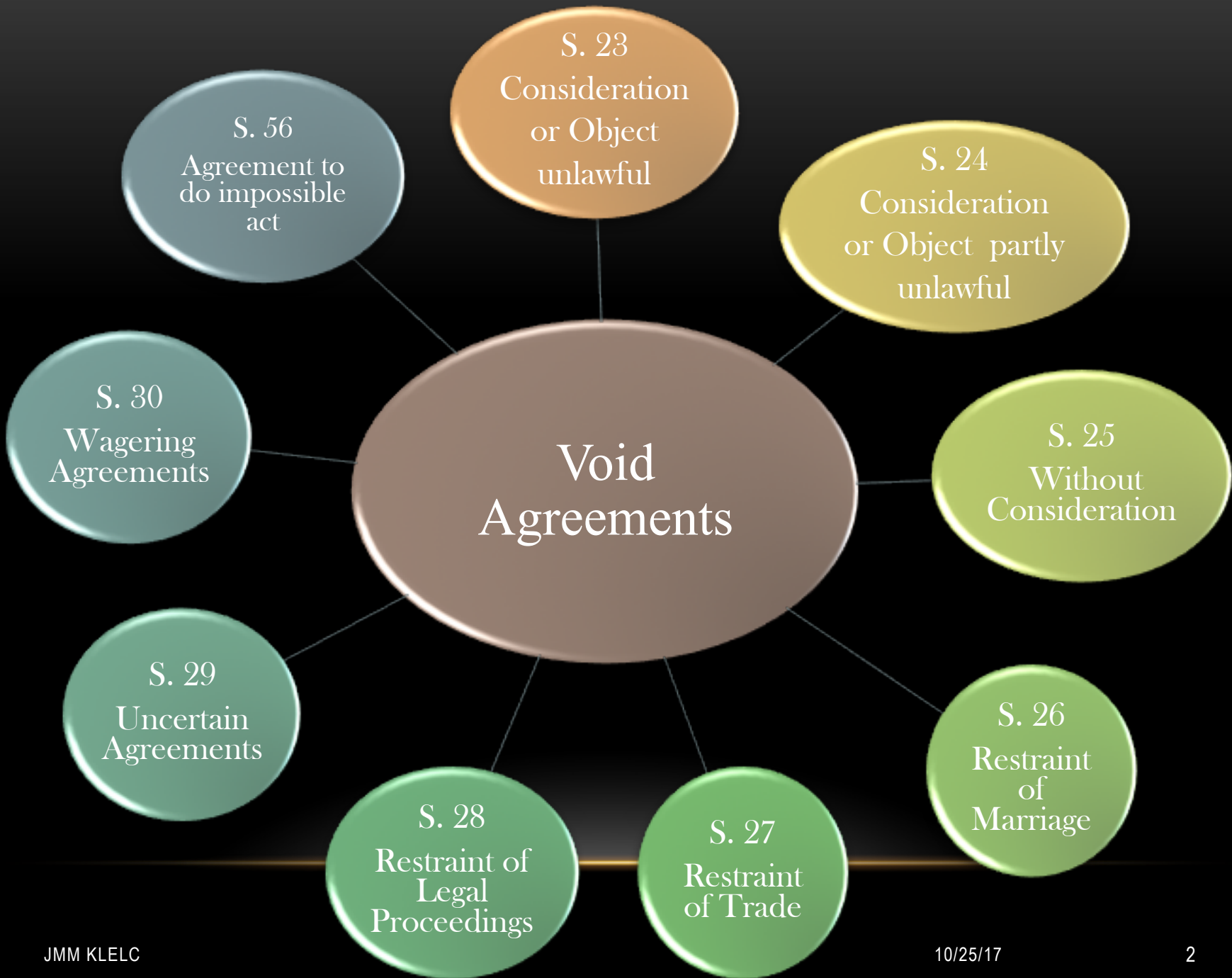


VOID AGREEMENTS

SS. 2(G), 23-30, 36, 56

S. 2(g) An agreement not enforceable by law is said to be void

S.2(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.



S. 24 AGREEMENT 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.

Analysis

1. Part of the consideration for an object being unlawful or
 2. Part of the object for a consideration being unlawful
 3. Whole of the agreement is void, unless unlawful portion can be severed from the lawful portion without damaging the lawful portion.
- ◆ Eg. Agreement to live in adultery and to keep the house - single sum as consideration for both acts
 - inseparable - void.
 - ◆ A Muslim husband agreed by deed to handover all his earnings to his wife and not to do anything without her permission. If he did so, she would be at liberty to divorce him.
 - HELD: First part enforceable as maintenance, second part void.

