
UNIT 6 VOID AGREEMENTS AND CONTINGENT CONTRACTS

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6.0 OBJECTIVES

After studying this unit, you should **be able** to:

- describe and, identify agreements which are void-ab-initio or become void subsequently
- explain the status of agreements in restraint of marriage, trade and legal proceedings
- describe uncertain agreements and state whether such agreements shall be valid or not
- define wagering agreements, state their legal status and distinguish between **such** agreements and other similar contracts
- state the effect of 'impossibility' on contracts and their legal status.

6.1 INTRODUCTION

You have already learnt about the term 'void agreement'. In this unit **you** will **study** about the various agreements which have been specifically declared void and the agreements which (on the face of it) appear to be void but are not treated as such. This unit also includes detailed discussion on contingent contracts.

6.2 VOID AGREEMENTS

Section 2(g) of the Indian Contract Act defined a void agreement as, "an agreement not enforceable by law". Some agreements are void-ab-initio which means that they are unenforceable right from the time they are made. For example, you learnt that an agreement with a minor or a person of unsound mind is void-ab-initio. Such an agreement does not become a contract at all. There may, however, be some agreement which, when made, are enforceable (i.e., they are contracts) but later, due to development of certain circumstances or change in circumstances, the contracts becomes unenforceable. When they become unenforceable they are called 'void contracts'. For example, **A** agrees to sell **B** a ship load of sugar on its way from Cuba to India. Due to heavy storm, the sea water enters the ship and the whole sugar gets

wet. This makes the contract void as A cannot compel B to accept wet sugar in place of sugar saying it is the same sugar, only its form having changed. So also B cannot insist A to deliver him the agreed sugar or else pay damages. Then, there are certain agreements which have been expressly declared void under certain provisions of the contract Act or any other law.

The following types of agreements have expressly been declared void under various sections of the Indian Contract Act.

- 1 Agreements by or with persons incompetent to contract (sections 10 & 11).
- 2 Agreements entered into through a mutual mistake of fact between the parties (section 20).
- 3 Agreement, the object or consideration of which is **unlawful** (section 23).
- 4 Agreement, the consideration or object of which is partly unlawful (section 24).
- 5 **Agreement** made without consideration (section 25).
- 6 **Agreements** in restraint of marriage (section 26).
- 7 Agreements in restraint of trade (section 27).
- 8 Agreements in restraint of legal proceedings (section 29).
- 9 Wagering agreement (section 30).
- 10 Impossible agreement (**section** 56).
- 11 An agreement to enter into an agreement in the future.

In Units 3 to 5 you have already read about agreements in items I to 5 listed above. We shall, now study the rest of the 'void agreements' i.e., items 6 to 12.

6.2.1 Agreements in Restraint of Marriage

According to section 26 of the Indian Contract Act, *every agreement in restraint of the marriage of any person, other than a minor, is void*. The restraint may be general or partial. Thus the party may be restrained from marrying at all, or from marrying for a fixed period, or from marrying a particular **person** or a class of persons. For example, A promised to marry none else except B, and in default pay her a sum of Rs. 2,000. A married some one else and B sued A for recovery of Rs. 2,000. Held, the agreement was in restraint of marriage and as such void (**Lowe v. Peers**).

However, a **penalty upon remarriage may not be construed as a restraint of marriage**. Thus, an agreement between two co-widows that if 'one of them remarried she should forfeit her right to her share in the deceased husband's property, has been upheld (**Rao Rani v. Gulab Rani**). Similarly, a provision in Nikah Nama (marriage agreement) by which a Muslim husband authorises his wife to divorce herself from him in the event of his remarrying a second wife is not void. Thus, if the wife divorces herself from the husband on his marrying a second wife, the divorce shall be valid, and she will be entitled to maintenance **from** him (**Badu v. Badarannessa**).

