

Indian Contract Act, 1872Unit - 3 = Other Essential Elements of Contract.

→

Essential Element of a valid contract.

Capacity to contract

Free consent

Lawful consideration & Object

Not Expressly Declared void.

- ↓
1. Major
 2. Sound mind
 3. Not Disqualified.

- ↓
- Not Caused by:
1. Coercion
 2. Undue Influence
 3. Fraud.
 4. Misrepresentation
 5. Mistake.

* Capacity to Contract :-

⇒ "Capacity" refers to the competence of the parties to make a contract.

* Who is Competent ?

- ⇒ According to section 11, Every person who.
- ⇒ has attained the age of majority.
 - ⇒ is of sound mind and
 - ⇒ is not otherwise disqualified from Contracting.
 - ⇒ is competent to contract.

* Analysis :-

⇒ In other words, following persons to be incompetent to contract :-

⇒ Minors.

⇒ Persons of unsound mind and.

⇒ Persons of disqualified by any law of which they are subject.

*

Minors

Q Who is minor ?

⇒ As per Indian Majority Act (Act 19 of 1875), a minor is a person who has not completed 18 years of age.

* Position of Contract with minors :-

1 A contract made with or by a minor is void-ab-initio :-

⇒ A minor is not competent to contract and any agreement with or by a minor is void from the very beginning.

Example 1 :- Mr. D a minor, mortgaged his house for Rs. 20,000 to money lender, but the mortgagee i.e.

money lender has paid him Rs. 8,000. Subsequently the minor had filed a suit for cancellation of contract. Held the contract is void as Mr. D is minor and therefore he is not liable to pay anything to lender. [Mohanji Bibi vs. Phasmodas Ghose]

2. No ratification after attaining majority:-

⇒ A minor cannot ratify the agreement on attaining majority, as the original agreement is void-ab-initio.

Example 2:- X, a minor makes a promissory note in the name of Y. On attaining majority, he makes a new promissory note in place of old one. Here the new promissory note which he executed after attaining majority is also void being without consideration.

3. Minor can be beneficiary or can take benefit out of contract:-

⇒ Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor.

Example 3: A promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accepted a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

4. A minor can always plead minority:-

⇒ A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major.

Example 4:- In case of Mohori Bibi vs. Dharmodas Ghose, Mr. D misrepresented his age and money lender has paid him Rs. 8,000. But the Court did not stop him from

denying that he is a minor and therefore not liable to pay amount.

5. Contract for Supply of Necessaries:-

⇒ Minor is liable to pay out of his property for the necessities supplied to him by the other. Necessary may be about necessary goods (eg. Food, Cloths etc.) and services (eg. education etc.)

Example 5:- Shrutti being a minor purchased a laptop for her online classes of Rs. 70,000 on credit from a shop. But her assets could pay only Rs. 20,000. The shopkeeper could not hold Shrutti personally liable and could recover only amount recoverable through her assets i.e. upto Rs. 20,000.

6. He cannot enter into a contract of Partnership:-

⇒ A minor being incompetent to contract cannot be a partner

in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.

7. He cannot be adjusted in solvent:-

⇒ because of incapability of contracting debts.

8. Minor cannot bind parent or guardian:-

⇒ In the absence of authority, express or implied, a minor is not capable of binding his parent or guardian, even for necessities. The parents will be held liable only when the child is acting as an agent for parents.

Example 6:- Richa a minor entered into contract of buying a Scooty from the dealer and mentioned that her parents will be liable for the payment of Scooty. The dealer sent a letter to her parents for money. The parents

will not be liable for such payments as the contract was entered by a minor in their absence and out of their knowledge.

9. Minor can be an agent:-

⇒ A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.

Example 7:- A minor can have an account in the bank. He can draw a cheque for his purchases. But he shall not be liable for cheque bounces nor can he be sued under Court of law for any fraud done from his account.

10. Joint contract by minor and adult:-

⇒ The adult will be liable on the contract and not the minor.

11. Surety (Guarantor) for a minor:-

⇒ In a contract of guarantee when an adult stands surety for a minor then adult is liable to third party as there is direct contract between the surety and the third party.

Example 8:- Mr. X guaranteed for the purchase of a mobile phone by Krish, a minor. In case of failure for payment by Krish, Mr. X will be liable to make the payment.

12. minor as shareholder:-

⇒ A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting through his lawful guardian become a shareholder by transfer of transmission of fully

paid share to him.

13. Liability of torts :- A tort is civil wrong.

Example 9 :- A minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.

