) 109 ER 1130**, a horse was bought for a certain price coupled with a promise to give £5 more if the horse proved lucky. The agreement was held void for uncertainty. The Court had no machinery to determine what luck the horse had brought to the buyer.

Cases relating to uncertain agreements have generally arisen in connection with the sale of goods where uncertainty relates to price or payment terms. For example, where goods are sold and the balance of the price is stated to be payable on unspecified "hire-purchase terms" [**Scammell & Nephew Ltd v. Ouston [1941] AC 251 (HL)**], or where the price is left to be agreed upon between the parties in the future, was merely an agreement to agree [**May & Butcher Ltd v. The King [1934] 2 KB 17 (HL)**], the agreement has been held void for uncertainty.

~~~~~

However, you should note that where the price is left to be fixed by a third party, there is no uncertainty and the agreement will be enforceable. For example, where A agrees to sell to B one thousand kilograms of rice at a price to be fixed by C, there is no uncertainty as the price is capable of being made certain. The agreement, therefore, is not rendered void. Similarly, if the agreement is totally silent as to price, it will be valid, as in that case, section 2 of the Sale of Goods Act will apply and the reasonable price shall be payable.

**Illustrations where agreements have been declared void for uncertainty:**

An agreement to grant a lease when no date of commencement is expressly or impliedly fixed (**Giribala Dasi v. Kalidas Bhanja, AIR 1921 PC 71**). But when the commencement of a lease, is dependent upon a contingency, which has occurred, the agreement is not void (**L.C. Sitlani v. Viroosing Ramsing and Another, AIR 1947 Sind 6**).

2 An agreement to pay a certain amount, after deductions as would be agreed upon between parties (**Kovuru Kalappa Devara v. Kumar Krishna Mitter AIR 1945 Mad 10**).

3 A contract to negotiate (**Courtney & Fairbairn Ltd. v. Tolani Bros. (Hotels) Pvt. Ltd. AIR 1975 SC 1538**)

4 A defendant passed a document to the Agra Savings Bank whereby he promised to pay to the manager of the bank the sum of Rs. 10 on or before a certain date and a similar sum monthly every succeeding month. It was held that the instrument could not be regarded as a promissory note as it was impossible from its language to say for what period it was to continue and what

~~~~~

~~~~~

amount was to be paid under it [**Carter v. Agra Savings Bank Ltd. (1883) ILR 6 All 54**].

**Illustrations where agreements have been held not to be uncertain:**

1. A, who is a dealer in coconut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade indicates the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.
2. A agrees to sell B "all the grain in my granary at Ramnagar. There is no uncertainty here to make the agreement void.

**An agreement to enter into an agreement in the future is void.**

An agreement which leaves essential terms to be settled by future negotiations is generally void for uncertainty and is not enforceable in law. Such an arrangement is commonly described as an "agreement to agree". The principle is that there can be no binding contract unless the parties have reached a concluded agreement on all material terms.

In **May and Butcher Ltd. v. The King [1934] 2 KB 17 (HL)**, the parties entered into an arrangement for the sale of surplus tentage, but the price and certain other essential terms were to be agreed upon from time to time in the future. The House of Lords held that there was no concluded contract because essential terms had been left for future agreement. The case established that an agreement which merely contemplates a future agreement on material terms is not enforceable.

The distinction between a concluded contract and a mere agreement to agree was explained by the Supreme Court of India

