

# Business law

## Lecture-10

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is –

- **forbidden by law**; or
- it is of such nature that **if permitted it would defeat the provisions of 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.

### ➤ Void and Illegal Contracts –

#### Consequence of Illegal Agreements

- an illegal agreement **is entirely void**;
- **no action can be brought** by a party to the contract to an illegal agreement. The maxim is **“Ex turpi cause non-oritur action” - from an evil cause, no action arises**;
- money paid or property transferred under an illegal agreement cannot be recovered. The maxim is **in parti delicto potierest condition defendeties- In cases of equal guilt, more powerful is the condition of the defendant**;
- where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and
- any agreement which is collateral (connected) to an illegal agreement is also tainted with illegality and is treated as being illegal, even though it would have been lawful by itself



### ➤ Agreements Void as being opposed to Public Policy –

The following agreements are void as being against public policy but they are not illegal –

- a) **Agreement in restrain (restrict) of parental rights** : An agreement by which a party deprives himself of the custody of his child is void.
- b) **Agreement in restraint of marriage** : An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.
- c) **Marriage brokerage or brokerage Agreements** : An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.
- d) **Agreements in restraint of personal freedom are void** : Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.
- e) **Agreement in restraint of trade** : An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.

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### ➤ Void Agreements –

Following agreements have been expressly declared to be void by the Indian Contract Act –

- Agreement made by incompetent person	- Agreement in restraint of marriage – Section 26
- Agreement made under a bilateral mistake of fact – Section 20	- Agreement in restraint of trade – Section 27
- Agreement of which the consideration or object is unlawful – Section 23	- Agreement in restraint of legal proceedings – Section 28
- Agreement of which the consideration or object is unlawful in part – Section 24	- Agreements void for uncertainty – Section 29
- Agreement made without consideration – Section 25	- Wagering agreement
- Agreement to do impossible acts	

- a) Agreement by a minor (section 11) or a person of unsound mind (section 12).
- b) Agreement of which the consideration or object is unlawful – Section 23
- c) Agreement made under a bilateral mistake of fact material to the agreement – Section 20
- d) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part – Section 24
- e) **Agreement in restraint of marriage – Section 26**

Agreement in restraint of marriage is void.

**Exceptions: a) Minors; b) Restraint for particular reasonable period is valid**

- f) Agreement in restraint of trade is void.

**Exceptions –**

- An agreement through which an **outgoing partner** will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade
  - Where a person **sells his business along with the goodwill** to another person, agrees not to carry on same line of business in certain reasonable local limits, such an agreement is valid.
  - An **agreement of service** through which an employee commits not to compete with his employer is not in restraint of trade
  - Trade **Combinations** are valid as long as they are not creating monopoly are valid
- g) **Agreement in restraint of legal proceedings – Section 28**  
An agreement which restricts or waives one's right to sue or limits the time of justice is void.  
**Exceptions:**
    - A contract by which the parties agree that any dispute between them shall be referred to arbitration and will not be taken to the court is a valid contract.

- h) **Agreements void for uncertainty – Section 29**

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



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### i) Agreement by way of wager – Section 30

Payment of money or money's worth upon ascertainment of future uncertain event is known as wagering.

#### ➤ Wagering Agreements –

##### A) Meaning of wagering agreements –

The literal meaning of the word “wager” is a “bet”. Wagering agreements are nothing but ordinary betting agreements.

##### Example –

A and B enter into an agreement that if England's Cricket Team wins the test match, A will pay B Rs.100 and if it loses B will pay Rs.100 to A. This is a wagering agreement and nothing can be recovered by winning party under the agreement.



##### B) Essentials of wagering agreements –

- One party should win and one part should loose
- There should be mutual chance of gain or loss
- No parties should have control over the event.

#### ➤ Performance of contract

##### Meaning –

- Every contract has certain obligations (duties) which are to be performed by the parties to the contract.
- When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed.
- When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance

