



CONTINGENT CONTRACTS & WAGERING AGREEMENTS

Arpeeta Dash (B.A.LLB-1st year)

BHUBHANESWAR, ODISHA, INDIA,

ABSTRACT

This research paper consists of Contingent Contracts and Wagering Agreements. It will also provide the difference between Contingent Contracts and Wagering Agreements. The paper will provide brief definition and explanation to both the topics with respect to Indian Contract Act, 1872 and why Wagering is not considered as a professional practice in India. This paper will also give brief analysis to both the topics with relevant case laws of Supreme Court of India. This paper will also talk about the sections with illustrations too to bring clarity in understanding.

INTRODUCTION

The term ‘Agreement’ means when it fulfils the ingredients of Indian Contract Act, 1872. It means the set of promises when taken into consideration forms an agreement. The definition of agreement is well mentioned in Section 2(e) of Indian Contract Act, 1872. Agreements can be valid, voidable, void or void ab initio. In agreement, four conditions are needed to be fulfilled that are proposal, acceptance, promise and consideration.

Whereas, the term ‘Contract’ means when the agreement gets enforceable by law that means all the ingredients of contract are valid in the eyes of law to form a contract. The definition of Contract is well mentioned in section 2(h) of Indian Contract Act, 1872. Contracts which are formed can be valid, void or voidable. Section 10 which forms the basic structure of contract talks about what agreements are contracts. It further states that the parties should give free consent and should be competent to form contracts, they should have lawful consideration to lawful object and hereby not expressly declared void.

Now, the term ‘Wagering Agreement’ or ‘Agreement by way of wager’ is also considered to be void. Section 30 of Indian Contract Act, 1872 talks about Wagering Agreements and also states why horse racing is considered to be game of skill rather than game of chance. We will also try to understand further about Wagering agreement through case law.

The term ‘Contingent Contract’ means a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. These contracts are also called conditional contracts since it sets a condition, being uncertain about the occurrence or non-occurrence of the event. Contingent contracts are covered in the sections from 31 to 36 of Indian Contract Act, 1872.

WAGERING AGREEMENTS

Section 30 of Indian Contract Act talks about ‘Agreements by way of wager, void’. It further states that no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any

wager is made. Wagering means betting that is promising an amount upon the determination of some future uncertain event.

Illustration: - a) A promises B that he will bet an amount of 10000 rupees if India wins the world cup while B promises A that he will give the same if India loses the world cup. Now, this agreement is void since it is done through way of wager.

b) C and D promises each other to pay a certain amount whether it will rain today or not. Here, the agreement is void since rain is uncertain future event and C and D are betting with certain price whether who wins and who loses.

• *Why Wagering is considered as an illegal professional practice in India?*

The Indian court of law has given the discretion to state whether they'd make wagering legal or illegal in their state. But the court has strictly barred wagering agreements. In India, if a person will take wagering as their profession, the society will consider it as disgrace. The parents would be unable to speak about their child's profession in the society as it is something which is going against the law. If a person will practice wagering as profession, then he would spend all the money on betting rather than for his family and household. People will start becoming lazy and will get an addiction towards betting. Therefore, Wagering is considered as an illegal professional practice in India but some states like Goa, Sikkim consider wagering as legal. It is because they get the benefit through taxes and these are also called state lottery. Private lotteries are banned in India.

• *Why horse racing is considered as game of skill and not game of chance?*

To begin with the answer, the term game of skill means which requires adequate knowledge and intelligence about that particular game whereas the term game of chance totally depends on luck and is considered as illegal. So, when the player chooses a horse, it does not only look after the colour, physique of the horse but also, he looks after the health records, past performance records, and different documents before he chooses his horse for horse racing. Therefore, horse racing is considered as a game of skill and not game of chance.

• *Essentials of Wagering Agreement*

- 1) Promise to pay money or money's worth.
- 2) The promise must take place on an uncertain event.
- 3) There must be two parties, one acquiring benefit while the other acquiring loss.
- 4) There must be no control over the event.
- 5) There must be no other field of interest.

6) The agreement must amount to void.

• *Is Online Rummy considered as game of skill?*

In ¹⁾ **Andhra Pradesh Vs Satyanarayana, AIR 1968**, it was held that Online rummy is considered as game of skill and not game of chance since the cards are gathered in sequence which requires adequate knowledge to play it. It is similar to manual rummy and cannot be considered as game of chance but game of skill.

• *Exceptions to Wagering agreement.*

1) Insurance contracts.

2) Game of chance contracts.

3) Horse racing competitions.

