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# WAGERING AGREEMENTS: AN IN-DEPTH STUDY OF RELEVANT PROVISIONS AND CASE LAWS



## ABSTRACT

**Wilson Mizner rightly said, "Gambling is the sure way of getting nothing for something."**

*A wagering agreement is the one where the terms stated in an agreement are uncertain or unpredictable. Such an agreement is considered to be void under the Indian Contract Act, 1872. This paper provides an in-depth study on the provisions related to agreements by way of wager under the Indian jurisdiction.*

*This paper is organized into three parts. The first part introduces wagering agreements as given under Section- 30 of the Indian Contract Act, 1872 and how the term 'Wager' has been time and again defined through judicial interpretations. It also lays down some research objectives which I have attempted to answer in this paper. The second part attempts to lay down the provisions after which an agreement will be termed as wagering agreement. The four key parameters namely Uncertainty of occurrence, reciprocal win or loss, no control over the occurrence, lack of any other interests makes an agreement a wagering one. This part also deals with the concept of speculative and collateral transactions. The third and the last part delves into the exception of 'Skill' in wagering agreements with the help of the famous case of*

*'Varun Gumber v. Union Territory of Chandigarh', as decided by the Punjab & Haryana High Court in the year 2017.*

## INTRODUCTION

The section-30 of the Indian Contract act, 1872 defines "all agreements by way of wager to be void".[1] This means that terms of such an agreement based on "uncertain events"[2] cannot be enforced.

However, the definition does not include what 'wager' is itself, thus, leaving room for a smorgasbord of creative judicial interpretations based on the contemporary circumstances like technology, furtherance of law and facts of each case. The most notable of these interpretations was in the "Carlill v. Carbolic Smokeball Co."[3] case where Lord Hawkins lays down the 4 yardsticks or core features to determine whether an agreement is by way of wager or not, these yardsticks find relevance till date.

With regard to Speculative and Collateral transactions, courts have laid down lucid guidelines to act as a touch stone for a wagering agreement, e.g. Intention and not mere words are held as an important determinant of wager - "real object of the parties must be discovered";[4] something which is void , may still be legal.

Using a case study, we shall further delve into the recognition of 'skill' as an exception to a wagering agreement and how this particular 19th century judgement has sprung opened tremendous untouched grounds for creative, uncertain yet skilful activities which would've earlier been declared void as wager.

## RESEARCH OBJECTIVES

1. To analyse the concept of 'Wagering agreements' and related jurisprudence in India and elsewhere.

[1] Indian Contract Act, §30, No. 09, Acts of Parliament, 1872 (India)

[2] Indian Contract Act, §30, No. 09, Acts of Parliament, 1872 (India)
[3] Carlill v. Carbolic Smokeball Co. (1892) 2 QB 484, 490
[4] Ismail Lebbe v. Barlett & Co, 199 IC 574 (PC)

2. To examine using a contemporary case-study, the exception of 'skill' in wagering agreements and its related jurisprudence.

**What are agreements by way of wager?**

Any agreement which involves an 'Uncertain event' as its consideration is considered by way of wager and therefore, void. However, the effect of time and subsequent jurisprudence has chiselled this wide definition which could be interpreted (or misinterpreted indeed) to declare genuine , lawful and valid agreements-void. The most significant of these judgements is "Carlill v Carbolic Smokeball Co." case which took on the colossal job to define the term 'wager' which was only superficially understood back-then. It laid down 4-key parameters to determine the wagering nature of an agreement-

1. **Certainty/Uncertainty of an Occurrence:**

   The first requirement for an agreement by wager is that the fulfilment of the deal must depend on the result of an uncertain event. Though, wager usually refers to a future occurrence, "but it may even relate to an event which has already happened, but the parties are unaware of its results at the time of happening".[5]

2. **Reciprocal win or loss:**

   The second key is that upon the occurrence of the said uncertain event, one of the party must win and the other must lose. Without such a gain or loss, there is no wager. "It is the essence of wager that each side should stand to win or lose according to the result of the uncertain event."[6] This position was reiterated by the Bombay High Court in "Babasaheb v. Rajaram" [7] case where:

   Two wrestlers agreed to compete in a wrestling contest on the premise that the party who did not show up on the scheduled day forfeited Rs. 500 to the opposing party and the winner received Rs. 1125 from the gate money. The plaintiff sued the defendant for

[5] William Reynell Anson, principles of the English law of contract 22nd Edition 301
[6] Sassoon v. Tokersey, (1913) 28 Bom 616
[7] Babasaheb v. Rajaram AIR 1931 Bom 264

rupees 500 after he failed to appear in the ring. Here it was held that since neither of the parties lost, and the alleged 'winner' got his reward from the gate-money and not the other party, the agreement was not by wager.

3. **No control over the occurrence:**

No party should hold sway over the occurrence or non-occurrence of the event. Since this may affect the uncertain nature of the event, it is an essential feature of a wager.

4. **Lack of any other interest:**

Finally, parties ought not to have any other interest in the occurrence of the event apart from the stake the might gain or lose.

