AN APPRAISAL OF VOID AND VOIDABLE CONTRACTS UNDER NIGERIAN LAW

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ABSTRACT

An appraisal of void and voidable contracts discusses void and voidable contracts under the following sub-heads: contract void at common law which includes contracts to oust the Jurisdiction of the courts, contracts that are sexually immoral and contracts in restraint of trade. It also discusses consequences of void contracts which include contracts not void in toto, contracts void in toto, money paid or property transferred by one party to the other and the fact that subsequent transactions are not necessarily void. Lawful promises may also be severable and enforceable. It is necessary to note that there is generally, no basic difference between the classification of contracts under the Nigerian and English laws. However, local differences of approaches to and interpretation of legal situations are reflected in Nigerian law which is more concerned with commercial activities. Because not all contractual agreements are enforceable at law, the need arises for the classifications of contracts so as to enable the courts and parties know when a breach is enforceable against the party in breach or at the wrong or not. Basically at common law, contracts are classified into formal contracts or contracts under seal and simple or parol contracts. The modern classification of contracts apart from these two also include express and implied contracts, executed and executory contracts as well as classification based on the legal effects, such as when contracts are said to be either illegal, void, voidable or enforceable. Void contracts are contracts which have not been expressly prohibited but which do not give rise to any rights whatsoever. Contracts are either void because they fail to conform to the requirements of the law or a contract may be declared void by law or statute. A voidable contract on the other hand is one which is valid from beginning and binding on the parties but for some obvious reasons which may be either one of misrepresentation, duress, mistake or any other vitiating element it is rendered voidable at the option of one of the parties who rescinds the contract.

Keywords: Contract, Void, Voidable, Illegal, Court, Jurisdiction, Agreement

INTRODUCTION

Void Contracts

These are contracts which have not been expressly prohibited but which do not give rise to any rights whatsoever. They are destitute of legal effect and a nullity, for example, an agreement for an immoral consideration. Therefore, neither of the contracting parties can enforce it upon a breach.

Contracts are void under two heads: Firstly, if a contract fails to conform to the requirement of the law such a contract is regarded as void, for instance, where a party refuses to furnish consideration for a promise made to him/her, such a contract is not enforceable.

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Secondly, a contract may be declared void by law or statute. For instance a contract that is tainted by immorality is void. Contract to commit crimes are also void, contract for conveyance of land or landed property are required to be in writing and failure to comply with this requirement makes such a contract void. Also, by section 3(1)(a)(b) and (d) of the Hire purchase Act of 1965 cap 169, the following provisions in the hire purchase agreement are inter- alia declared void as enacted:

> *"Where an owner of goods let on hire purchase or a person acting on his behalf, is authorized to enter upon the premises for the purpose of taking possession of the goods or is relieved from liability for any such entry; Where the right of the hirer under a hire purchase agreement to deter- mine the agreement is excluded or restricted; Where any person acting on behalf of the owner or seller in connection with the formation or conclusion of a hire purchase or credit sale agreement is treated or is deemed to be the agent of the hirer or buyer."*

Also Section 11(1) of the Kaduna state sale of goods Edict 1990 provides that:

> *Where an agreement to sell goods is on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make the valuation, the agreement is void.*

Sometimes, void contracts may have some legal effect. For instance, a contract made with an infant is void but property will pass under it and it may even be that the infant (not the major party) can sue on it.

In some cases contracts may be null and void to such an extent that not only does no right of action arise out of them but any money or other property transferred cannot be recovered. An example is wagering agreements. It is noteworthy to mention that all illegal contracts are void, but not all void contracts are illegal.

Voidable Contracts

These are contracts which one of the parties (but not the other) may rescind or affirm at his option. A voidable contract is therefore valid from the beginning and binding on the parties but for some obvious reasons which may be either one of misrepresentation, duress, mistake or any other vitiating element, it is rendered voidable and at the option of one of the parties who rescinds the contract.

However, where any of these vitiating elements is discovered but affirmed by the innocent party in effect, the contract becomes valid and enforceable. A third party therefore, who purchases goods which have been the subjects of a voidable contract acquires good title to them. For example, A, a doctor, compels his patient B to sell him his watch worth ₦500 for ₦25. B (not A) can avoid the contract. But if before B avoids it A sells the watch for N3,400 to C who has no notice of what passed between A. and B. B cannot recover it from C.