6.2.2 Agreements in Restraint of Trade

Freedom of trade and commerce is a fundamental right protected by Article 19(g) of the Constitution of India, Just as the Legislature cannot take away individual freedom of trade, so also the individual cannot barter it away by an agreement. **As per Justice James, V.C.**, "public policy requires that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the state of his labour, skill or talent, by any contract that he enters into". **Courts, therefore, do not allow any tendency to impose restrictions upon the liberty of an individual to carry on any business, profession or trade.**

In India, the law on the subject is contained in section 27 which reads: *Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void*. Thus, all agreements in restraint of trade, whether general or partial, qualified or unqualified, are void.

Examples

- 1 In Patna city 29 out of 30 manufacturers of combs agreed with R to supply him combs and not to any one else. Under the agreement R was free to reject the goods if he found there was no market for them. **Held**, the agreement amounted to restraint of trade and was thus void (Sheikh **Kalu v. Ramasaran Bhagat**).
- 2 J, an employee of a company, agreed not to employ himself in a similar business within a distance of 800 miles from Madras after leaving the company's service. **Held**, the agreement was void (Oakes & Co. v. Jackson).
- 3 A and B carried on business of braziers in a certain locality in Calcutta. A promised to stop business in that locality if B paid him Rs. 900 which he had paid to his workmen as advance. A stopped his business but B did not pay him the promised money. **Held**, the agreement was void and, therefore, nothing could be recovered on it. (Madhab v. Raj **Coomar**).

Exceptions

There are two exceptions to this rule: 1) those created by statutes, and 2) those arising from judicial interpretations of section 27.

Statutory Exceptions : Following are the exceptions created by the statutes :

- 1 **Sale of Goodwill:** The seller of goodwill of a business may agree with the buyer thereof not to carry on a similar business within specified local limits. Such a restraint shall be valid, if limits are reasonable (section 27). Please note that the reasonableness of restrictions will depend upon many factors, such as the area in which the goodwill is effectively enjoyed, the price paid for it and above all, the nature of the business. For example, a seller of imitation jewellery in England, sold his business to B and promised that for a period of two years he would not deal (a) in imitation jewellery in England (b) in real jewellery in certain foreign countries. The first promise alone was held lawful. The second promise is void and the restraint was unreasonable in point of space and nature of business (**Goldsohl V. Goldman**).
- 2 **Certain restraints in partnership:** There are four provisions under the Partnership Act which recognise agreements in restraint of trade as valid. Accordingly, partners may agree that:
 - a) A partner shall not carry on any business other than that of the firm while he is a partner [section 11(2) of the Indian Partnership Act, 1932].
 - b) A partner on ceasing to be a partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. The agreement shall be valid only if the restrictions are reasonable [section 36(2) of the Indian Partnership Act, 1932].
 - 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. Such an agreement shall be valid provided the restrictions imposed are reasonable (section 54 of the Indian **Partnership Act**, 1932).
 - d) A partner may, upon the sale of the goodwill of a firm, make an agreement that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits. Any such agreement shall be valid if the restrictions imposed are reasonable [section 55(3) of the Indian Partnership Act, 1932].

Exceptions

Under Judicial Interpretations : Following are the exceptions arising under judicial interpretation of section 27 of Indian Contract Act.

- 1 **Trade Combinations:** Business combinations with the idea of regulating business and not restraining it have been held to be desirable in public interest. Restraints imposed by such associations are, therefore, not to be declared void on grounds of restraint of trade. In the case of **Haribhai v. Sharef Ali**, four ginning factories entered into an agreement fixing uniform rate for ginning cotton and pooling

their earnings to be divided between them in certain proportions. The Bombay High Court held the agreement to be valid and enforceable. But the Courts would not allow a restraint to be imposed disguised as trade regulations. Thus, an agreement between certain persons to carry on business with the members of their caste only (**Vaithelinga v. Saminada**), and an agreement to restrict the business of sugar mill within a zone allotted to it, have been held void (**Carew & Co. Ltd. v. North Bengal Sugar Mills**).

