

## Void agreements

### Contents

- 1 Void agreements
- 2 Agreements in restraint of trade
- 3 Wagering agreements
- 4 Other void agreements
- 5 Chapter review

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## INTRODUCTION

### Learning outcomes

The overall objective of the syllabus is to give students an understanding of the legal system and commercial laws; and build a knowledge base of corporate laws.

### Void agreements

**LO**                    **On the successful completion of this paper, candidates will be able to demonstrate knowledge of laws relating to void agreements.**

LO 2.7.1            Be aware of circumstances or conditions when an agreement is considered as void

LO 2.7.2            Identify different types of void agreements.

### References to Legal Acts

Section number references embedded in the learning materials refer to the following legal acts unless otherwise stated:

Act	Chapters
Contract Act 1872	3-16
Partnership Act 1932	17
Negotiable Instrument Act 1881	18
Companies Act, 2017	19-27
Securities Act 2015	22

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# 1 VOID AGREEMENTS

## Section overview

- Meaning of void agreements
- Void agreements

### 1.1 Meaning of void agreements

An agreement not enforceable by law is said to be void. All agreements may not be enforceable by law. The agreements which are not enforceable by law right from the time when they are made are called void-ab-initio. [Section 2(g)]

#### Effect on agreement collateral to void agreement

When an agreement is void, other agreement which is collateral to it is also void and is not enforceable by law if the other party has knowledge about it

### 1.2 Void agreements

Contract Act declares certain agreements to be void. Such agreements are listed below:

1. Agreements by or with persons incompetent to contract [Section 11]
2. Agreements made under mutual mistake of fact [Section 20]
3. Agreements made under mutual mistake of foreign law [Section 21]
4. Agreement, the object or consideration of which is unlawful [Section 23]
5. Agreement, the consideration or object of which is partly unlawful [Section 24]
6. Agreement made without consideration [Section 25]
7. Agreements in restraint of trade [Section 27]
8. Wagering agreement [Section 30]
9. Agreements in restraint of legal proceedings [Section 28]
10. Agreements in restraint of marriage [Section 26]
11. Uncertain agreements [Section 29]
12. Agreements contingent on impossible events [Section 32]
13. Agreements to do impossible acts [Section 56]
14. Agreement to enter into an agreement in future

#### Note

- Agreements from 1 to 6 have been discussed in earlier chapters.
- From 7 to 14 are those agreements which are specifically or expressly declared as void under the Contract Act.

## 2 AGREEMENTS IN RESTRAINT OF TRADE

### Section overview

- Meaning of agreements in restraint of trade
- Exceptions of agreements in restraint of trade

#### 2.1 Meaning of agreements in restraint of trade

Every agreement by which anyone is restricted from exercising a lawful profession, trade or business of any kind, is to that extent void. [Section 27]



#### Example: Agreements in restraint of trade

A and B carried on business in a certain locality in Karachi. A promised to stop business in that locality if B paid him Rs. 1,000. A stopped his business but B did not pay him the promised money. It was held that A could not recover anything from B because the agreement was in restraint of trade and was thus void.

#### 2.2 Exceptions of agreements in restraint of trade

Following are the exceptions where agreements in restraint of trade are not considered as void:

##### Sale of goodwill

One who sells the goodwill 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 goodwill from him, carries on a like business therein, provided that such limits are reasonable. [Section 27]

##### Partner's agreements

The Partnership Act allows following agreements as an exception to the agreement in restraint of trade:

- ❑ **Existing partner**  
Subject to contract between partners a partner may not carry on any business competing with that of the firm while he is a partner. [Section 1]
- ❑ **Outgoing partner**  
An outgoing partner may agree with his partners that he will not carry on any business similar to that of the firm for a specified period and for specified local limits. [Section 36]
- ❑ **Dissolution of the firm**  
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 for a specified period and for specified local limits. [Section 54]
- ❑ **Sale of goodwill**  
Partner(s) may upon the sale of the goodwill of a firm, make an agreement that partner(s) will not carry on any business similar to that of the firm for a specified period and for specified local limits. [Section 55]

##### Trade combinations

An agreement between different firms in the nature of a trade combination in order to maintain a price level and avoid under selling is not void.



#### Example: Trade Combinations

- ❑ An agreement by two persons to avoid competition is void because it tends to create monopoly.
- ❑ An agreement among some manufacturing companies not to sell goods below a minimum price and to divide the profits in a certain proportion is not void because such agreement was made to regulate the business and not to restrain it.