Contracts Void at Common Law

A contract is said to be void at common law because the courts have declared it to be so over a long period of time and the type of contracts in this group are now almost freed. These are contracts which violate no basic feeling of morality, but run counter to certain social and economic attitudes. Contracts regarded as void at common law are thus classified into three: These are, contracts to oust the jurisdiction of the courts, contracts that are sexually immoral and contracts in restraint to trade.

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Contracts to Oust the Jurisdiction of the Court

Any provision in any agreement which purports to deprive the parities of their rights to resort to the courts for the settlement of any dispute arising out of the agreement is void on the grounds of public policy. Such a provision for the ouster of the court's jurisdiction could also be in breach of section 33(1) of the 1979 Constitution of Nigeria which gives everyone a right of fair before a court or other tribunal established by law for the determination of this civil right and obligations. In considering this principle in Lee V. S Showmen's Guild Of Great Britain[27] Mrs. Bennett who was separated from her husband, agreed not to bring a maintenance action against him in respect of herself and their children and to indemnify him against legal expenses arising from the deed containing the agreement. In return, the husband, Mr. Bennett agreed to pay her and the children annuity and to convey to her certain property. When the husband failed to carry out his own part of the bargain and the wife sued him to enforce it, it was held that the covenant by Mrs. Bennett not to apply to the court for maintenance was void and unenforceable, and since it formed the main consideration for the husbands promise, the whole agreement was void.

Denning l. J. referred to:

> *"The well-known principle that the parties cannot contract to oust the ordinary courts form their jurisdiction… the can, of course, agree to leave questions of law, as well as questions of fact to the decision of domestic tribunal. The can, indeed, make the tribunal the final arbiter on question of fact, but they cannot being examined by the courts. If parties should seek by agreement, to take the law out of the hands of the courts, and put it in the hands of a private tribunal, without any recourse at all to the courts in case of error, then the agreement is to that extent contrary to public policy and void"*

Thus, any provision by which a wife binds herself not to apply to the court for maintenance is void as an ouster of the jurisdiction of the courts. In Bennett V. Bennett[28] Mrs. Bennett who was separated from her husband, agreed not to bring a maintenance action against him in respect of herself and their children and to indemnify him against legal expenses arising from the deed containing the agreement. In return, the husband, Mr. Bennett agreed to pay her and the children annuity and to convey to her certain property. When the husband failed to carry out his own part of the bargain and the wife sued him to enforce it, it was held that the covenant by Mrs. Bennett not to apply to the court for maintenance was void and unenforceable, and since it formed the main consideration for the husbands promise, the whole agreement was void.

In Bello and Dairo V. Alowonle[29] the plaintiffs and the defendants were once partners in a firm which the defendant managed. The plaintiffs were illiterate persons and the defendants who managed the firm, kept no books, of account but announced profits time to time. When the partnership was subsequently dissolved, the instrument of dissolution provided that no legal proceedings should be institute by any partnership agreement, and that all rights and liabilities arising out of the partnership should be deemed to have been satisfied upon the signing of the instrument of dissolution. The plaintiff instituted proceedings when claims for partnership debts were being made against them and also in order to stop the defendant from trading under the name of the dissolved partnership. The defendants resisted the action by reliance on the clause outing the court's jurisdiction. It was held that the ouster clause was contrary to public policy in that it purported to remove the court's jurisdiction to adjudicate

[27] (1952) 2 Q. B. 29 or (1952),E.R 1175
[28] (1952) K. B. 249
[29] (1968), 2 A.L.R. Comm 188

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over the rights and liabilities of the parties arising out of contracts. The relevant paragraph in the dissolution agreement was therefore held to be void.

However, an agreement which contains a provision that disputes should first be referred to an arbitral tribunal or some other private body for settlement, but which does not prevent a dissatisfied party from appealing to a court against the tribunal's decisions is quite valid and enforceable. Thus, if a party to such an agreement should institute proceedings in a court without first resorting to the tribunal, it is a good defense to argue that the plaintiff cannot bring the action without first going to the tribunal. The court will invariably stay the proceedings until the arbitration process has been completed.