* Who is Sound Mind?

⇒ Sec. 12: 'A person is said to be sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests.'

* Types of Persons of Unsound mind & Rules :-

• Idiots :-

⇒ An idiot is a person who has completely lost his mental powers
 ⇒ Contract with this person is void.

• Lunatic:

- ⇒ "A person who is usually of unsound mind, but occasionally of sound mind,
- ⇒ may make a contract when he is of sound mind".

Burden of Proof

- ⇒ the burden of proving of sound mind at the time of contract lies on the person who affirm it.

- Drunken or intoxicated persons or ~~Per~~ Persons in capable to understand due to age or Disease :-

- ⇒ "A person who is usually of sound mind, but occasionally of unsound mind,
- ⇒ may not make contract when he is unsound mind".

Burden of Proof:

→ The burden of proving of sound mind at the time of contract lies on the person who affirms it.

* Contract By Disqualified Persons.

(i) Alien Enemy :- A person who is citizen of a foreign country which is at war with India.

(a) Contracts made during the war :- During the continuance of war an alien can neither contract with an Indian citizen nor he can sue in an Indian court.

(b). Contract made before the war :- These contracts may either be suspended or dissolved. All contracts which are against the public policy or are such that may benefit the enemy stand dissolved. The contracts which are not against public policy are merely suspended for the duration of war and revived after the war.

is over, provided they have not already become time barred under the law of limitation.

(ii) Foreign Sovereigns (Rulers), their diplomatic staff and representatives of foreign States:-

⇒ They can enter into contracts and enforce those contracts in our courts. But an Indian citizen has to obtain a prior sanction of the central Govt. in order to sue them in our law courts. An ex-king can, however, be sued against in our courts without any such sanction.

(iii) Corporations:- The contractual capacity of a statutory corporation is limited by the statute governing it. As regards a company registered under the Companies Act, 2013, the contractual capacity is regulated by its memorandum of Association and the Companies Act, 2013.

(iv) Insolvents :- When a doctor is adjudged insolvent he is deprived of his power to deal in his property divisible among his creditors.

(v) Convicts :- A convict when undergoing imprisonment is incapable of entering into a contract.

Free Consent

* Consent Sec. 13 :-

⇒ "Two or more persons are said to consent when they agree upon the same thing in the same sense." (consensus-ad-idem)

⇒ When there is no consent, there is no contract.

* Free Consent Sec. 14 :-

(1) Coercion as defined in Sec. 15,

(2) Undue influence as defined in Sec. 16.

- (3) Fraud as defined in Sec. 17.
- (4) Misrepresentation as defined in Sec. 18,
- (5) Mistake, subject to the provisions of Sec. 20, 21, and 22.

* Coercion (Sec. 15) :-

⇒ The consent is said to be caused by coercion when it is obtained by :-

- (a) Committing or threatening to commit any act forbidden by IPC.
- (b) Unlawful detaining or threatening to detain any property.

Example 10 :- X says to Y: "I shall kill your son, unless you agree to sell your house to me for Rs. 5,000." Y says, "All right, I shall sell my house to you for Rs. 5,000, do not kill my son." X has employed Coercion.

- (3) Fraud as defined in Sec. 17.
- (4) Misrepresentation as defined in Sec. 18,
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Example 10:- X says to Y: "I shall not return the documents of title relating to your wife's property, unless you agree to sell your house to me for Rs. 5,000." Y says, "All right, I shall sell my house to you for Rs. 5000. Do not detain my wife's documents of title."

Consequences of coercion (Sec. 19)

- (i) Contract is voidable at the option of party whose consent was so caused.
- (ii) Person to whom money is paid or things delivered under coercion must repay or return it.

Burden of proof

⇒ Lies on the aggrieved party that his consent is not free.

a. Threat to commit suicide - is it coercion?

⇒ Suicide through forbidden by IPC is

for obvious reason not punishable.

⇒ A dead person cannot be punished.

⇒ But Sec. 15 declares that committing or threatening to commit any act forbidden by IPC is coercion.

⇒ Hence, a threat to commit suicide will be regarded as coercion.

Example II:- Where husband obtained a gift deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code.

* Undue Influence (Sec. 16):-

⇒ A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties :-

⇒ is in a position to dominate the will of the other and.

⇒ Uses that position to obtain an unfair advantage of the other."

* Essential ingredients under this provision:-

(1) Relation Between the parties:- A person can be influenced by the other when a near relation between the two exists.

