Subject Name: Contract Act
Topic Name: Void Contracts

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Void Agreements

A void agreement is essentially treated as if it never existed in the first place. It is deemed void ab initio, meaning null and void from the outset. We've previously explored the various circumstances under which an agreement can be deemed void, including when it involves incompetent parties, lacks consideration, contains an unlawful consideration or object, violates public policy, and more.

However, Section 10 of the Act also outlines that for an agreement to be considered a valid contract, it must not have been expressly declared as void.

Consequently, Sections 26 to 30, 36, and 56 of the Act explicitly declare certain agreements as void due to their inherent nature.

The Act defines a void agreement in Section 2(g) as an agreement that is not enforceable by law. It outlines various types of agreements that are declared to be void:

1. Agreements of which consideration and objects are unlawful in part (Section 24).
2. Agreements without consideration (Section 25).
3. Agreements in restraint of marriage (Section 26).
4. Agreements in restraint of trade (Section 27).
5. Agreements in restraint of legal proceedings (Section 28).
6. Unmeaning agreements (Section 29).
7. Wagering agreements (Section 30).
8. Agreements to do impossible acts (Section 56).

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Section 24: Void Agreements Due to Unlawful Elements

Section 24 of the Act stipulates that agreements become void if any part of the consideration for one or more objects, or any part of any consideration for a single object, is unlawful. Essentially, if any aspect of an agreement's consideration or object is illegal, the entire agreement is rendered void.

Illustration:
A promises to oversee both a legal indigo manufacturing operation and an illegal trade in other goods on behalf of S. In exchange, B promises to pay A a salary of 10,000 rupees per year. Because both the object of A's promise and the consideration for B's promise contain unlawful elements, the agreement is void.

The rationale behind this provision, articulated by Willes J, asserts that if it's impossible to separate the illegal portion from the legal one in a covenant, the entire contract becomes void. However, if the illegal aspect can be severed without impacting the lawful part, the valid portion may still be enforced.

For instance, if an agreement involves paying a fixed sum to a married woman for living in adultery (unlawful) alongside performing lawful duties, the entire agreement would be void because it's infeasible to separate the lump sum between lawful and unlawful aspects.

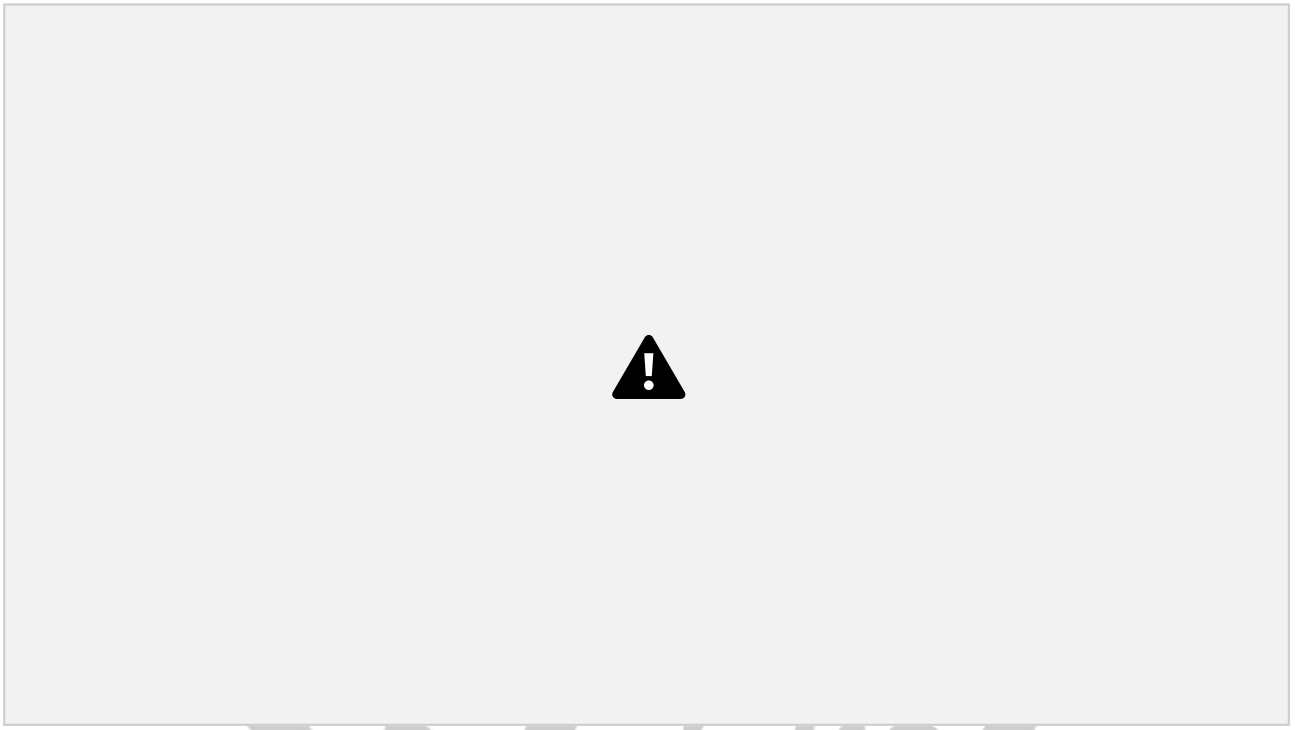
Similarly, if a contract combines legal and illegal elements but the legal part can be isolated from the illegal, the legal portion remains enforceable. For example, if a Muslim husband agrees to allocate all his earnings to his wife (legal) alongside an unlawful provision for divorce under certain conditions, the legal aspect of the agreement can be enforced while disregarding the unlawful component.