~~~~~

~~~~~

in **Kollipara Sriramulu v. T. Aswatha Narayana, AIR 1968 SC 1028**. The Court held that where all essential terms have been finally settled and only a formal document remains to be executed, the contract is binding and enforceable. However, where essential terms are yet to be agreed upon in the future, there is no concluded contract and consequently no enforceable agreement.

Thus, the legal position is that an agreement to enter into a future agreement is void if material terms remain uncertain or are left for future negotiation. However, if the parties have already agreed upon all essential terms and intend merely to execute a formal document thereafter, a binding contract comes into existence notwithstanding the absence of such formal document. This principle is consistent with Section 29 of the Indian Contract Act, 1872, which renders uncertain agreements void.

### **What is wagering agreement?**

The Indian Contract Act does not define a wager.

A wagering agreement, according to **Sir William Anson**, is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.

**Cockburn C.J.** defined it as a contract by A to pay money to B on the happening of a given event in consideration of B's promise to pay money to A on the event of no happening.

Thus, a wagering agreement is an agreement under which money or money's worth is payable, by one person to another on the happening or non-happening of a future uncertain event. For example, A and B bet as to whether it would rain on a particular day or not—A promising to pay Rs. 100 to B if it rained, and B

~~~~~

~~~~~  
promising an equal amount to A, if it did not. This agreement is a wager.

**Essentials of a Wagering Agreement:** From the above description of a wagering agreement, following essentials may be noted.

1. **Uncertain event:** The first thing essential to wager is that the performance of the bargain must depend upon the determination of an uncertain event. An event may be uncertain either because it is yet to take place or it might have already happened but the parties are not aware of its result.
2. **Mutual chances of gain or loss:** The second essential feature is that upon the determination of the contemplated event each party should stand to win or lose. If either of the parties may win but cannot lose, it is not a wagering agreement.
3. **Neither party to have control over the event:** Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of a wager.
4. **No other interest in the event:** Further, neither party should have interest in the happening of the event other than the sum or stake he will win or lose.
5. **Promise to pay money or money's worth:** Lastly, to constitute wager, the promise should be to pay money or money's worth only.

**Effects of Wagering Agreement:** An agreement by way of wager is void. **Section 30** provides 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 result of any game or other uncertain event on which any wager is made.

~~~~~

Unless the wager amounts to an unauthorized lottery (which is punishable under Section 297 of the Bharatiya Nyaya Sanhita, 2023), a wagering agreement is generally not illegal but merely void under Section 30 of the Indian Contract Act, 1872.

Consequently, collateral transactions are ordinarily enforceable; thus, if A borrows money from B to pay a wagering debt to C, the loan agreement between A and B is valid. This was affirmed in **Gherulal Parakh v. Mahadeodas Maiya, AIR 1959 SC 781**.

However, certain forms of gambling, such as unauthorized lotteries, may attract penal consequences under special laws, and in States such as Maharashtra and Gujarat wagering transactions have been made unlawful by gambling legislation.

### **Lotteries**

Lottery is an arrangement for the distribution of prizes by chance among persons purchasing tickets. The dominant motive of the participants need not be gambling. Where a wagering transaction amounts to an unauthorized lottery, it may be unlawful and attract penal consequences under Section 297 of the Bharatiya Nyaya Sanhita, 2023 (formerly Section 294-A of the Indian Penal Code, 1860), as well as the Lotteries (Regulation) Act, 1998.

Section 297 “Keeping lottery office” reads as under:

- (1) Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.
- (2) Whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear from doing anything for

~~~~~

~~~~~  
the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to five thousand rupees.

In *re* **The Universal Mutual Aid and Poor Houses Association, Thoppa Naidu v. The Universal Mutual Aid and Poor Houses Association, (1880) ILR 3 Mad 54**, monthly subscriptions were collected to raise a donation fund to carry out charitable objects. A substantial portion of the interest accruing on the fund so raised was utilised in granting loans free of interest and cash bonuses to certain subscribers, the names and amounts to be determined by means of drawings. The court held that the business carried on by the company was a lottery and, therefore, illegal though there was a charitable or philanthropic purpose annexed to the lottery. The company was, therefore, ordered to be wound up.

A cycle and gramophone dealer started a chit with 100 subscribers, each subscribing Rs. 3 per month, for a period of 20 months. There was to be a monthly draw in which the subscriber whose number or name drawn was given a cycle or a gramophone at his option and relieved from further liability to pay subscriptions. In the 21st month each of the subscribers who did not draw at any of the previous drawings were given a cycle or gramophone, it was held that the transaction amounted to a lottery and was, therefore, illegal (**Public Prosecutor v. M. Munisami Naidu, AIR 1935 Mad 750**).

