



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

SUBJECT CODE: BAL 901

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LECTURE 2

TOPIC: RESTRAINT OF TRADE UNDER INDIAN CONTRACT ACT

Statutory Exceptions

1. Sale of Goodwill

The only exception mentioned in Section 27 of the Contract Act is related to 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 appear to the court reasonable, regard being had to the nature of the business.

Meaning of Goodwill: - There should be real goodwill to be sold. The Goodwill which has been the subject of sale is nothing more than the probability that the old customer will resort to old place.

2. Partnership Act

According to Section 11 the Partnership Act,1932 partners during the continuance of the firm to restrict none of them shall carry on any other business than that of the firm. Section 36 the Partnership Act,1932 is related to restrain an outgoing partner from carrying on a similar business within the specified period and specified local limits,

- a. The agreement should specify the local limits or the period of restraint, and
- b. The restriction imposed must be reasonable.

Firm Daulat Ram vs. Firm Dharm Chand, AIR 1934 Lah 110, where two ice factory owners constituting a partnership agreed that only one factory will be worked at a time and its profits distributed among them. The restraint was held to be justified.

3. Restraint upon employees

Restraint during Employment

Agreement of service contain negative covenants is for preventing the employee from working anywhere during period covered by the agreement. Now a days trade secrets is main contention for negative covenants. Employer's wants to protect his trade secrets because of that employment agreement with negative covenants are generally used. Agreements for protection of confidentiality and trade secrets are not one sided or unfair or unreasonable. Any breach of such clauses on the part of employee can be treated as a misconduct.

Restraint during the employment and post-employment this issue was first time discussed by Supreme Court in ***Niranjan Shankar Golikar vs. Century Spg & Mfg Co. Ltd.*** a company manufacturing tyre cord yarn was offered collaboration by a foreign producer on the condition that the company shall maintain secrecy of all the technical information from its employees. The Defendant was appointed for a period of five years, the condition being that during this period he shall not serve anywhere else even if he left the service earlier. Shelat J held the agreement to be valid. The defendant was accordingly restrained from serving anywhere else during the currency of the agreement.

Post-Employment Covenant

According to Indian laws any agreement which is related to restraint of trade and profession shall not be binding on the parties and the same shall be null and void. By using the term void ab initio, for such type of agreements it has shown that it has kept such non-compete clause in the agreements beyond consideration. Indian courts have also consistently refused to enforce post termination non-compete clauses in

employment contracts as “restraint of trade” is impermissible under Section 27 of the Indian Contract Act 1872, and have held them as void and against the public policy because of their potential to deprive an individual of his or her fundamental right to earn a living.

Covenants that prohibit employees from engaging in a business similar to or competitive with that of the employer beyond the term of employment or post-employment are invalid.

A non-compete clause is well known under the Contractual Laws as the clause being made out into any agreement between two parties where one party is the employer and the other party is the employee. According to this non-compete clause, the employee undertakes and gives his acceptance as per the condition of the employer that during the course of the employment or even after post-employment, he will not be the competitor of the employer in the form and nature of the employment of the employer. The Non-compete clause finds place under the agreements and contracts throughout the world. According to Indian Contract Act, 1872 the non-compete clause, it is prohibited.

Pepsi Foods Ltd. & ors. vs. Bharat Coca-cola Holdings Pvt. Ltd. (19), post-employment restrictions were held to be invalid and violative of Article 19 (1)(g) of the Indian Constitution. Negative covenant in contract restraining employee from engaging or undertaking employment for twelve months after leaving the services of plaintiff was held to be contrary and in violation of Section of the Indian Contract Act, 1872 and injunction was declined.

Exercise:

1. The only exception mentioned in Section 27 of the Contract Act is

- a) Sale of goodwill
- b) Restriction on outgoing partner
- c) Both of the above

- d) None of the above
2. According to Section 11 the Partnership Act,1932 partners during the continuance of the firm to restrict none of them shall carry on any other business than that of the firm.
- a) True
 - b) False
 - c) Both of the above
 - d) None of the above
3. Section 36 the Partnership Act,1932 is
- a) An exception to Section 27 of the Contract Act
 - b) Not an exception to Section 27 of the Contract Act
 - c) Both of the above
 - d) None of the above
4. Which section of the Partnership Act empowers to restrain an outgoing partner from carrying on a similar business within the specified period and specified local limits
- a) Section 11
 - b) Section 16
 - c) Section 31
 - d) Section 36
5. *Niranjan Shankar Golikar vs. Century Spg & Mfg Co. Ltd.* is a case relating to
- a) Sale of goodwill
 - b) Restraint to an outgoing partner of a partnership firm
 - c) Both of the above
 - d) None of the above