CASE ANALYSIS

• ²⁾ Gherulal Parakh Vs Mahadeo Das Maiya Case {1959 SC}

In this case, the appellant and respondent entered into a partnership agreement and there was a condition that if the appellant takes the agreement into loss, then the amount will be distributed equally and will be paid to other wheat firms. Certainly, the agreement was a loss and the respondent paid the whole amount to third party. Later, when he approached appellant for the money that is share of liability, he rejected it. The respondent sued appellant in the court of law. The court ruled that the agreement was void under section 30 since it's a wagering agreement. But cannot be forbidden by law under section 23 of Indian Contract Act, 1872. Hence, in its final statement, it stated that the agreement intending to wager cannot be forbidden by the law under section 23 of Indian Contract Act, 1872.

CONTINGENT CONTRACTS

Section 31 of Indian Contract Act, 1872 talks about 'Contingent contracts, defined'. It further states that a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. These contracts are called conditional contracts and it is done to indemnify

the loss. This means the contracts are set up on a condition irrespective whether the event would happen or not happen.

Section 32-36 also talks and defines about contingent contracts and we will try to understand it one by one.

- Section 32: - Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

This means that if the event happens then only the contract can get enforceable by law but if it not happens or becomes impossible then it is not enforceable.

Illustration: A tells B that if he marries C then he will pay 20000 rupees. B marries C. Therefore, A has to pay the sum which was promised to B.

- Section 33: - Enforcement of contracts contingent on an event not happening-Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

This means the contract is only enforceable when the event does not happen or becomes impossible.

Illustration: - A tells B that if he does not marry C then he will pay him 20000 rupees. C dies. Therefore, A has to pay the sum which was promised to B.

- Section 34: - If the future event on which a contract is contingent is the way in which 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.

This means the contract will become impossible if the living person makes the contingent contract impossible.

Illustration: - A tells to B that if he marries C, he will pay 20000 rupees. B marries C but later, C falls in love with D and marries him. The contract is somehow impossible but can be a valid contingent contract if C comes back to B again.

- Section 35: - Contingent contracts to do or not to do anything if a specified uncertain event happens 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.

Illustration: - A tells to B that if he marries C within 6 months then he will pay 20000 rupees but B takes time and marries C after 7 months. Here, A does not have to pay B because the event didn't take place in specified time and makes the contract void.

- Section 36: - Contingent agreements 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 agreement at the time when it is made

This means if the event becomes impossible before the performance then it becomes void.

Illustration: - A tells to B that he will pay him 20000 rupees if he marries C. But unfortunately, before B could perform the contract, C dies. Therefore, the agreement becomes void.

CASE ANALYSIS

- ³⁾ Commissioner of excess profit tax vs ruby general insurance co. Ltd (1957)

The respondent was an insurance company and one day, the appellant contended that out of 100 percent, 40 percent were for unexpired risks and the remaining should be deducted out of total capital. But the respondent stated it as contingent and not a contract of insurance. The court stated that the portion kept aside cannot be included for the capital hence cannot get deducted. The court also brought contract of insurance under the ambit of contingent contract.

- WHAT IS THE DIFFERENCE BETWEEN CONTINGENT CONTRACTS AND WAGERING AGREEMENTS?

1) The contingent contract is enforceable by law while the wagering agreements are void in the eyes of law.

2) Section 31 talks about Contingent contracts with proper definition while section 30 talks about wagering agreements with no definition of wager.

3) In contingent contract, there is a field of interest taking place on uncertain future event while in wagering agreement, it is all about one party winning and gaining the profit while the other party losing and getting loss.

4) The uncertain event called collateral on which the contract has to be performed in contingent contract but in wagering agreement, it depends on the uncertain event to decide which party will lose and which party will win.

5) There may not be reciprocal promises in contingent contracts but in wagering agreements, there is involvement of reciprocal promises.

6) A contingent contract is a contract to indemnify the loss while wagering agreement involves paying money or moneys worth on the outcome of uncertain event.

7) Contingent contracts are legal in the eyes of law while wagering agreements are illegal in the eyes of law.

CONCLUSION

Through this research paper, we can conclude that wagering agreements are void whereas contingent contracts are valid in nature. Therefore, our society should opt for contingent contracts and not wagering agreements. This research paper also covered the sections from 30 to 36 of Indian Contract Act, 1872 and also provided difference between contingent contracts and wagering agreements. This paper also provided two cases each to analyse both the topics briefly.

REFERENCES

➤ CASES REFERRED: -

- 1) Andhra Pradesh Vs Satyanarayana {1968 AIR 825}
- 2) Gherulal Parakh Vs Mahadeo Das Maiya Case {1959 AIR 781}
- 3) Commissioner of excess profit tax vs ruby general insurance co. Ltd {1957 AIR 669}

➤ BOOKS OR STATUTES REFERRED: -

- 1) Bare act by professionals

➤ ONLINE SOURCES: -

- 1) iPleaders