Furthermore, transactions stemming from agreements to execute illegal acts may still be valid and enforceable if they can function independently from the illegal act.

In cases where a contract outwardly appears capable of legal performance, the undisclosed intention of one party to execute it unlawfully does not prevent the other party from enforcing it. However, if there's uncertainty about the agreement's true nature, interpretations favouring lawful performance should be prioritised.

Absence of Consideration

According to Section 25, an agreement lacking consideration is deemed void. However, exceptions to this rule have been previously discussed alongside the concept of "consideration."



Restraint of Marriage

Section 26 stipulates that any agreement restraining the marriage of an individual, except for minors, is void. This provision reflects the legal policy to discourage agreements that curtail the freedom to marry. Restraints on marriage can take various forms, such as preventing marriage altogether, imposing restrictions for a specific duration, or prohibiting marriage with particular individuals or classes.

However, there's an exception for minors, as they are afforded certain protections under the law.

It's essential to distinguish between a penalty upon remarriage and a restraint of marriage. For instance, an agreement between two widows stating that if either remarries, she forfeits her share in the deceased husband's property is upheld. The court clarified that this doesn't impose a restraint on remarriage but rather provides consequences for the decision to remarry.

Similarly, agreements wherein remarriage results in the loss of maintenance rights or grants the first spouse the right to seek a divorce upon the husband's remarriage have been deemed valid.

Restraint of Trade

Section 27 of the Indian Contract Act declares any agreement restraining an individual from exercising a lawful profession, trade, or business void to that extent. This provision underscores the protection of freedom of trade and commerce, which is a fundamental right under the Constitution of India. Essentially, individuals cannot contract away their freedom to engage in lawful occupations.

The principle behind this provision is to ensure that every individual has the liberty to work for themselves and contribute to the community without undue restrictions. The law aims to prevent individuals from depriving themselves or the state of their labour, skills, or talents through agreements that impose restraints on trade.

This section covers both partial and general restraints on trade. In the case of Madhub Chander v Raj Coomar, the Calcutta High Court held that the restriction need not be absolute to be considered void. Even partial restrictions, such as limitations to a specific locality, fall under the purview of Section 27. The absence of the term "absolutely" in this section indicates that it applies to both total and partial restraints.

Therefore, agreements that restrict trade, regardless of the extent, are void under Section 27. For example, agreements to close a business for a specified duration or to divide business operations between parties for certain periods have been deemed void as they impose restraints on trade.

Exceptions to Restraint of Trade

Exceptions to the general rule of void agreements in restraint of trade can be categorised into statutory exceptions and those arising from judicial interpretation.

Statutory Exceptions:

- ➔ Sale of Goodwill:
    - ◆ Section 27 provides an exception regarding the sale of goodwill. When someone sells the goodwill of a business, they may agree not to carry on a similar business within specified local limits for as long as the buyer or any person deriving title from them continues a similar business there. However, these limits must be deemed reasonable by the court considering the nature of the business.
    - ◆ The rationale behind this exception is to protect the interests of the purchaser of goodwill. It ensures that the seller doesn't immediately set up a competing business, preserving the value of the goodwill transferred. Goodwill, in this context, represents the reputation and connection of the firm, which can significantly impact profits.