(2) Position to dominate the will:- Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:-

(a) Real and apparent authority:- Master and servant, doctor and patient and etc.

(b) Fiduciary relationship:- Father and son, solicitor and client, husband and wife, creditor and debtor.

(c) Mental Distress:- Where the mental

Capacity of the person is temporarily or permanently affected by the person reason of mental or bodily distress, illness or of old age.

(3) The object must be to take undue advantage:-

⇒ Where the person is in a position to influence the will of the other in getting consent, must have the object to take advantage of the other.

Example 12:- A advances money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

Example 13:- An illiterate old woman who is physically ill and mentally distressed executed a gift deed in favour of his relative who

was taking care of her. Here relatives is in position to dominate the will of an old woman.

* Consequences of Undue Influence (Sec. 19A) :-

(i) Contract is voidable at the option of party whose consent was so caused

(ii) Such contract may be set aside either absolutely or if the party who is entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just and equitable.

* Burden of Proof :-

⇒ The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

* Distinction between Coercion and Undue Influence:-

Basis	Coercion	Undue Influence
Section	Defined in Sec. 15.	Defined in Sec. 16.
Nature	Involves physical force or threat.	Involves moral pressure.
Relationship	Relationship between parties is not necessary.	Some sort of relationship must exist between the parties.
Consent obtained	Consent is given under the threat of an offence.	Consent is obtained by dominating the will, no offence is committed.
Exercise by whom	It may come even from a stranger.	It is employed by the party to contract.

* Fraud (Sec. 17) :-

⇒ "Fraud" means and includes any of the following acts committed by a party to a contract, or by his agent with intent to deceive or to induce a person to enter into a contract:-

- (1) The suggestion that a fact is true when it is not true and the person making the suggestion does not believe it to be true;

Example 14:- A sells his watch to B by saying that the watch is made in Japan but actually the watch is Indian and this fact is known to A. Hence A made a fraud.

- (2) The active concealment of a fact by a person having knowledge or belief of the fact;

Example 15:- X sells a horse to Y. Horse is blind and X knows the fact. When X asks, "Is horse blind?" X clearly says, "No". Here X made fraud.

- (3) A promise made without any intention of performing it;

- (4.) Any other act fitted to deceive;

Example 16:- A agrees to double B's gold by magic and runs away with his gold. It is fraud.

(5) Any such act or omission as the law specially declares to be ~~fraud~~ fraudulent.

* Essential Elements of Fraud :-

(1) There must be a representation or assertion and it must be false. Mere silence as to facts is not fraud.

Example 17 :- 'x' sell by auction to 'y' a horse which 'x' knows to be unsound. 'x' say nothing to 'y' about the ~~horse~~ horse unsoundness. This is not fraud by 'x'.

NOTE :- Silence amounts to fraud where.

(i) There is a duty to speak.

Example 18 :- 'x' sells by auction to 'y' a horse which 'x' knows to be unsound. 'y' is 'x's daughter. Here the relation between the parties would make it 'x's duty to tell 'y', if horse is unsound.

(ii) His silence is speech.

Example 19:- Where 'Y' says to 'X' "If you do not deny it, I shall assume that the house is sound". X says nothing. Here 'X' silence is equivalent to speech.

(2) The representation or assertion must be a fact.

Example 20:- 'X' who is about to sell goods says that cost him Rs. 5,000. This is statement of fact. But if he says the goods are worth Rs. 5,000, it is a statement of opinion.

(3) The representation must have been made with a knowledge of its falsity or without belief in its truth.

(4) The other party must have been induced to act upon the representation or assertion.

Example 21:- 'A' bought shares in a company on the faith of a prospectus which contained an untrue statement that one 'B' was a director of the company. ~~A's to buy the shares.~~

'A' had never heard of 'B' and, therefore, the statement was immaterial from his point of view. A's claim for damages in this case was dismissed because the untrue statement had not induced 'A' to buy the shares.

(5) The other party, acting on the representation or assertion, must have subsequently suffered some loss.

(6.9) The other party must have relied upon the representation and must have been deceived.

Example 22:- 'T' bought a cannon (large gun-top) from 'H' on credit. The cannon was defective but 'H' had plugged (gun powder) it. 'T' did not examine the cannon, but when he used it, it burst (before the payment) held, as the plug had not deceived 'T' he was liable to pay.

* Misrepresentation (Sec. 18):-

⇒ 'Misrepresentation' is wrong done without intention to deceive.