In Companies Mineral Et Metellurgique V. Owners Of M. V. Heron[30], the plaintiffs and respondents brought an action against the defendants for breach of a charter-party agreement committed by the latter outside Nigeria. Pending the hearing of the action the plaintiffs and respondents successfully applied for an order of arrest and detention of the defendants and appellants ship, the "M.V.Heron" lying in Nigeria port. In this suit, the defendants and appellants applied for an order to release the ship from detention and for a stay of further proceedings in the suit against them, on the grounds that the court had no jurisdiction to entertain the suit until the dispute had been referred to an arbitrator as provided for in the charter agreement between the parties. Referring to the applicable provisions of the Arbitration Law of Western Nigeria which is Clause 21, Ovie whiskey J granted the application for stay of proceeding.

Thus, while it is contrary to public policy for parties to agree to exclude the courts completely from adjudicating on any dispute that might arise between them in respect of their contractual rights and obligations, it is lawful to make a prior resort to an arbitral tribunal or some other such body a condition precedent to the institution of legal proceedings.

Contracts that are Sexually Immoral

The question of what constitutes sexual immorality differs from one society to the other and from generation to generation. But there have been some fairly consistent social attitudes to some aspects of sexual conduct and transactions. Thus, a prostitute cannot sue for her fees, neither is any action maintainable to recover lodgings knowingly let for prostitution. In Bowry V. Bonnet [31], it was held that the price of clothes specifically furnished to enable a prostitute to carry on her trade was not recoverable and in PEARCE V. Brooks[32] where the plaintiff hired a beautifully designed brougham to the defendant with the knowledge that she was going to use it to attract men for her profession, it was held that the plaintiff could not recover the price of hire.

However, as stated earlier, in many cases what constitute sexual immorality will in some aspects differ, with the age and society. Even in Britain, the traditional common law approach to immorality contracts is being progressively abandoned in cases concerning arrangements between a couple who live together in a common household as man and wife without being married. Such relationships are referred to as stable relationship. Such persons may for example come to an agreement relating to the house in which they live. Where the house is owned by one of them, that agreement can confer legally enforceable rights on the other, such as a contractual license to remain there, or a share in the value of the house in respect of the contribution made by the other party. Also, by the English Domestic Violence and Matrimonial Proceedings Act of 1976, a spouse who is a victim of domestic violence can

[30] (1952) 2 Q. B. 29 or (1952),E.R 1175
[31] (1808), Camp, 348, 10 R.R. 697
[32] (1866) L. R. I Ex 213

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exclude the other from the matrimonial home and this remedy is expressly extended to "a man and a woman who are living in the same household as it applies to parties to a marriage.

All these illustrations represent a major modern shift towards a more liberal and permissive interpretation in the English Common law, as to what constitutes sexual immorality. It is a clear judicial recognition and acknowledgment of a practice that has not only become fairly common but is becoming increasingly accepted by society.

Contracts in Restraint of Trade

A contract in restraint of trade is one by which a party restricts his future liberty to carry on his trade, business or profession in such a manner and with such persons as he chooses.

A contract of this class is prima facie void but it becomes binding upon proof that the restriction is justifiable in the circumstances as being reasonable from the point of view of the parties themselves and also of the community. Such has long been the legal effect of two familiar types of contracts. Firstly, one by which an employer agrees that after leaving his present employment he will not compete against his employer, either by setting up business on his own account or by entering the service of a rival trader. Secondly, is an agreement by the vendor of goodwill of a business not to carry out on similar business in competition with the purchaser. This doctrine based on restraint of trade is based upon public policy, and its application has been peculiarly influenced by changing views of what is desirable in the public interest which is inevitable. "Public policy is not constant, and it necessarily alters as economic conditions alter".

Contracts which prevent or regulate business competition were in early times regarded as invariably void, and persons who made them were even threaded with imprisonment. But it came to be recognized that this inflexible attitude might defeat its own ends. A master might be reluctant to employ and train apprentices if he could not to some extent restrain them from competing with him after the end of their apprenticeship. And a trader might be unable sell the business he had built up if he could not bind himself not to compete with the purchaser. The courts therefore began to uphold contracts in restraint of trade, and in 1711 the whole court subject was reviewed in the case of Mitchel V. Reynolds[33], where it was held that a bond by Y to restrain himself from trading in a particular place was valid if made on reasonable consideration. It was also held that contracts in general restraint of trade (for example not to exercise a trade throughout the United Kingdom) were void, but that contracts in partial restraint of trade (limited to a particular locality) were valid. Lord Macclesfield said, "What does it signify to a tradesman in London what another does in Newcastle?"