**Does the permission from the Government to hold lottery make it legal?** In the case of **Sir Dorabji Tata v. Edward F. Lance, (1910) ILR 35 Bom 25**, where the Government of India had sanctioned a lottery called the War Loan Lottery, the plaintiff sued on a contract to purchase a ticket bearing a particular

~~~~~  
number, and for an injunction restraining the Secretary of the Turf Club from proceeding with the drawing. The defence was that, it being a wagering contract, the suit was not maintainable. The court held that the permission granted by the Government will not have the effect of overriding section 30 of the Indian Contract Act and making such a lottery legal. Its only effect was that the person responsible for running the lottery would not be punishable under the Indian Penal Code.

**Is purchasing a lottery ticket an offence?** No. Mere purchase of a lottery ticket is not an offence. Section 297 of the Bharatiya Nyaya Sanhita, 2023 (formerly Section 294-A of the Indian Penal Code, 1860) is directed primarily against persons who promote, conduct, keep, or advertise unauthorized lotteries, rather than ordinary purchasers of lottery tickets. The rationale underlying *Barclay v. Pearson* [1893] 2 Ch 154, as subsequently noticed in Indian decisions, is that lottery laws are aimed at promoters of lotteries rather than ticket purchasers.

In *H. Anraj v. Government of Tamil Nadu*, (1986) 1 SCC 414, the Supreme Court held that the sale of a lottery ticket confers upon the purchaser (i) a right to participate in the draw and (ii) a right to claim the prize contingent upon success in the draw. However, this view was subsequently reconsidered by the Constitution Bench in *Sunrise Associates v. Government of NCT of Delhi*, (2006) 5 SCC 603, which held that a lottery ticket is merely evidence of an actionable claim and overruled *H. Anraj* to the extent it treated the right to participate in the draw as a distinct transferable right separate from the actionable claim.

The earlier decision in *H. Anraj* was nevertheless significant because it recognised that a lottery ticket embodies legal rights and is not merely a worthless piece of paper. However, it did not

~~~~~

alter the settled principle that Government authorization of a lottery does not, by itself, make a wagering agreement enforceable. In *Sir Dorabji Tata v. Edward F. Lance*, ILR (1918) 42 Bom 676, the Bombay High Court held that Government sanction of a lottery does not override Section 30 of the Indian Contract Act, 1872, nor does it render the underlying wagering transaction enforceable.

Nevertheless, since a wagering agreement under Section 30 is generally void and not illegal (unless prohibited by a special statute), collateral transactions are ordinarily unaffected. Accordingly, a loan advanced for the purchase of lottery tickets may be recoverable as a collateral transaction, notwithstanding the unenforceability of the wagering agreement itself. Thus, where A lends Rs. 2,000 to B for purchase of lottery tickets, A shall be able to recover the same.

**Exceptions to Wagering Agreements (Transactions Held Not Wagers):** The following transactions have been held not to be wagers:

1 Transactions for the sale and purchase of stocks and shares or for the sale and delivery of goods, with a clear intention to give and take delivery of shares or goods, as the case may be. One should note that, where the intention is only to settle in price differences, the transaction is a wager and hence void.

2 Prize competitions that are substantially games of skill, such as athletic contests and skill-based puzzles, are not wagering agreements. A wagering agreement requires mutual chances of gain and loss depending upon an uncertain event. Thus, in **Babasaheb Rahimsaheb v. Rajaram Raghunath Alpe**, AIR 1931 Bom 264, an agreement between two wrestlers under which the winner was to receive prize money out of the gate receipts

~~~~~

~~~~~

was held not to be a wagering contract. The court observed that the competitors had not staked money against each other, the prize was to be paid out of contributions made by spectators, and the essential element of mutual gain and loss was absent. However, a prize competition will escape the taint of wagering only where success depends predominantly upon skill; if the outcome depends mainly on chance, it may still be treated as a wager or lottery. This distinction was emphasized by the Supreme Court in **State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699**, where competitions involving a substantial degree of skill were held to fall outside the mischief of gambling and wagering laws.

