

Corporate Laws

BBA(FIA)

Lecture 8

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Void Agreement



- Section 2(g): “An agreement not enforceable by law is said to be void”.
- An agreement which does not satisfy the essential elements of contract is void.
- Illegal agreements are void but void agreements are not illegal.
- Sec 65: No restitution of the benefit received is allowed in these cases.

Void Agreements



Act expressly declared some agreements to be void agreements:

1. Agreement by a minor or a person of unsound mind. (Sec 11)
2. Agreement made under bilateral mistake of fact (Sec 20)
3. Agreement made without consideration (Sec 25)
4. Agreement in restraint of marriage. (Sec 26)
5. Agreement in restrain of trade. (Sec 27)
6. Agreement in restrain of legal proceedings. (Sec 28)
7. Agreements the meaning of which is uncertain (Sec 29)
8. Agreements by way of wager. (Sec 30)
9. Agreements contingent on impossible events. (Sec 36)
10. Agreements to do impossible acts. (Sec 56)

Agreement in Restraint of Marriage



- Section 26: “Every agreement in restraint of the marriage of any person, other than a minor is void”.
- Every person has a right to get married and that too has a right to exercise his choice. Any restraint or interference with the freedom of choice in marriage is illegal.
- However, this does not apply to a minor who can be restrained till he attains majority.
- Restraint may be general or partial: not to marry at all, or a certain person, or a class of persons, or for a fixed period

Agreement in restraint of Trade



- Section 27: “Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void”.
- The object of enacting this section is to encourage free trade. Every individual is free to carry on any lawful trade at any place of his choice. Every man shall be at liberty to work for self and shall not be at liberty to deprive self of the State of his labor, skill or talent by any contract that they enters into.

Exceptions



- Sale of Goodwill: Contract Act
 - Seller should not carry on a similar business
 - Restrictions should apply only within specified local limits
 - Restrictions can be in force till buyer carries on a like business
 - Reasonable by court

- Partners agreement: Partnership Act: specified period and local limits.
 - Restriction on existing partner
 - Restriction on outgoing partner
 - Restriction on partners upon dissolution of firm
 - Sale of goodwill of firm

Exceptions



- Trade combinations:
 - Regulate business: valid
 - Not to sell below certain price, divide profit
 - Restraint business/create monopoly: invalid
- Negative stipulations in service agreements
 - During employment: valid
 - After employment: void

Agreement in Restraint of Legal Proceedings



Every agreement, by which any party thereto is restricted absolutely from enforcing right under or in respect of any contract is void to that extent.

Section 28 declares the following two kinds of agreements void:

1. An agreement by which a party is restrained absolutely from taking usual legal proceeding in respect of any rights arising from a contract.
2. An agreement which limits the time within which one may enforce contractual rights without considering the time allowed by the limitation act.

Agreement the meaning of which is uncertain



Section 29: “Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

- Through this the law aims to ensure that the parties to a contract should be aware of the precise nature and scope of their mutual rights and obligation under the contract. Thus, if the word used by the parties are or indefinite, the law cannot enforce the agreement.
- An agreement “to enter into an agreement in future” is void for uncertainty unless all the terms of the proposed agreement are agreed expressly or implicitly. Thus, an agreement to engage a servant some time next year, at a salary to be mutually agreed upon is a void agreement.

Agreement by way of Wager



- Literally the word ‘wager’ means ‘a bet’ .
- Where something is stated to be lost or won on the result of a doubtful issue.
- Wagering agreements are nothing but ordinary betting agreements.
- Cotton L J has described wager as “The essence of gaming and wagering is that one party is to win and the other to lose upon a future event which at the time of the contract is of an uncertain nature- that is to say, if the event turns out the other way he will win.”

Essential features of a Wager



- There must be a promise to pay money or money's worth.
- Promise must be conditional on an event happening or not happening.
- Event must be an uncertain one for both the parties.
- Each party must stand to win or lose.
- No party must have a proprietary interest in the event. The stake must be the only interest of the parties.

Agreement by way of Wager Contd.



- Agreement by way of wager is void.
- Section 30 “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.”
- In Maharashtra and Gujarat wagering agreements are illegal.

Special Transactions



- Commercial transactions:
 - Commodity or shares or futures or options: valid
 - Actual delivery: valid
 - Pay differences: wager
- Lotteries: wager and illegal if not authorised by Govt.
- Crossword puzzles:
 - if based on chance: wager
 - If based on skill and prize not exceed Rs. 1000 under Prize Competition Act, 1955: not wager
- Insurance: valid
 - Indemnity, insurable interest, scientific
- Horse Race: Is game of skill

Agreement contingent on an Impossible event



- Section 36: “Contingent agreements to do or not to do anything if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.”
- Eg: A agrees to pay B Rs.1000 (as loan) if B marry A’s daughter C. C was dead at the time of the agreement, the agreement is void.

Agreement to do Impossible Act



“An agreement to do an act impossible in itself is void.” (Sec, 56 Para-1)

- A agrees with B to discover treasure by magic. The agreement is void. [Section 56].
- A agrees with B to run with a speed of 100 Kilometer per hour. The agreement is void.



THANK YOU