The effect of that case as interpreted in later decisions was that a restraint was prima facie valid if it was supported by adequate consideration and was not general, that is, did not extend over the whole kingdom.

Quite clearly, whatever validity this proposition might have had in early eighteenth century England, it cannot be valid for more modern times. Today, a manufacturer of goods based in Lagos may have trading outlets all over Nigeria, or even all over West Africa. So what a tradesman does in Kano City, which is 600 miles from Lagos, could have a devastating effect on the manufacturer based in Lagos. This was evident in Leontaritis V. Nigerian Textile Mills Limited[34], where it was held that a restraint on a senior employee of a textile mill based in Lagos, Prohibiting him for a period of two year after leaving the employment of the mill, from taking any interest either directly or indirectly, or from entering into any business, was

[33] (1711), P. WMS, 181
[34] (1967), N.C.L.R.114

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valid. The respondent textile mill, though based in Lagos, had a thriving market throughout the whole of Nigeria.

The House of Lord case of Nordenfelt Guns and Ammunition Company Limited[35] had already established that a covenant in general restraint of trade could be valid, provided it was reasonable in the interest of the parties and of the public. In that case, the appellant Nordenfelt, was maker and inventor of guns and ammunition. He sold his business to the respondent company for 287, 500 pounds and entered into a covenant that he would not for 25 years:

> *"engage… either directly or indirectly in the trade or business of a manufacturer of guns, gun mountings, gun powder explosives or ammunition, or in any business competing or liable to compete in any way with that for the time being carried on by the company"*

But he reserved the right to deal in explosives other than gun powder, in torpedoes or submarine boats and in metal castings or forgings. After some years Nordenfelt entered into a business with a rival company dealing with guns and ammunition and the respondents sought an injunction to restrain him from

doing so. Thus, since then, the law is to the effect that: firstly, restraint are no longer prima facie valid, they are prima facie void, but can be justified if they are reasonable and not contrary to the public interest. Secondly, it is no longer essential that the consideration should be adequate as was decided in the case of Tallis V. Tallis[36] "though…the quantum of consideration may enter into the question of the reasonableness of the agreement". On the authorities of Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company[37] and Esso Petroleum Limited V. Harpers Garrage (Stourport) Limited[38]. Thirdly, the rule that a restraint must not be general no longer applies. Thus, in Nordenfelts case[39] the covenant between Nordenfelt and the respondent was held valid although it prevented competition anywhere in the world.

Although the contrary has been suggested in Shell U.K. Limited V. Lostock Garrages Limited[40] the general view is that the question whether a restraint is valid must be determined once and for all by reference to the circumstances in existence at the conclusion of the contract as was decided in Commercial Plastic Limited V. Vincent[41].

The Modern Position

The modern law on the subject of restraint of trade is founded on Nordenfelt's case[42] and some subsequent decisions. The present law may be summarized as follows:

All restraints of trade (subject to the exception as provided in Mitchell V Reynolds and Leontaritis cases)[43] in the absence of special justifying circumstances are contrary to public policy and therefore void.

Whether a restraint is reasonable or not is a question of law for the court to decide. And thirdly, a restraint is only justifiable if it is reasonable in the interest of the contraction parties and in the interest of the public.

[35] (1894) A.C. 535
[36] (1853)E and 391
[37] (1894), A.C.55, at 565
[38] (1968) A.C 300,323
[39] (1894) AC 535
[40] (1976), WLR 1187, at 1198
[41] (1865), I.Q.B. 623, at 644
[42] ibid
[43] ibid

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The modern principles and procedures applied and followed by the courts were very lucidly presented by Alyande J. in the case of Leontritis V. Nigerian Texitile Mille Limited[44]. According to the learned judge, a contract in restraint of trade is valid if: it is reasonably necessary to protect the person in whose favour it is imposed, it is not unreasonable as regards the person restrained, and it is not injurious to the public. If the agreement read as a whole appears on the face of it not be unreasonable in the interest of either of the parties or the public, a restraining clause will not be deemed unreasonable. In deciding the question of unreasonableness the court must have regard to the following: the nature of the business, trade or occupation, the area over which the restraint is to be imposed, and the length of time for which it is to continue. While it is true that a master is not entailed to protect himself at all from the mere competition of his servant he is entitled to protect himself against the disclosure or use by the servant, especially when he is employed in a confidential position, of trade secrets, names of customers, and other information confidentially obtained and a reasonable restraint imposed for this purpose is valid, even if it has the effect of preventing to some extent the future competition of the servant.'' [45]

The onus of showing that the restraint is reasonable between the parties rests upon the covenantee that is the party trying to enforce the restraint. On the other hand, once this onus is discharged, the onus of showing that notwithstanding the fact that the convent is reasonable as between the parties it is injurious to the public interest and therefore void, rests upon the party alleging it. This point was emphasized in Herbert Morris Limited V. Saxelby[46]. And in Campagnie Francaise DE L'afrique Ocidentale V. George E. Leuba[47], Webber J. echoed these same views.

CONSEQUENCES OF VOID CONTRACTS

If a contract is void at common law the following legal consequences flow from it.

Contracts not Void in Toto

Contracts that tend to oust the jurisdiction of the courts or to prejudice the status of marriage or to place restraints on trade though contrary to public policy are not totally void. For example A sold his business of a carrier to B and agreed for a weekly salary of 2 pounds 3 shillings and ten pence to serve B as assistant for life and further agreed never to exercise the trade of a carrier except as such assistant. A's salary for eighteen weeks ran into arrears. In A's suit to recover it, B pleaded that the contract being void for excessive restraint of trade, no part of it was enforceable. It was held that A must succeed. If the contract consists of many parts and one part cannot be enforce, it does not mean that other parts also fall to the ground (Wallis V. Day[48]). Thus, where part of a promise is void and part of it valid, severance is applied to cut out the void part. The court however, will not rewrite the promise or rephrase it as expressed by the parties. In order to be susceptible to severance, the void portion of the promise must be capable of being separated from the remainder of the promise. It must pass "the blue pencil'' rule, that is severance can only be effected when the objectionable part can be removed by running a national blue pencil through it without affecting the meaning and clarity of the remaining part. Thus, it must be possible to construe the promise as being divisible into a number of separate and independent parts. Where this is not possible, the whole of the promise will be void. In BELLO DAIRO V. ALOWONLE[49]

[44] (1967) NCLR 114
[45] Quoted by Sagay: Nigerian law of contract, (Spectrum,Ibadna), 9th Edition, 1997, Page 359.
[46] (19160, AC 688 at 715
[47] (1918), 3 N.L.R. 67
[48] (1837) 2 M&W 273
[49] (1968) 2 ALR Comm 118

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and agreement dissolving the partnership between the plaintiffs and defendant contained the following provision:

> *"That no legal proceedings or other proceedings shall be instituted by any of the partners against the others or any of the others in respect of any matter arising out of or in connection with the partnership agreement… And that all rights and liabilities arising out of the said partnership agreement shall be deemed to have been satisfied upon the signing of this agreement".*

When the plaintiffs brought some claims against the defendant under the partnership agreement, the defendant resisted the claim by relying on the clause ousting the court's jurisdiction. This clause was held to be illegal and void, but the remaining part of the promise was not affected.

Also in Price V. Green[50] which was an earlier decision, the seller of a perfumery business in London agreed with the purchases that he would not carry on a similar business in the cities of London, Westminster or within 600 miles from London. The part of the promise relating to London and Westminster was held valid and enforceable, whilst the part relating to 600 miles from London was declare void and excised off the agreement. The case of Goldsoll V. Goldman[51] is also a case decided to the same effect as the last two cases.

Contracts Void in Toto

Where there is no separateness or independence between the various parts of a promise, or where the promise is in effect a single one without sub promises within it, there can be no severance voidness is total, and the whole promise will be struck down. In Baker N. Hedgercock[52] where the master tailor got his foreman cutter to promise not to carry on any business what so ever within one mile of the master's shop after leaving his service, it was held that the whole of that promise was void and severance was impossible. The case of Attwood V. Lamont[53] is a more controversial case. In that case A carried on business as a draper, tailor, and general outfitter in a shop organized in several different departments, each with a manager. B who was head cutter and manager of the tailoring department and who had nothing to do with the other departments, agreed that he would not at any time carry on business as a tailor, dress maker, general draper, milliner, hatter, Haber clasher, gentlemen's, ladies, or children outfitter. The court at first instance agreed that the agreement constituted of distinct obligation in separately defined divisions, and held that the unreasonable portions could be severed, leaving the valid one (on tailoring) intact. This decision was however reversed by the Court of Appeal, which held that the parties had made a single indivisible agreement protecting the entire business of the employer. To sever the tailoring clause from the others would have meant altering the nature of the covenant and not merely its extent. Severance was therefore not possible.