According to Sec. 18, there is misrepresentation:-

(1) When a person positively states that a fact is true when his information does not warrant to be so;

Example 23:- X says to Y that his bike runs 70 km per litre. X believes that he is true but actually bike runs 40 km per litre. Here there is misrepresentation by X.

- (2) When there is a breach of duty by a person without intention to deceive which brings an advantage to him, and loss to the other;

Example 24:- While taking a life Insurance policy, X states that his age is 25 years believing it to be true. Actually, he is 30 years old. X is guilty of misrepresentation.

- (3) When a party causes the other party to make a mistake as to the subject matter.

* Consequences of Misrepresentation :-

⇒ The aggrieved party, in case of misrepresentation by the other party, can :-

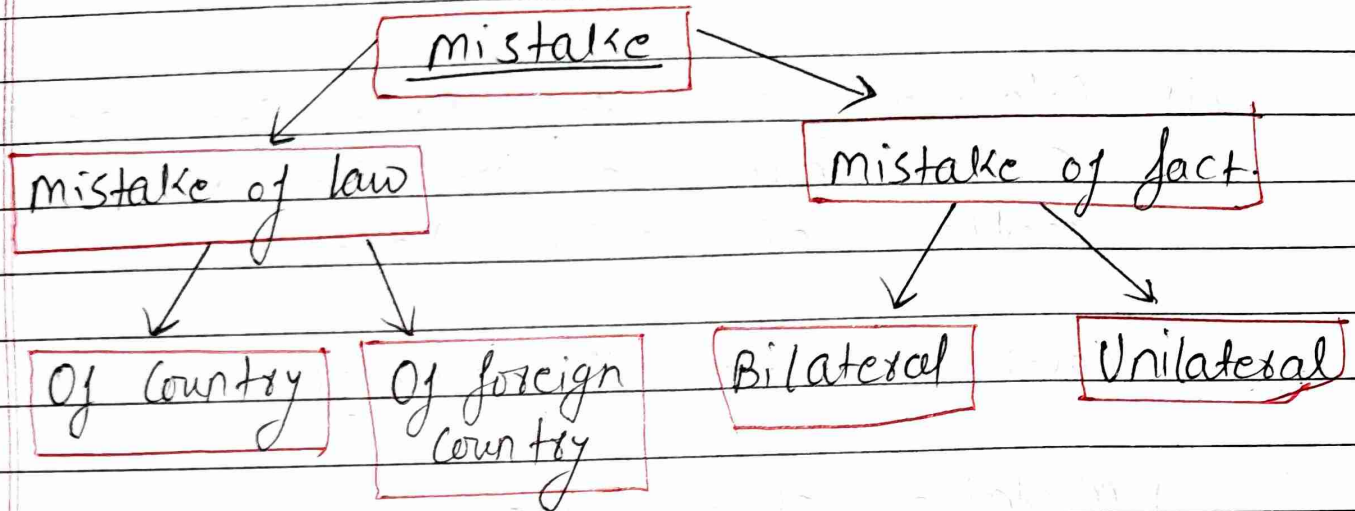
- (1) avoid or rescind the contract; or
- (2) accept the contract but insist that he shall be placed in the position in which he would have been if the representation made had been true.

* Distinction between Fraud and Misrepresentation :-

Basis	Fraud	Misrepresentation.
Section	Defined in Sec. 17	Defined in Sec. 18.
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of Truth.	The person making the suggestion believes that the statement is untrue.	The person making the statement believes it to be true, although it is not true.
Claim of damages.	The injured party can repudiate the contract and claim damages.	The injured party can repudiate the contract but cannot claim damages.
Means to discover the truth.	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

* Mistake (Sec. 20-22)

Meaning - Erroneous belief about something.



* Mistake of law :-

(i) Mistake of law of the Country :-

⇒ A person cannot be allowed to get any relief on the ground that it had done a particular act in ignorance of law.

Example 25 :- A and B entered into a contract on the erroneous belief that a particular debt is barred by the Indian law of limitation. This contract is not voidable.

(ii) Mistake of law of a foreign Country :-

⇒ Such a mistake is treated as mistake

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of fact and the agreement in such a case is void.

* Mistake of Fact:-

(i) Bilateral mistake:- Both the parties are under a mistake as to a matter of fact. Agreement is void.