2 Exclusive Dealing Agreements: Reasonable agreements to deal in the products of a single manufacturer or to sell the whole produce to a single dealer have been upheld to be valid and not in restraint of trade. Thus, the following agreements were upheld as enforceable:

- i) An agreement by a manufacturer of dhotis to supply 1,36,000 pairs of certain description to the defendant and not to sell goods of that kind to any other person for a fixed period (**Carliles Nephew & Co. v. Ricknauth Buckte mull**).
- ii) An agreement by a person to sell all the salt manufactured by him to a firm for five years (**Mackenzie v. Sriramiah**).
- iii) An agreement by a person to sell all the mica produced by him to the plaintiffs, and not to any other firm nor to keep any in stock (**Subha Naidu v. Haji Badshah Sahb**).
- iv) An agreement by a buyer of goods for Calcutta Market, not to sell them in Madras.

However, where a manufacturer or supplier, after meeting all the requirements of a buyer, has surplus to sell to others, he cannot be restrained from doing so (**Shaikh Kalu v. Ram Saran Bhagat**). Similarly, exclusive dealing agreements shall not be valid if their terms are unreasonable or they unreasonably check competition (**Esso Petroleum Co. v. Harper's Garage Ltd.**).

3 Service Agreements: An agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else or, directly or indirectly, take part in or promote or aid any business in direct competition with that of his employer is valid (**Charles Worth v. Macdonald**). For example, A agreed to become assistant for three years to B who was a doctor practising at Zanzibar. It was agreed that during the term of the agreement A was not to practise on his own account in Zanzibar. After one year, A started his own practice. Held, the agreement was valid and A could be restrained by an injunction from doing so,

These days it is a common practice to appoint trainees. A service bond is normally got signed whereby the trainee agrees to serve the organisation for a stipulated period. Such agreements, if reasonable, do not amount to restraint of trade and hence are enforceable. But an agreement to restrain an employee from competing with his employer after the termination of his employment may not be allowed by the courts. Thus, in the case of **Brahmaputra Tea Co. v. E. Scarth**, where an attempt was made to restrain a servant from competing for 5 years after the period of service, the court disallowed it,

Check Your Progress A

1 Are the following agreements valid?

- a) A sells the goodwill of his business in South Delhi to B and agrees with him not to carry on a similar business within the boundaries of South Delhi.

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- b) X, an optical surgeon, employs Y as his assistant for a term of 3 years and y agrees not to practise as a surgeon during this period.

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- c) A, a shopkeeper of Hauz Khas Market, agrees to pay B, his rival in business, a sum of money as compensation if B closes his business there.

.....

- 2 N sold his business and goodwill by an agreement. The agreement provided that the company: (i) not to practise the same trade for 25 years, and (ii) not to engage in any business competing or liable to compete in any way with the business that the company may engage itself in.

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- 3 A and B were rival shopkeepers in the same locality. A agreed to pay B a certain sum of money if B closes his business in that locality. B accordingly did so, but A refused to pay. Can B claim the promised amount.

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- 4 A, a doctor in Madras, employed another doctor B, as an assistant for a period of three years on a salary of Rs. 1,000 per month. The agreement between A and B provided that after termination of his employment B shall not practise as a doctor in Madras within a radius of one mile of A's dispensary for a period of one year, and if B did so, B should pay Rs. 10,000 to A as liquidated damages. Immediately after the termination of his employment B begins to practise as a doctor next door to A's dispensary. Shall A succeed if he sue B for the recovery of Rs. 10,000?

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6.2.3 Agreements in Restraint of Legal Proceedings

Section 28 of the Indian Contract Act regards the following two restraints of legal proceedings as void.

- 1. **Restriction on Legal Proceedings:** An agreement by which a party is restricted absolutely from enforcing his legal rights under, or in respect of, any contract by the usual legal proceedings in the ordinary tribunals. For example, a contract contains a stipulation that no action should be brought upon it in case of breach, Such a stipulation would be void because it would restrict both parties from enforcing their rights under the contract in the ordinary tribunals. But, a contract whereby it is provided that all disputes arising between the parties should be referred to the arbitration, whose decision shall be accepted as final and binding on both parties of the contract, is not invalid. The courts have power, in spite of such a stipulation, to set aside the decision of the arbitrator on grounds of misconduct on the part of the arbitrator.