S. 26 Agreement in restraint of marriage void

- Every agreement in restraint of the marriage of any person, other than a minor, is void.
- **POLICY OF LAW** - discourage restraint on freedom of marriage
- Restraint may be partial or general, i.e., restraint from marrying at all, marrying for a fixed period, a particular person, class of persons, - void - exception, minor.
- Eg. Agreement between co-widows to surrender their rights on remarriage,
- Eg. loss of maintenance on remarriage, etc
- ✓ Restraint on remarriage is not void.

S. 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.

Analysis

- Freedom of trade a constitutional right – neither the parliament by law nor the parties by their choice can take it away by their voluntary agreement.
- **Public policy** – “every man shall be at liberty to work and shall not be at liberty to deprive himself or the state, of his labour, skill or talent, by any contract he enters in to. Every man shall have unfettered liberty to exercise his powers and capabilities for his own and the community’s benefit.”
- Hence s. 27 declares, every agreement by which any one is restrained from carrying on a lawful profession, trade, or business of any kind is void to that extent

All restraints – partial or whole

- *Madhub Chander v. Raj Coomar*

pt and dt rival shop keepers – dt agreed to pay a sum if pt closed his business in a locality – dt refused to pay – pt sued dt.

HELD: void, the words “restrained from carrying on a lawful profession, trade, or business” do not mean absolute restraint and are intended to apply to partial restraint as well. The word ‘absolutely’ appeared in s. 28 is missing in s. 27 importing that the section intended to prevent not merely total restraint but also a partial restraint.

Eg. Agreement to close a mill for 3 months in a year, to close business for 15 days in a month – void.

EXCEPTIONS

ENG LAW - REASONABLE RESTRICTION WOULD MAKE THE AGREEMENT ENFORCEABLE

INDIA - VOID - STATUTORY AND JUDICIAL EXCEPTIONS

Statutory Exceptions

- Sale of good-will
- Partnership Act

Exceptions Arising from Judicial Interpretations

- Trade combinations
- Exclusive dealing agreements
- Restraint upon employees
 - Restraints during employment
 - Protection of trade secrets
 - Agreement between employers
 - Effect of premature removal

EXCEPTIONS - 1. SALE OF GOOD WILL

S. 27 - 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.

➤ Object – secure the interests of buyer of goodwill

2. PROVISIONS OF PARTNERSHIP ACT

- S.11 – none of the partners to carry on any business other than that of the firm – mutual agreement
- S. 36 - Outgoing partner – restriction – period and local limits – reasonable
- S. 54 – restraint in anticipation or upon dissolution

JUDICIAL INTERPRETATIONS –

1) TRADE COMBINATIONS

- Unions of manufacturers or traders to carry on their business in a organised way
- Primary object is to regulate and not to restrain
- Helps standardisation of goods, fixed prices and elimination of unfair competition.
- E.g., Regulation as to closing and opening of shops, fixation of prices, licensing of traders, supervision and control of dealers, even though involves restraint, is valid.

2) EXCLUSIVE DEALING AGREEMENTS

- Usual business practice to ensure the assured trade between persons
- Eg. A manufacturer agrees to sell all his produce to a buyer, who in turn agrees not to buy from any where else.
- “such negative stipulations do not have the effect of restraining the manufacturer, on the contrary, it encourages his business because he is assured of a certain market for goods
- Seller may sell in open market, if-
 - ✓ i) seller cannot buy all the produce;
 - ✓ ii) seller has an intention to create monopoly;
 - ✓ iii) seller binds the seller for unreasonable time.

3) Restraint upon employees

A. Restraints during employment

- prevention from working elsewhere
- prevention from disclosure of trade secrets, customer information, etc.,
- prevention from taking part in any business

B. Protection of trade secrets

- Employer is entitled for protection against exploitation of trade secrets even after the employee has left him
- E.g., Restraint on a solicitors clerk refraining him from practicing within 7 miles,
- servant of a tailor refrained from opening a shop within 10 miles.

C. Agreement between employers

- Agreement that neither would employ a person who had been the employee of the other in the last 5 years – void as the restriction is wide and unreasonable.

D. Effect of premature removal – a restriction though reasonable will not be effective.

S. 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 that extent.

Exception 1.-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.-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.