### Service Agreements

During the employment, agreement of services often contains a clause by which an employee is prohibited from working anywhere else. Such a clause in service agreement by which an employer restricts the employee not to compete with the employer or accepting any other employment is not restraint of trade. Further, where legitimate interest or goodwill or trade secret of employer is involved an employer may restrict his employee even after the end of employment but such restriction should be just and reasonable.



#### Example: Service Agreements

- An employee who possesses certain trade secrets, agreed not to carry on the similar business during 5 years after the termination of service.  
It is a valid agreement because restraint is intended to protect an employer against an employee making use of trade secrets learned by him in the course of his employment.
- An agreement to restrain a servant from competing for 5 years after the period of service.  
It is void because restraint is intended to avoid competition.

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### 3 WAGERING AGREEMENTS

#### Section overview

- Meaning of wagering agreement
- Effects of wagering agreement

#### 3.1 Meaning of wagering agreement

An agreement between two persons 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 is called a wagering agreement. An agreement by way of wager is void. [Section 30]



##### Example: Wagering agreement

A promises to pay Rs. 10,000 to B if it rained today, and B promises to pay Rs. 1,000 to A if it did not.



##### Example: Transactions which are not held wagers:

- Prize competitions which are games of skill, e.g. picture puzzles, athletic competitions. For example, an agreement to enter into a wrestling event in which winner was to be rewarded by the entire sale proceeds of tickets is not a wagering contract.
- An agreement to contribute to a plate or prize of the value of Rs. 500 and above to be awarded to the winner of a horse race.
- Stock market transaction in which the delivery of shares is intended to be given.
- Contracts of insurance.

#### 3.2 Effects of Wagering Agreement

The effects of wagering agreements are following:

- Such agreements are void
- No suit can be filed to recover the amount won on any wager.
- Transactions which are collateral to wagering agreements may also be void.

## 4 OTHER VOID AGREEMENTS

### Section overview

- Agreements in restraint of legal proceedings
- Agreements in restraint of marriage
- Uncertain agreements
- Agreements contingent on impossible events
- Agreements to do impossible acts
- Agreements to enter into an agreement in the future

### 4.1 Agreements in restraint of legal proceedings

Every agreement by which any party is restricted from enforcing his right under a contract by the usual legal proceedings or which limits the time within which he may enforce his right is void. [Section 28]

#### Exceptions

- An agreement between two or more persons who agree that any dispute which may arise between them shall be referred to arbitration, is valid.
- An agreement whereby parties agree not to file an appeal in upper court of law, is valid.
- Parties making contract to select one court of law between two courts equally competent.

### 4.2 Agreements in restraint of marriage

Every agreement in restraint of the marriage of any person other than a minor is void. This is because the law regards marriage and married status as the right of every individual. [Section 26]



#### Example: Agreements in restraint of marriage

A promises with B for good consideration that she will not marry C. It is a void agreement..

#### Exceptions

An agreement restraining the marriage/to hear case of a minor is valid.

### 4.3 Uncertain agreements

An agreement the meaning of which is not certain or capable of being made certain are void. [Section 29]



#### Example: Uncertain agreements

- A agrees to sell to B "a hundred ton of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
- A, who is a dealer in coconut oil, agrees to sell to B "one hundred ton of oil." The nature of A's trade affords an indication of the meaning of the words, and has entered into a contract for the sale of one hundred tons of coconut oil.
- A agrees to sell to B "all the grain in my granary at Peshawar." There is no uncertainty here to make the agreement void.
- A agrees to sell to B "one thousand mounds 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.
- 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 are to be given. The agreement is void.

#### 4.4 Agreements contingent on impossible events

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. [Section 32]



**Example: Agreements contingent on impossible events**

A agrees to pay Rs. 1,000 if B marries C (a Hindu) who is already married to D. This agreement is void.

#### 4.5 Agreements to do impossible acts

An agreement to do an impossible act is void. [Section 56]



**Example: Agreements to do impossible acts**

A agrees with B to discover treasure by magic. The agreement is void.

#### 4.6 Agreements to enter into an agreement in the future

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

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## 5 CHAPTER REVIEW

### Chapter review

Before moving on to the next chapter check that you now know how to:

- Discuss briefly expressly declared void agreements
- Discuss the exceptions to such void agreements
- Explain wagering agreement

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