AILET

Legal Reasoning: Void Agreements for CLAT 2020

Aditya Anand · 02 Jan 2020

Legal Reasoning: Void Agreements for CLAT 2020

Introduction

Any agreement between two or more parties that is enforceable by law is a contract. In India, contracts are governed by the Indian Contract Act, 1872 (**ICA**) which is a statute containing detailed provisions on various aspects of contracts including execution and enforcement. The various provisions contained in the Act are referred to as "Sections".

For a detailed study of the basics of contracts, click Here

Section 2(h) of the ICA defines a contract as *"an agreement enforceable by law*". This implies that an agreement which is not enforceable by law shall not constitute a valid contract.

Accordingly, either party to such agreement cannot approach a court of law to get the agreement enforced against any/all other parties to the agreement. Agreements which are not enforceable by law are also called "void" agreements.

The ICA specifically declares certain kinds of agreements to be void agreements.

Void Agreements under the Indian Contract Act

The different kinds of agreements which the ICA specifically declares to be void can be understood as follows:

1. Agreement without consideration – Each party entering into an agreement promises to do something for the other in return for something being done for them. This is called "consideration" under contract law. For example, if A and B enter into a contract wherein A promises to sell his car to B for Rs. 50,000, the payment of Rs. 50,000 by B forms the consideration for A to sell his car and the sale of a car by A forms consideration for B to pay Rs. 50,000 to him. Section 25 of the ICA states that as a general rule, agreements without

consideration are void. If in the above example, A promises to give his car to B for free, such agreement is void because there is no consideration for A to give his car to B due to which it will be justified if A later refuses to give his car to B. The said general rule is subject to certain exceptions. For instance, a gift deed does not involve consideration as the property is transferred under a gift deed only out of love and affection.

2. Agreement having unlawful consideration – While each agreement, in order to be valid, must have some consideration, the consideration must also be lawful and not illegal. Section 23 of ICA states that an agreement having an illegal consideration is void. For example, if A agrees to pay Rs. 10,000 to B for the murder of C, the murder of C by B is an unlawful consideration as murder is illegal and an offence under the law. Hence, such agreement shall be void and not enforceable in a court of law by either A or B.
3. Agreement in restraint of marriage – Section 26 of the ICA states that an agreement in restraint of the marriage of any person, other than a minor, is void. For example, if A promises to pay B Rs. 10,000 if B remains un-married till the age of 50 years, such agreement is void and not enforceable either by A or B. This restriction does not apply to a person who is minor in age since minors are generally barred from marrying by the personal law governing them.
4. Agreement in restraint of trade – Section 27 of the ICA states that each agreement which restrains a party from exercising a lawful profession, trade or business of any kind is void to the extent of imposing such restriction. For example, if A agrees to pay B, a doctor, Rs. 10,000 if B does not practice medicine anywhere in Kolkata for 3 years, such agreement between A and B is void. While determining whether an agreement is void as per section 27 or not, the Indian courts generally do not hold an agreement to be void if the restriction imposed therein is reasonable in the court's opinion. For example, if Coca Cola or McDonald's awards its franchise to a particular company, a condition may be imposed on such company/franchisee that it shall not sell competing goods during the period for which the franchise agreement is in force. Since such condition only facilitates the distribution of goods of Coca Cola/McDonalds (the franchisor), it shall not make the franchise agreement to be void under section 27 of ICA.
5. Agreement in restraint of legal proceedings – Section 28 of the ICA states that an agreement which absolutely prohibits a party from enforcing his/her legal right/rights through legal proceedings or imposes a time limit for enforcing such legal rights through legal proceedings is void. For example, an agreement between A and B stating that enforcement of another contract between A and B cannot be sought after expiry of 2 years from the date of breach of

such contract shall be void if the Indian law otherwise permits such enforcement to be sought at any time within 3 years from the date of breach of the contract. In other words, the agreement cannot take away the legal rights available to either party under the applicable law.

6. Agreement which is uncertain – Section 29 of the ICA states that agreements whose meaning is not certain and also not capable of being made certain are void. For example, if A and B enter into an agreement for sale of a "few" apples by A to B for Rs. 100, such agreement is void because the term "few" is vague and it is not clear as to how many apples are to be sold by A to B.
7. Agreements by way of wager – Section 30 of the ICA states that an agreement by way of the wager is void. A wager essentially means a bet between two or more persons and an agreement based on a bet is void. For example, A believes that it will rain on 1st January 2020 while B believes that it will not rain on that day. Accordingly, A and B reach an agreement wherein A agrees to pay B a sum of Rs. 100 if it does not rain on 1st January 2020 while B agrees to pay Rs. 100 to A if it rains on that day. Such agreement shall be void as per section 30 of the ICA therefore neither A or B can get it enforced by a court of law.
8. Agreement to do an impossible act – Section 56 of the ICA states that an agreement involving the doing of an impossible act by either party is void. For example, A promises to pay B Rs. 100 if B flies in the air for one hour. Since human beings cannot fly, such an agreement is void.

All content written above is only meant to be read and understood for conceptual clarity and not memorized. The various sections of ICA referred above are only for reference and also need not be memorized.

Read our post on void agreements here.

Read CLATapult's post on Legal reasoning.