A contract may contain a double stipulation that any dispute between the parties should be settled by arbitration, and neither party should enforce his rights under it in a court of law. Such stipulation would be valid as regards its first branch. (i.e., all disputes between the parties should be referred to arbitration, because that stipulation itself would not have the effect of ousting the jurisdiction of the courts. But the latter branch of the stipulation (i.e, neither party should enforce his rights under it in a court of law) would be void because by that the jurisdiction of the court would be necessarily excluded. Further, it should be noted that the restriction imposed upon the right to sue should be absolute in the sense that the parties are precluded from pursuing their legal remedies in the ordinary tribunals. Thus, where there are two courts, both

of which have jurisdiction to try a suit, an agreement between the parties that the suit should be filed in one of those courts alone and not in the other, does not contravene the provisions of section 28 (**Milton & Co. v. Ojha Automobile Co.**).

- 2 **Limitation of Time:** Another type of agreement rendered void by section 28 is where an attempt is made by the parties to restrict the time within which an action may be brought so as to make it shorter than that prescribed by the law of limitation. For example, according to the Indian Limitation Act, an action for breach of contract may be brought within three years from the date of breach. If a clause in an agreement provides that no action should be brought after two years, the clause is void.

A clause in a policy of life insurance declaring that "no suit to recover under this policy shall be brought after one year from the death of the assured" was held void. However, cases of the above sort are distinguished from those which provide for surrender or forfeiture of rights if no action is brought within the stipulated time. A clause in a policy of life insurance provided "if a claim be made and rejected and an action or suit be not commenced within three months after such rejection..., all benefits under the policy shall be forfeited." This clause was held valid.

6.2.4 Uncertain Agreements

An agreement is called an uncertain agreement when the meaning of that agreement is not certain or capable of being made certain. Such agreements are declared void under section 29.

Examples

- 1 A agrees to sell to B "one hundred tons of oil". The agreement is void for uncertainty since there is no clarity in the agreement what kind of oil was intended.
- 2 A agrees to sell B "my white horse for Rs. 5,000 or Rs. 10,000". There being nothing to show which of the two prices was to be given, the agreement is void.

In the case of **Guthyng v. Lynn**, a horse was bought for a certain price coupled with a promise to give £5 more if the horse proved lucky. The agreement was held void for uncertainty. The Court had no machinery to determine what luck the horse had brought to the buyer.

Cases relating to uncertain agreements have generally arisen in connection with the sale of goods where uncertainty is related to the price. For example, where goods are sold, the price being payable subject to 'hire-purchase' terms (**Scammell v. Custen**) or at such price as should be agreed upon between the parties (**May & Butcher v. The Kind**), the agreement in each case was held void for uncertainty as to price.

However, you should note that where the price is left to be fixed by a third party, there is no uncertainty and the agreement will be enforceable. For example, where A agrees to sell to B one thousand kilograms of rice at a price to be fixed by C, there is no uncertainty as the price is capable of being made certain. The agreement, therefore, is not rendered void. Similarly, if the agreement is totally silent as to price, it will be valid, as in that case, section 2 of the Sale of Goods Act will apply and the reasonable price shall be payable.

Certain other illustrations where agreements have been declared void for uncertainty :

- 1 An agreement to grant a lease when no date of commencement is expressly or impliedly fixed (**Giribala Dasi v. Kalidas Bhanga**). But when the commencement of a lease, is dependent upon a contingency, which has occurred, the agreement is not void (**Sitlani v. Viroosing**).
- 2 An agreement to pay a certain amount, after deductions as would be agreed upon between parties (**Kalpna Devara v. Krishna Mitter**).
- 3 A contract to negotiate (**Courtney and Fairbairn Ltd. v. Tolani Bors. (Hotels) Ltd.**)
- 4 A defendant passed a document to the Apra Savings Bank whereby he promised

to pay to the manager of the bank the sum of Rs. 10 on or before a certain date and a similar sum monthly every succeeding month. It was held that the instrument could not be regarded as a promissory note as it was impossible from its language to say for what period it was to continue and what amount was to be paid under it (*Carter v. The Agra Savings Bank*).

Certain illustrations where agreements have been held not to be uncertain:

- 1 A, who is a dealer in coconut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade indicates the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.
- 2 A agrees to sell B "all the grain in my granary at Ramnagar". There is no uncertainty here to make the agreement void.
- 3 A agrees to sell B one hundred tons of coconut oil 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.

6.2.5 Wagering Agreements

The Indian Contract Act does not define a wager. A wagering agreement, according to Sir William Anson, is a *promise to give money or money's worth upon the determination or ascertainment of an uncertain event*. Cockburn C.J. defined it as "a contract by A to pay money to B on the happening of a given event in consideration of B's promise to pay money to A on the event of no happening." Thus, a wagering agreement is an agreement 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. For example, A and B bet as to whether it would rain on a particular day or not—A promising to pay Rs. 100 to B if it rained, and B promising an equal amount to A, if it did not. This agreement is a wager.

Essentials of a Wagering Agreement: From the above description of a wagering agreement, following essentials may be noted.

- 1 Uncertain event; The first thing essential to wager is that the performance of the bargain must depend upon the determination of an uncertain event. An event may be uncertain either because it is yet to take place or it might have already happened but the parties are not aware of its result.
- 2 Mutual chances of gain or loss: The second essential feature is that upon the determination of the contemplated event each party should stand to win or lose. If either of the parties may win but cannot lose, it is not a wagering agreement.
- 3 Neither party to have control over the event: Neither party should have control over the happening of the event one way or the other. If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of a wager.
- 4 No other interest in the event: Further, neither party should have interest in the happening of the event other than the sum or stake he will win or lose.
- 5 Promise to pay money or money's worth: Lastly, to constitute wager, the promise should be to pay money or money's worth only.

Effects of Wagering Agreement: An agreement by way of wager is void. Section 30 provides: *agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made*. Thus, in India, unless the wager amounts to a lottery (it is a crime according to section 294-A of the Indian Penal Code), it is not illegal but simply void. For example, A borrows Rs. 500 from B to pay to C, to whom A has lost a bet. Agreement between A and B is valid. It should be noted that in Maharashtra and Gujarat they have been declared illegal.

Lotteries: Lottery is an arrangement for the distribution by chance among persons purchasing tickets. The dominant motive of the participants need not be gambling. Where, however, a wagering transaction amounts to a lottery, it is illegal and comes under section 294-A of the Indian Penal Code. This section reads as follows:

Whoever keeps an office or place for the purpose of drawing any lottery not authorised by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

And whoever published any proposal to pay any sum or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

In the case of Universal Mutual Aid and Poor Houses **Association v. Thoppa Naidu**, monthly subscriptions were collected to raise a donation fund to carry out charitable objects. A substantial portion of the interest accruing on the fund so raised was utilised in **granting** loans free of interest and cash bonuses to certain subscribers, the names and amounts to be determined by means of drawings. The court held that the business carried on by the company was a lottery and, therefore, illegal though there was a charitable or philanthropic purpose annexed to the lottery. The company was, therefore, **ordered** to be wound up.

A cycle and gramophone dealer started a chit with 100 subscribers, each subscribing Rs. 3 per month, for a period of 20 months. There was to be a monthly draw in which the subscriber whose number or name drawn was given a cycle or a gramophone at his option and relieved from further liability to pay subscriptions. In the 21st month each of the subscribers who did not draw at any of the previous drawings were given a cycle or gramophone, it was held that the transaction amounted to a lottery and was, therefore, illegal (Public Prosecutor v. M. Naidu).

Does the permission from the Government to hold lottery make it legal? In the case of Sir **Dorabji Tata v. Edward F. Lance**, where the Government of India had sanctioned a lottery called the War Loan Lottery, the plaintiff sued on a **contract** to purchase a ticket bearing a particular number, and for an injunction restraining the Secretary of the Turf Club from proceeding with the drawing. The defence was that, it being a wagering contract, the suit was not maintainable. The court held that the permission granted by the Government will not have the effect of overriding **section 30** of the Indian Contract Act and making such a lottery legal. Its only effect was that the person responsible for running the lottery would not be punishable under the **Indian Penal Code**.