- The definition of goodwill includes not just the probability of retaining old customers but also encompasses the entire advantage derived from the firm's reputation and connection, acquired through years of honest work or lavish expenditure.

➔ Partnership Act:

- The Partnership Act contains provisions that validate agreements in restraint of trade within the context of partnerships. For instance, partners may agree during the continuance of the firm that none of them will carry on any business other than that of the firm (Section 11).

- Additionally, partners can restrict an outgoing partner from engaging in a similar business for a specified period or within certain local limits, provided the restrictions are reasonable (Section 36). Similar agreements can be made in anticipation of dissolution.

Judicial Interpretation:

➔ Trade Combinations:

- Associations or combinations of traders or manufacturers aimed at regulating business practices, standardising goods, fixing prices, and eliminating ruinous competition are generally upheld. However, the courts scrutinise agreements to ensure they genuinely regulate business rather than restrict it.

- Agreements to regulate prices and output are often upheld if they aim to prevent cutthroat competition rather than restrain trade.

➔ Solus or Exclusive Dealing Agreements:

- Producers or manufacturers may engage sole agents or distributors who agree not to deal with goods from other manufacturers. As long as such agreements are ancillary to positive covenants and do not unreasonably restrain trade, they are generally permissible.

Agreement in Restraint of Legal Proceedings

According to Section 28 of the Indian Contract Act, any agreement that restrains legal proceedings is considered void. This provision ensures that parties cannot enter into agreements that hinder their ability to seek legal remedies through the courts.

An agreement between a debtor and a creditor, for example, where the debtor agrees not to raise the defence of limitation even if the debt becomes time-barred, would be void. This is because such an agreement would contravene the provisions of the Limitation Act, which sets the time limits within which legal actions can be initiated.

Similarly, agreements aimed at reducing the period of limitation from the standard duration prescribed by law, such as shortening the limitation period from three years to three months, six months, or one year, would also be deemed void. This is because they would effectively undermine the provisions of the Limitation Act.

Section 28 was later amended by the Indian Contract Amendment Act of 1996, which clarified that any agreement that provides for the forfeiture of rights arising from a contract if legal action is not initiated within a specified period, regardless of the time allowed by the Limitation Act, would also be void. This ensures that parties cannot circumvent the provisions of the Limitation Act through contractual agreements.

Agreements Void for Uncertainty

Section 29 of the Indian Contract Act states that agreements whose meaning is uncertain or incapable of being made certain are considered void. This provision emphasises the importance of clarity and specificity in contractual agreements to ensure mutual understanding between the parties involved.

Examples illustrating the application of Section 29:

1. Uncertain Subject Matter: S agrees to sell to B "a hundred tonnes of oil" without specifying the type of oil intended for sale. Since the type of oil is not defined, the agreement lacks certainty and is therefore void.

2. Specific Subject Matter: Contrastingly, if S agrees to sell to B "a hundred tonnes of coconut oil," the agreement becomes valid because the specific type of oil intended for sale is clearly defined. In this case, there is no ambiguity regarding the subject matter of the agreement.

3. Exclusive Deal: In the scenario where S exclusively deals in coconut oil, an agreement to sell "a hundred tonnes of oil" to B would still be considered valid. This is because, given S's exclusive business in coconut oil, it is understood that the agreement pertains to coconut oil specifically, even if not explicitly mentioned.

Wagering Agreements

Section 30 of the Indian Contract Act pertains to wagering agreements, declaring them as void. Such agreements involve bets or wagers on uncertain events, with the outcome determining the transfer of money or stakes between the parties involved. However, exceptions exist, particularly in the context of horse racing prizes.

A wagering contract involves two parties holding opposing views on the outcome of a future uncertain event. They mutually agree that, depending on the determination of that event, one party will pay a sum of money or other stakes to the other party. Importantly, neither party has any other interest in the contract apart from the sum or stakes they stand to win or lose.

Essential Elements of a Wagering Contract:

1. Uncertain Event: The contract must be contingent on the determination of an uncertain event, whether past, present, or future.
2. Mutual Chances of Gain or Loss: Both parties must stand to win or lose based on the outcome of the event. If one party can only win without any risk of loss, it does not constitute a wagering contract.
3. No Control over the Event: Neither party should have control over the outcome of the event. If one party can influence the result, the agreement lacks the essential element of uncertainty.
4. No Other Interest in the Event: Apart from the stakes involved in the contract, neither party should have any other interest in the outcome of the event.