Analysis

- Eng law - Agreement to oust the jurisdiction of the courts is void on public policy
- India - two kinds of agreements void
 - Agreement restricting a party **absolutely** from enforcing his legal rights arising from or arising under a contract by usual legal proceedings in the ordinary tribunals
 - An agreement which limits the time within which the contractual rights may be enforced
- Stipulation - no action shall be brought upon a contract is void
- Right to appeal and restriction thereon is not covered by s. 28
- Partial restriction valid - selection of alternative courts jurisdiction.
- Reference of future disputes to arbitration
- Reference of existing dispute for arbitration.

S. 29 Agreements void for uncertainty

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations

(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.

(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.

(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.

Illustrations

(d) A agrees to sell to B " all the grain in my granary at Ramanagar."

There is no uncertainty here to make the agreement void.

(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.

(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.

Analysis

- An agreement to be binding must be capable of definite meaning.
- Terms must be definite or capable of being made definite without further agreement of parties.
- *Guthyng v. Lynn* – a horse was bought for Rs. 10,000/- and promised to pay Rs. 2000/- if the horse proved to be lucky.

HELD: Void, for uncertainty, court has no means to discoverer the good or bad luck the brought.

- An agreement to agree in future is void – critical matter of the agreement is undecided void–
- E.g., Agreement for the sale of goods with a stipulation that the price, dates of payment, dates and mode of delivery be agreed upon from time to time – void

Analysis

- There cannot be a contract to contract or a contract to negotiate but where the preliminary negotiations are crystallised in to definite shape, parties may be compelled contract on those terms.
- *Hillas & Co. v. Arcos Ltd.* - A contract to purchase for the year 1930 “22,000 standards of soft wood goods of fair specification” with an option to buy 1,00,000 for the year 1931.

HELD: Agreement is valid. Dealing for the previous year indicated the intention to have a similar dealing and also made it unnecessary for the particulars to be repeated.

Analysis

- Partial uncertainty capable of being made certain is valid

E.g., contract to sell 200 tons of iron bars, buyer accepted. But subject to usual conditions of acceptance only. No evidence about usual conditions . Buyer was held liable by rest of the contract.

E.g., Contract of sale of land – payment in 3 installments - land shall be released for further construction in 3 phases.

VOID, which part of the land was not specified.

S. 30 Agreements by way of wager void

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.

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.

Analysis

- ‘Wager’ not defined
- According to Anson, “wager is a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event.
- Essential features of a wagering agreement
 1. Uncertain event – usually future event but it may relate to past as well when the parties are unaware of its result or time of happening.
 2. Mutual chances of gain or loss

Baba Saheb v. Rajaram – two wrestlers agreed to play a wrestling match on a condition that the party failing to appear on the day fixed shall forfeit Rs. 500/- to the opposite party and the winner was to receive Rs. 1,125/- out of the gate money. The dt. Failed to appear in the ring the pt sued him for Rs. 500/-

HELD – Agreement was not wagering. neither side stood to lose on the result of the match. Stakes did not come out of pockets of the parties, but came from the gate money.

Analysis

- Prize money if prescribed by the parties only not recoverable
 - Eg., Deposit of Rs. 200/- by all with a stake holder to abide by issue of a walking match, the loser to forfeit the amount.
 - Carlill v. Carbolic Smokeball Co. case
 - Chit funds – wagering?
3. Neither to have control over the event
 4. No other interest in the event – e.g., contract of insurance – ‘insurable interest’

Analysis

- Speculative transactions are wager - E.g., Agreement to settle the difference between contract price and market price on a specified day - wager
- Intention of the parties gathered from the circumstances is the deciding factor. Eg. Agreement for 2,00,000 bags of rice by the mill owner, while the capacity of the mill was to produce only 60,000 bags. - wager, Sale of goods never appeared in the market
- Effect of wagering agreement - void - but not unlawful u/s. 23 - collateral transactions may be enforceable - e.g., money deposited with another to pay off a wagering debt is recoverable. (All Illegal agreements are void but all void agreements are not illegal)
- Exceptions -
 - Horse race - Rs. 500 or more
 - Speculation involving application of skill or knowledge as distinguished from mere chance - e.g., Cross word puzzle.

S. 56. An agreement to do an act impossible in itself is void.

- *Contract to do an act afterwards becoming impossible or unlawful.*-A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
- *Compensation for loss through non-performance of act known to be impossible or unlawful-* Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations

- (a) A agrees with B to discover treasure by magic. Agreement is void,
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to Practice polygamy, A must make compensation to B for the loss caused to her by the non-performance of his promise.
- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.
- (e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.