Is purchasing a lottery ticket an offence? It is not an offence to buy a lottery ticket. **Section 294-A** of the Indian Penal Code is aimed at promoters of lotteries (**Barclay v. Pearson**). In one of the recent judgments, Supreme Court held that sale of a lottery ticket confers on the **purchaser** thereof two **rights**; (a) a right to participate in the draw, and (b) a right to claim a prize contingent upon his being successful in the draw (**H. Anraj v. Government of Tamil Nadu**). Thus this decision of the **Supreme Court**, by recognising the right of the purchaser of a lottery ticket has reversed the **earlier** outlook on the subject. It may well be said that where a lottery is authorised by the Government, it shall not be illegal as was decided in the case of Sir Dorabji Tata v. Edward F. Lance. Consequently, collateral transactions shall **also be** enforceable. Thus, where A lends Rs. 2,000 to B for purchase of lottery tickets, A shall be able to recover the same.

Exceptions to Wagering Agreements (Transactions Held 'Not Wagers': The following transactions have been held not to **be wagers**:

- 1 Transactions for the sale and **purchase** of stocks and shares or for the sale and delivery of goods, with a clear intention to give and take delivery of shares or goods, as the case may be. You should **note** that, where the intention is only to **settle in** price differences, the transaction is a wager and hence void.
- 2 Prize competitions which are games of skill, **e.g.**, picture puzzles, athletic competitions, etc. Thus, an agreement to enter into a wrestling contest in which the winner was to be rewarded by the entire sale proceeds of tickets, was held **not** to be a wagering contract (**Babasaheb v. Rajaram**). A crossword puzzle in which prizes depend upon **correspondence** of the competitor's solution with a **previously** prepared solution kept with the **editor** of newspapers is a lottery and therefore, a wagering **transaction**. According to **Prize Competition Act, 1955**.

prize competitions in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.

- 3 An agreement to contribute to a plate or prize of the value of above Rs. 500 to be awarded to the winner of a horse race. (section 30).
- 4 Contracts of insurance are not wagering agreements even though the payment of money by the insurer may depend upon a future uncertain event. contracts of insurance differ from the wagering agreements in the following respects:
 - a) It is **only** the person possessing an insurable interest that is permitted to insure life or property, and not any person, as in the case of a wager.
 - b) In the case of fire and marine insurance, only the actual loss suffered by the party is paid by the company and not the full amount for which the property is insured. Even in the case of life insurance, **the** amount payable is fixed only because of the difficulty in estimating the loss caused by the death of the assured in terms of money, but the underlying idea is only indemnification.
 - c) Contracts of **insurance** are regarded as beneficial to the public and are, therefore, encouraged. Wagering agreements on the other hand are **considered** to be against public policy.

6.2.6 Agreements to do Impossible Acts

Section 56 of the Indian Contract Act declares that an agreement to do an act impossible in itself is void. Thus, where A agrees with B to discover treasure by magic, the **agreement** is void. We may say that parties who purport to agree **to** the doing of **something** obviously impossible must be deemed not to be serious or not to understand **what** they are doing. Moreover, law cannot regard a promise to do something **obviously** impossible as of any value and such a promise is, therefore, no consideration.

An agreement **to** do an act impossible in itself should be contrasted from a contract which becomes impossible of performance. Subsequent impossibility renders a contract void when the act becomes impossible. Details on subsequent impossibility and its effect **shall** be discussed in Unit 7.

6.2.7 Restitution

Restitution means "return" or "restoration". When an agreement or a contract becomes void, **the** person who has received any benefit or advantage under such **agreement** or contract must **restore** it or compensate for it to the **person from whom** he has received it (section 65).

Examples

- 1 A pays B Rs. 1,000 in consideration of **B's** promising to marry C, who is A's **daughter**, C is dead at the time of the promise. The agreement is void. B must repay Rs. 1,000 **to A**.
- 2 A contracts with **B** to deliver to him 250 quintals of rice before the first of May. **A** delivers 130 quintals only before that day and none after. **B** retains 130 quintals after the first of May. B is bound to pay A for 130 quintals.
- 3 A, a singer, contracts **with B** the manager of a theatre, to sing at his theatre for two nights in every week during the next **two** months and B agrees to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and **B**, in consequence rescinds the contract. B must pay **A** for the five nights on which she had sung.
- 4 In the above example, if **A** receives an advance of Rs. 1,000 and is unable to sing due to illness, **A** must return the advance. B cannot sue A for the loss he has suffered due to **A's** illness.

It must be noted that the law of restitution is applicable only to those contracts which become void later on by some event which the **promiser** could not prevent or because of supervening impossibility. The principle of restitution does **not** apply to the contracts which are void-ab-initio with the exception where the minor has entered into agreement by **misrepresenting** his age.

6.3 CONTINGENT CONTRACTS

6.3.1 What is a Contingent Contract?

A contingent contract is a contract to do or not to do **something** if some event, collateral to such contract, does or does not happen (section 31). For example, **A** contracts to pay **B** Rs. 10,000 if **B's** house is burnt. This is a contingent contract.

The following are the essential features of a contingent contract.

- 1 ~~The~~ performance of a contingent contract is made dependent upon the happening or non-happening of some event.
- 2 The event on which the performance is made to depend, is an event collateral to the contract i.e., it does **not** form part of the reciprocal promises which constitute the **contract**. For example, where **A** agrees to deliver 100 bags of wheat and **B** agrees to pay the price only **afterwards**, the contract is a conditional contract and not contingent, because the event on which **B's** obligation is **made** to depend is a part of the promise itself and not a collateral event. Similarly, where **A** promises to pay **B** Rs. 10,000 if he marries **C**, it is not a contingent contract.
- 3 The contingent event should not **be** the mere will of the promisor. For instance, if **A** promises to pay **B** Rs. 1,000 if he so **chooses**, it is not a contingent contract. However, where the event is within the **promisor's will** but not merely his will, it may be a contingent contract. ~~For example,~~ if **A** promises to pay **B** Rs. 1,000 if **A** left Delhi for Bombay, it is a **contingent** contract, because going to Bombay is an event no doubt within **A's** will, but is not merely his will.

6.3.2 Rules Regarding Enforcement of Contingent Contracts

The rules regarding contingent contracts are **summarised** hereunder (sections 32 to 36):

- 1 Contracts contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event **has happened**. And if, the event becomes impossible, such contract becomes void (section 32).

Examples

- i) **A** makes a contract with **B** to buy **B's** horse if **A** survives **C**. This contract cannot be enforced by law unless and until **C** dies in **A's** life-time.
 - ii) **A** contracts to pay **B** a **sum of money when** **B** marries **C**. **C** dies without being married to **B**. The contract becomes **void**.
- 2 Contracts contingent upon the non-happening of a certain future event can be enforced when the happening of that event **becomes** impossible, and not before (section 33). **For example,** **A** agrees to pay **B** a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.
 - 3 If a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything, which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. (section 34). **For example,** **A** agrees to pay **B** a sum of money if **B** marries **C**. But **C** marries **D**. The marriage of **B** to **C** must now be considered impossible, although it is possible that **D** may die and that **C** may afterwards marry **B**.
 - 4 Contracts contingent upon the **happening** of an uncertain **specified** event within a fixed time become void if, at the expiration of the time fixed, such event has not happened or if, before the time fixed, such event becomes impossible (section 35). **For example,** **A** promises to pay **B** a sum of money if a certain ship returns within a year. The contract may be enforced if the ship **returns** within the year, and becomes void if the ship is burnt within the year.

- 5 Contracts contingent upon the non-happening of a specified event within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed expired, if it becomes certain that such event will not happen' (section 35). For example, A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return-within the year, or is burnt within the year.
- 6 Contingent agreement 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,

Examples

- i) A agrees to pay B Rs. 1,000 if two parallel straight lines should enclose a space. The agreement is void.
- ii) A agrees to pay B Rs. 1,000 if B will marry A's daughter C and C was dead at the time of the agreement. The agreement is void.

6.3.3 Difference Between a Contingent Contract and a Wagering Agreement

- 1 A wagering agreement consists of reciprocal promises while a contingent contract may not consist of reciprocal promises.
- 2 A wagering agreement is of a contingent nature while a contingent contract may not be of a wagering nature.
- 3 A wagering agreement is void while a contingent contract is valid.
- 4 In a wagering agreement parties have no other interest in the subject matter except for winning or losing of wagering amount while it is not so in contingent contracts.
- 5 In a wagering agreement the future event is the sole determining factor while in a contingent contract future event is only collateral.

Check Your Progress B

- 1. Are the following contracts valid and enforceable by law?
 - a) A contracts to pay B Rs. 10,000 if B's house is burnt.
.....
.....
 - b) A contracts with B to buy B's horse if A survives C.
.....
.....
 - c) A agrees to pay B Rs. 10,000, if he makes two parallel lines meet.
.....
.....
- 2 M lost a sum of Rs. 8,500 to L & Co. on bets on horse races and on his failure to pay was reported to the organising club. M subsequently executed in favour of L & Co. a hundi for Rs. 8,500 in consideration of their withdrawing his name from the club and thereby preventing his being posted as a defaulter. When L & Co. demanded payment, M pleaded that the consideration was unlawful. Decide.

6.4 LET US SUM UP

Void agreements are those agreements which are not enforceable by law. These are agreements in restraint of marriage, agreements in restraint of trade, agreements in restraint of legal proceeding, agreements which are uncertain in their meaning and wagering agreements. In all the aforesaid cases, law declares such agreements to be of no legal effect except in certain exceptional circumstances..

A wagering agreement is an agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event. Wagering agreements are void in India. However in Maharashtra and Gujarat they are illegal.

Contingent contracts are a class of conditional contracts. It is a contract to do or not to do something if some event, collateral to such contract, does or does not happen.

The chief characteristic of Contingent Contracts is that their performance depends upon happening or non-happening of certain event in future and such event must be uncertain and collateral to the contract.

6.5 KEY WORDS

Against Public Policy : Against the general interest' of the public.

Collateral Transaction: A transaction which is helping or subsidiary to the main transaction.

Exclusive Dealing Agreements: An agreement to deal exclusively in the products of a single manufacturer or an agreement to sell the whole produce to a single dealer.

Insurable Interest: A person is so situated with regard to the thing insured that he would have benefit by its existence and loss from its destruction.

Prima Facie: Latin expression which means 'on the face of it'.

Tribunals: Courts and other judicial machinery.

Void-ab-initio: Latin expression which means **unenforceable** from the beginning.

6.6 ANSWERS TO CHECK YOUR PROGRESS

A 1 a) Yes b) Yes c) No, restraint of trade.

2 The first part of the agreement is valid being **reasonably** necessary for the protection of the purchaser's interest. But the second part by which he was prohibited from competing with the company in any business which the company might carry **on** was unreasonable. and thus void (Nordenfelt v. Maxim Nordenfelt Gun Co.).

3 No, the agreement being in restraint of **trade** is void (Madhab Chander v. Raj Coomar).

4 A shall not succeed. Any restraint of trade operative after the termination of employment is bad in law (Oakes & Co. v. Jackson).

B 1 a) Yes. It is a contingent contract

b) Yes. Again it is a contingent contract but can be enforced only if A survives C.

c) No. Agreement is void (**Section 36** and Section 56).

2 M shall be **liable** to **pay** the consideration in the form of L & Co's promise to withdraw. **Ms** name from the club in order to prevent M being posted as a defaulter was legal. **A** wagering contract being only void does not affect collateral transactions.
(Leicester & Co. v. **S.P. Millick**)

6.7 TERMINAL QUESTIONS

1 "An agreement in restraint' of trade is void". Examine this statement mentioning exceptions, if any.

2 Discuss the law regarding wagering **agreements** under the Indian Contract Act.

General Law of Contracts II

- 3 A promises to marry B only and none else and in the event of breach agrees to pay Rs. 50,000. A marries C, can B claim Rs. 50,000?
- 4 What are contingent contracts? State the rules regarding enforcement of such contracts. Give illustrations.

Note : These questions **will** help you to understand the unit better. Try to write **answers for them**. But do not submit **your** answers to the university. These are for your practice only.