Cases of Bilateral Mistakes:-

- (i) mistake as to the existence of the subject-matter.
- (ii) mistake as to the identity of the subject-matter.
- (iii) mistake as to the quality of the subject-matter.
- (iv) mistake as to the quantity of the subject-matter.
- (v) mistake as to the title of the subject-matter.
- (vi) mistake as to the possibility of performance
 - (a) Physical impossibility.
 - (b) legal impossibility.

(ii) Unilateral mistake :- Only one party under mistake. Contract is not voidable.

* legality of Object & Consideration :-

→ Unlawful Object and Consideration (Sec. 23) :-

(1) It is forbidden by law.

Example 26 :- A contracted with B to deal in stolen goods. It is forbidden by law and therefore void.

(2) If it is of such a nature that if permitted, it would defeat the provisions of any law.

Example 27 :- A was licensed under the Excise Act to run a liquor shop. The Act forbade the creation of a partnership to run the shop. A took B into partnership. Held, agreement is void.

(3) If it is fraudulent :-

Example 28 :- A, B & C enter into a partnership to run the business of fraud and distribute the earnings in equal.

ratio. Agreement is void

(4) If it involves or implies injury to the person or property of another.

Example 29:- A contracts with B to burn the house of C. As contract involves the property of C, contract is unlawful and void.

(5) If the Court regards it as immoral.

Example 30:- A asks B, "If you arrange a girl for marriage with me, I will give Rs. 50,000." Here contract is void as it is immoral.

(6) Where the Courts regards it as opposed to public policy.

(a) Trading with enemy.

Example 31:- Agreement with alien enemy.

(b) Stifling prosecution:- It is an agreement to abstain from prosecuting a person for an offence.

Example 32:- A promises to drop a prosecution which he has instituted against B for robbery, and B promises to restore the stolen property, the agreement is unlawful. But a compromise in case of compoundable offences is valid.

(c) Maintenance and Champerty :-

⇒ 'Maintenance' is an agreement to give assistance, financial or otherwise, to another to enable him to bring or defend legal proceedings when the person giving assistance has got no legal interest of his own in the subject matter.

Example 33:- A offers to pay B Rs. 2000 if B will sue C. A's motive is to hurt C. This agreement between A and B is a maintenance agreement.

⇒ "Champerty" is an agreement whereby one party is to assist another to bring an action for recovering money or property, and is to share in the proceeds of the action.

Example 34: A agrees to pay the expenses if B sues C, and B agrees to give a one-half of any proceeds received by B as a result of the said suit. If the object of a contract is just to assist the other party in making a reasonable claim arising out of a contract and then to have a fair share in the profit, the contract is valid.

(d) ~~It~~ Interference with the course of justice.

Example 35: An agreement to pay a bribe of Rs. 500,000 to a judge to change his decision is unlawful & void.

(e) Marriage brokerage contracts: - An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

Example 36: - An agreement to pay money to a person hired to

procure wife is opposed to public policy and therefore void.

(f) Interest against obligation:- The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

Example 37:- An agreement by an agent to receive without his principal's consent, compensation from another for the performance of his agency is invalid.

Example 38:- A, who is the manager of a firm, agrees to pass a contract to X if X pays to A 2,000 privately; the agreement is void.

(g) Sale of public offices:- Agreement for the sale or transfer to public offices and titles or procurement of a public recognition like padma vibhushan or Param veer chakra for monetary consideration.

Date _____

Example 39:- An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

Example 40:- An agreement to procure a public recognition like padma Vibhushan for reward is void.

(b) Agreement for the creation of monopolies:-

⇒ Agreement having for their object the establishment of monopolies are opposed to public policy and therefore void.

Example 41:- A contracts with municipal corporation for disallowing all the shopkeepers from the market other than A. Hence contract is void.

* Agreement Expressly Declared Void :-

(1) Agreement by incompetent parties (Sec. 11)

2. Agreement made under a mutual mistake of fact (Sec. 20.)

3. Agreements the consideration or object of which is unlawful. (Sec. 23).

4. Agreement the consideration or object of which is unlawful in part (Sec. 24).

⇒ If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

5. Agreements made without consideration (Sec. 25).

6. Agreement in restraint of marriage (Sec. 26) :-

⇒ Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding. (Other than a child marriage).

7. Agreement in restraint of trade (Sec. 27):

⇒ An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

But this rule is subject to the following exceptions,

* Exception to point No. '7' :-

(i) Sale of goodwill :- A seller of goodwill of a business may be restrained from carrying on

(a) a similar business,

(b) within specified local limit.

(c) provided that such limits appear to the court reasonable regard being had to the nature of the business.