Under Section 13 of the Prize Competitions Act, 1955, skill-based competitions with prizes not exceeding ₹1,000 per month were exempted from the operation of the Act; however, the exemption did not determine whether a competition was a wager, since a competition substantially involving skill is not a wagering agreement in the first place.

**3** An agreement to contribute to a plate or prize of the value of above Rs. 500 to be awarded to the winner of a horse race. (section 30).

**4** Contracts of insurance are not wagering agreements, even though the insurer's liability may depend upon the occurrence of a future uncertain event. Insurance contracts differ from wagering agreements in several respects:

**(a)** Only a person having an insurable interest in the life or property insured can validly enter into a contract of insurance. In a wagering agreement, by contrast, the parties need not have any interest in the subject matter other than the prospect of winning or losing money.

~~~~~

~~~~~

(b) Contracts of fire, marine, and other indemnity insurance are contracts of indemnity, under which the insurer compensates only the actual loss suffered, subject to the terms of the policy. Life insurance, however, is not strictly a contract of indemnity. The insurer agrees to pay a predetermined sum upon the occurrence of the insured event (death or maturity), irrespective of the actual financial loss suffered by the beneficiary. Nevertheless, the requirement of insurable interest distinguishes life insurance from a wager.

(c) Contracts of insurance serve a legitimate social and commercial purpose by providing protection against risk and are therefore recognised and encouraged by law. Wagering agreements, on the other hand, are generally regarded as socially undesirable and are rendered void under Section 30 of the Indian Contract Act, 1872.

### **Whether agreements to do impossible acts are void?**

**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. We may say that parties who purport to agree to the doing of something obviously impossible must be deemed not to be serious or not to understand what they are doing. Moreover, law cannot regard a promise to do something obviously impossible as of any value and such a promise is, therefore, no consideration.

An agreement to do an act impossible in itself should be contrasted from a contract which becomes impossible of performance. Subsequent (supervening) impossibility renders a contract void when the act becomes impossible.

### **What is restitution?**

~~~~~

~~~~~  
Restitution means "return" or "restoration". When an agreement or a contract becomes void, the person who has received any benefit or advantage under such agreement or contract must restore it or compensate for it to the person from whom he has received it (**section 65**).

### Examples

1 A pays B Rs. 1,000 in consideration of B's promising to marry C, who is A's daughter, C is dead at the time of the promise. The agreement is void. B must repay Rs. 1,000 to A.

2 A contracts with B to deliver to him 250 quintals of rice before the first of May. A delivers 130 quintals only before that day and none after. B retains 130 quintals after the first of May. B is bound to pay A for 130 quintals.

3 A, a singer, contracts with B the manager of a theatre, to sing at his theatre for two nights in every week during the next two months and B agrees to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B must pay A for the five nights on which she had sung.

4 In the above example, If A has received an advance for performances that become impossible owing to illness, the contract is discharged by frustration, A must restore the advance to the extent it relates to unperformed obligations, and B cannot claim damages because the non-performance is not a breach of contract.

The law of restitution under Section 65 is not confined to contracts that subsequently become void due to supervening impossibility. It also applies where an agreement is discovered to be void after having been entered into in the belief that it was

~~~~~

valid. However, Section 65 generally does not apply to agreements that are known to be void ab initio from the outset. Likewise, a minor's agreement, being void ab initio, is ordinarily outside the scope of Section 65; nevertheless, courts may grant equitable restitution where a minor has obtained a benefit by fraudulently misrepresenting his age and the benefit or its traceable proceeds remain identifiable.

~~~~~