E.g. A contract for insurance is not wager due to the presence of Insurable Interest, the absence of which will render the contract void. "Insurable interest is the risk of loss to which the assured is likely to be exposed by the happening of the event assured against."[8]



**Real object matters the most-**

The wagering character of an agreement is most dependent on the intention of the parties and not merely the words of the agreement. Even in a cleverly worded agreement, if the real object is to settle the difference between the contract and market price or is so far-fetched making it certainly impossible, the agreement may be by way of wager.

1. **Speculative Transactions:**

   It is important to establish a common intention of the parties by analysing prevailing circumstances. E.g. In an appeal from Burma, the privy council ruled that "if the circumstances of a case suggest that the parties merely wanted to settle the

[8] Wilson v. Jones, (1867) 2 Ex 139.

difference between the contract price and the market price without any real transfer of goods, the agreement is by way of wager."[9]

Furthermore, if the items negotiated for are intended and practicable to be delivered, the fact that delivery was not taken does not establish that the contract is by way of wager.

**2. Collateral Transaction:**

The supreme court has held that "while a wager is void and unenforceable, it is not forbidden by law".[10] Therefore, it is not unlawful under section 23 of Indian Contract Act, 1872.[11]

Resultantly, transactions collateral to the primary transactions are valid and enforceable.

E.g. A creditor who lent money to the debtor to clear dues from betting may be allowed to recover his money.



**Role of Skill-**

In a ground-breaking judgement the Privy council held that "If skill plays a substantial part in the result and prizes are awarded according to the merits of the solution, the competition is not by way of wager."[12] This fundamentally distinguished between purely by-chance, uncertain acts and skill based uncertain events like Crossword, spell-bee etc. The case analysis below discusses this using a contemporary case-

## CASE LAW- Varun Gumber v. Union Territory of Chandigarh[13]

**Facts:**

[9] Kong Yee Lone & Co v. Lowjee Nanjee, (1901) 28 IA 239.
[10] Gherulal Parekh v. Mahadeo Das AIR 1959 SC 781
[11] Indian Contract Act, §23, No. 09, Acts of Parliament, 1872 (India)
[12] Cole v. Odhams Press, (1936) 1 KB 416
[13] Varun Gumber v. UT, Chandigarh, 2017 SCC Online P&H 5372

The petitioner registered himself on the 'Dream11' platform using his email-id to play fantasy games. He transferred Rs. 50,000 to the platform account using his credit card and started designing his own virtual team for the 'Ireland vs Afghanistan' cricket match. After designing the virtual team, he participated in various leagues for Rs. 24,000 i.e. the amount he bet. He eventually lost it all.

The next day, he designed another virtual team for 'Manchester city vs Middleborough' football match and bet Rs. 26,000 on it. He ended up losing that as well, therefore losing all his deposited money in 2 days. He thereafter sent a legal notice to 'Dream11 Fantasy Pvt. Ltd.' Demanding the closure of the platform and refund of his money due to its illegal nature under the Public Gambling act, 1867. The company contended that the game involves a substantial skill-set to identify the players by analysing their past records and performance. The matter went to the Punjab and Haryana High court.

**Held:**

The high court concurred with the company that Dream11 is a fantasy game predominantly based on skill and prior experience. The user is expected to analyse the past performance of athletes and make informed decisions after considering all the factors. Any result therefore is entirely based on the user's analysis. The court took the example of 'horse racing' as defined by the New Encyclopaedia Britannica as *"Betting on horse racing or athletic contests involves the assessment of a contestant's physical capacity and the use of other evaluative skills."*.[14]

The court further relied on the observations of the Hon'ble Supreme Court[15] that i) Competitions with substantial skills involved are not gambling. ii) even if there is an element of chance but the game is predominantly skill based, it isn't gambling.

The petition was therefore dismissed and the operations of Dream11 were upheld under article 19(1)(g) of the constitution and granted an exception u/s 18 of the Public Gambling act,1867.

[14] Volume 5, THE NEW ENCYCLOPAEDIA BRITANNICA 15th edition 105 (Encyclopaedia Britannica, Inc. 1974)

[15] Dr. K.R. Lakshmanan v. State of Tamil Nadu 1996 AIR 1153

**Brief analysis-**

As we can see, the court drew a clear distinction between a game purely based on chance and a game which had an element of chance but was predominantly skill-based. The court, by citing the example of 'Horse Racing' drew a perfect analogy to reason its opinion since both the games predominantly involve skill along with an element of chance.

## CONCLUSION

It can be concluded that while there is a rather vague definition of 'Agreements by way of wager' under the Indian Contract Act,1872; the courts have defined its scope in an illustrious and detailed fashion. Terms such as 'Common Intention' have been pivotal in determining the true nature of an agreement, so that genuine agreements are enforced while wagering-ones are better identified and declared void. Apart from this, separating wheat from chaff by enforcing the 'collateral transactions' to a wagering agreement is an important jurisprudential-principle in this regard. Finally, the role of skill in games involving a certain element of chance has revolutionised the way we look at wager and has protected genuine, skill-based competitions from the misinterpretation of law. This evolving nature of 'Agreements by way of wager' has much to do with its resilience which has allowed this concept to re-shape itself with the present situation of the law and society.