(ii) Partner's agreements :-

(a) A partner shall not carry on any business other than that of the firm while he is partner.

- (b) An outgoing partner may agree with his partners not to carry on a business similar to that of the firm within a specified period or within specified local limits.
- (c) 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 within a specified period or within specified local limits.
- (d) Where the goodwill of a firm is sold after dissolution, a partner may carry on business competing with that of the buyer and he may advertise such business. But subject to agreement between him and the buyer, he may not (i) use the firm name, (ii) represent himself as carrying on the business of the firm, or (iii) solicit custom of persons who were dealing with the firm before its dissolution.
- (e) Any partner may, upon the sale of goodwill of a firm, make an agreement with the buyer that

Such partners will not carry on any business similar to that of the firm within a specified period or within specified local limits.

(iii) Trade Combination :- Business combination with idea of regulating business and not restraining it have been held to be desirable in public interest.

Example 42 :- An agreement between certain ice manufacturing companies not to sell ice below a stated price and to divide the profits in a certain proportion is not void. Such agreement are neither in restraint of trade nor opposed to public policy.

(iv) Service contracts :- Sometimes an employee, by the terms of his service agreement, is prevented from accepting :-

(a) any other engagement during his employment, and/or.

(b) a similar engagement after the termination of his services.

➤ As regards the first restraint, it is valid and is not in ~~not~~ restraint of trade if it is to operate while the employee is contractually bound to serve his employer. The doctors, for example, are usually debarred from private practice during the term of their employment.

➤ As regards the second restraint, it is void.

8. Agreement in restraint of legal proceedings (Sec. 28):-

⇒ An agreement in restraint of legal proceedings is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

However, there are certain exemptions to the above rule :-

- (i) A contract by which the parties agree that any dispute between them in respect of any subject shall be referred or arbitration and that only the amount awarded in such arbitration shall be recoverable is valid contract.
- (ii) Similarly, a contract by which the parties agree to refer to arbitration any question between them which have already arisen or which may arise in future, is valid; but such a contract must be in writing.

9. Agreement the meaning of which is uncertain (Sec. 29); Agreements, the meaning of which is not certain, are void (Sec. 29). The uncertainty may be as to (i) existence of, (ii) quantity of, (iii) quality of, (iv) price of, or (v) title to; the subject-matter.

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Example 43:- A agrees to sell to B

"100 tons of oil". There is nothing to show what kind of oil was intended. The agreement is void for uncertainty.

Example 44:- A agrees to sell to B "my white horse for Rs. 5,000 or Rs. 8,000." There is nothing to show which of the prices was to be given. The agreement is void.

Example 45:- A agreed to pay a certain sum when he was able to pay. Held, the agreement was void for uncertainty.

10. Wagering agreements or wagers (Sec. 30):-

⇒ A wager is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen.

Example 46:- If A and B enter into an agreement that A shall pay B Rs. 100 if it rains on Monday.

and that B shall pay A the same amount if it does not rain. It is a wagering agreement.

* Essential of a wagering agreement :-

1. Promises to pay money or money's worth.
2. Performance must be dependent on an event happening or not happening.
3. Event must be uncertain.
4. Mutual chances of win or lose.
5. No control over the event.
6. No other interest in the event. That is why a contract of insurance is not a wagering agreement.

* Effect of wagering agreements :-

- => Wagering agreements are void but not illegal. However in Maharashtra & Gujarat wagering agreements have been declared illegal.

* Suit to recover money deposited under wagering agreement:-

⇒ Money deposited with a person (called stakeholder) to be paid to the party winning upon a wager cannot be recovered by the winning winner. On the other hand, the loser can recover his deposit from the stakeholder. But where the stakeholder pays the money to the winner, the loser cannot recover it from him.

* Collateral Transaction:-

⇒ The validity of collateral transaction can not be challenged because the main contract which is a wager & hence void. Eg. in a wagering contract the broker is entitled to collect his brokerage.

Exception - following transactions are not wagers:-

(i) Game of skill, crossword, picture puzzles or athletic competitions.

- (ii) A subscription or ~~comp~~ Contributions or an agreement to subscribe or contribute toward any plate (a cup or other prize for a race or other contest), prize or sum of money of the value of Rs. 500 or above to be awarded to the winner or winners of a horse race.
- (iii) Share market transactions in which delivery of stocks and shares is intended to be given and taken.
- (iv) A contract of insurance.

11. Agreements to do impossible Acts (Sec. 56)

Example 47:- A agrees with B to discover treasure by magic the agreement is void.