This decision has been widely criticized and recent decisions indicate that the courts are moving away from the reasoning in Attwood V. Lamont[54] and have relaxed their previous rigorous approach to master and servant contracts. Thus, in Lucas (T) and Company Limited V. Mitchel[55] the plaintiff sought an injection restraining the defendant from breaking a covenant in his service agreement whereby he had agreed that within one year of the

[50] (1847) 16 M & W 346
[51] (1915), ch. 292
[52] (1888) 39 ch. D 520
[53] (1920) 3 KB 571
[54] ibid
[55] (1974) ch. 129 or (1972) 3 WLR 934

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termination of his employment within the greater Manchester area of England, he would not deal in any goods similar to the employers products or solicit orders for or supply of

such goods. It was held by the Court of Appeal that the covenant dealing with the first aspect was void, whilst the soliciting covenant was a reasonable restraint. An injunction was therefore granted in respect of the valid covenant.

Money Paid or Property Transferred by One Party to the Other is Recoverable

If money has been paid under a contract which contains an excessive restraint on trade or which involves marriage brokage, it may be recovered on the contract remaining unfulfilled and is not caught by the maxim 'ex turpi causa non oritur actio'. Thus, in the case of Hermann V. Charlesworth[56,] Charlesworth agreed that he would introduce gentlemen to Miss Hermann with a view to matrimony, in consideration of an immediate payment of 52 pounds and a payment of 250 pounds on the day of the marriage. He introduced her to several gentlemen and corresponded with others on her behalf, but his efforts were fruitless. Miss Hermann sued for the return of 52 pounds and was successful. Her right at common law rested on the principle that money deposited to abide the result of an event is recoverable if the event does not happen. This right is also recoverable in equity.

Subsequent Transactions are Not Necessarily Void

The three contracts under discussion are neither illegal nor void in toto, therefore, subsequent contracts are void only so far as they are related to that part of the original contract that is itself void. For instance, where A sells his business to B and agrees in unreasonably wide terms not to compete with B, after committing a breach of this void agreement, A gives B a bond to compensate him. On the other hand, if A's title to the shop turns out to be defective, and A gives B a bond to pay B N1,000 by way of compensation, B can validly sue on the bond.

Lawful Promises may be Severable and Enforceable

Severance means rejection from a contract of objectionable elements and retention of those parts that are valid. The doctrine of severance has two meanings to serve two purposes. It may be invoked to cut the whole of an objectionable promise from a contract leaving the rest of the contracts as valid as was held in the case of Goodinson V. Goodinson[57]. In this case, a husband H, and wife W, entered into an agreement whereby H would pay W a weekly sum for the maintenance of W and their child. W covenanted that so long as H made these payments, W would indemnify H against all debts incurred by W, would not pledge H,s credit, and would not take any matrimonial proceedings against H in respect of maintenance. W claimed arrears of maintenance under the agreement. H pleaded that the clause prohibiting matrimonial proceedings rendered the contract void. It was held that the whole of this clause could be eliminated to make the remaining clauses enforceable. Secondly, severance may also be applied in a situation where a promise is partly valid and partly void. In that case the objectionable part of the promise can be excised and the remaining part left intact and enforceable. Thus, if a servant who works for an employee whose business is restricted to Lagos, promises not to exercise his profession in Lagos, or any other part of Nigeria, the part of the promise relating to "any other part of Nigeria", is obviously void. In that case severance can be applied to excise the second part of the promise from the contract, leaving the first part valid and enforceable against the employee as was the case in Nordenfelts case[58].

[56] (1905) KB 123
[57] (1954) 2 QB 118
[58] ibid

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Where the parties have themselves framed a promise in such a manner that its words can be construed to be divisible into a number of separate and independent part, then one or more of the parts can be struck out and yet leave a promise that is substantially the same in character as that framed by the parties though diminished in extent by the reduction of its sphere of operation.

CONCLUSION

This research paper makes an appraisal of void and voidable contracts and has reached the conclusion that as regards contracts that are void under common law, the plaintiff can enforce his rights in certain situations. Also, while all illegal contracts are void, not all void contracts are illegal.

A voidable contract on the other hand is one which is valid from the beginning and binding on the parties but for some obvious reasons which may be either one of misrepresentation, duress, mistake or any other vitiating element, it is rendered voidable.

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