



# Similarities And Differences Between Insurance Contracts And Wagering Agreements

Alamelu

Guest Faculty

Business Law

Tamil Dr. Ambedkar Law University, Chennai, India

**Abstract:** Wager agreements and insurance contracts are two distinct legal concepts that often get confused due to their superficial similarities. Both involve a promise to pay money upon the occurrence of a certain event. However, they differ fundamentally in their nature, purpose, and legal standing. This article aims to elucidate these differences by comparing the two concepts across various dimensions.

## Introduction

In the realm of financial and legal agreements, both insurance contracts and wagering agreements occupy unique yet intriguingly similar spaces. At first glance, these two types of agreements might appear to be worlds apart, with insurance contracts being perceived as prudent financial safeguards and wagering agreements often seen as speculative ventures. However, a closer examination reveals that they share several fundamental characteristics, blurring the lines between risk management and risk-taking. This essay delves into the nuanced similarities between insurance contracts and wagering agreements, exploring how both involve the transfer of risk, the element of uncertainty, and the potential for financial gain or loss. By understanding these parallels, we can gain a deeper appreciation of the intricate dynamics that underpin these seemingly disparate agreements.

## Wagering Agreements

Literally the word 'wager' means 'a bet' something stated to be lost or won on the result of a doubtful issue, and, therefore, wagering agreements are nothing but ordinary betting agreements.<sup>1</sup>

Section 30 of the Indian Contract Act talks about the wagering agreements which reads as "agreements by way of wager are void". Section 30 states that,

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 the result of any game or other uncertain event on which any wager is made.

**Exception in favour of certain prizes for horse-racing** —This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

**Section 294A of the Indian Penal Code not affected** — Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860)<sup>2</sup> apply.

This section does not define ‘wager.’ Subba Rao J (CJ) in, *Gherulal Parakh vs Mahadeodas Maiya and Others*<sup>3</sup>, said:

“Sir William Anson’s definition of “wager: As a promise to give money or money’s worth upon the determination or ascertainment of an uncertain event, brings out the concept of wager declared void by Section 30 of the Contract Act.<sup>4</sup>

A wager is a contract where two parties agree that a sum of money or other consideration will be paid by one party to the other depending on the outcome of an uncertain event. The primary purpose of a wager is to speculate on the outcome of an event, often for entertainment or profit.

### Effects of wagering transactions

Wagering contracts are generally not enforceable by law. Section 30 expressly declares 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”. They are considered void under many legal systems because they are based on chance rather than a legitimate interest. The parties involved do not need to have any stake in the outcome other than the wager itself. The consideration in a wager is the amount staked by each party, which is typically equal. The outcome of a wager results in one party winning the stake and the other losing it, based purely on chance. Thus, the amount won on a wager cannot be recovered.

Consider a game of cards, where one either loses or wins. The loss or gain happens only because the person enters the bet. The person who plays the game has no further interest or relationship with the game other than that he might win the game. Betting or, wagering is not legally enforceable in a court of law and thus any contract in pursuance of it will be held to be illegal. In case someone pledges his house if he happens to lose a game of cards, the other party cannot approach the court to ensure its fulfillment.

In, *Badridas kothari v Meghhraj Kothari*<sup>5</sup>

Two persons entered into wagering transactions in shares and one became indebted to the other. A promissory note was executed for the payment of that debt. The note was held to be not enforceable.

### Exceptions

Though agreements by way of wager are void as per Section 30 of the Contract Act, there are there are certain exceptions and nuances to this general rule. Here are the key exceptions and related points.

#### - **Horse Racing**

Section 30(2) says that an agreement to contribute to the prize or stakes of a horse race is not considered a wager if the value of the prize or stakes exceeds ₹500. This means that betting on horse races is legally permissible under certain conditions.

#### - **Skill-Based Competitions**

Competitions that require a substantial degree of skill, such as certain card games, chess, or other skill-based games, are not considered wagers. The rationale is that these competitions are not purely based on chance but involve a significant element of skill. If skill plays a substantial part in the result and prizes are awarded according to the merits of the solution, the competition is not a lottery. Otherwise, it is.

Thus, literary competitions which involve the application of skill and in which an effort is made to select the best and most skillful competitor are not wagers<sup>6</sup>.

#### - **Lotteries**

State-run lotteries are an exception to the general rule against wagers. These lotteries are regulated by specific laws and are permitted by the government.

## Contract of Insurance

An insurance contract i.e., life, accident, fire, marine, etc is an agreement in which one party, known as the insurer, agrees to provide compensation to the other party, referred to as the insured, in exchange for a predetermined payment called the premium. This compensation is given upon the occurrence of a specified event that causes a loss to the insured. The policy serves as the document that evidences this insurance contract. According to Anson, a contract is a legally enforceable agreement made between two or more individuals, through which certain rights are granted to one or more parties in exchange for specific actions or abstentions by the other party or parties.

The Indian Contract Act of 1872 outlines the fundamental requirements for a contract. Section 10 of the Act states: "All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void..."

An insurance policy is also a contract formed between two parties, namely the insurance company and the policyholder, and it meets the criteria set forth in the Indian Contract Act.

The primary aim of an insurance contract is to ensure that the insured individual is safeguarded and financially shielded against uncertain events that could result in significant financial strain.

### Is contract of insurance a wager agreement?

A contract of Insurance is not a wager though it is performable upon an uncertain event. It is so because; the principle of insurable interest distinguishes insurance from a wagering contract. Insurable interest is the interest which one has in the safety or preservation of the subject matter of insurance. Where insurable interest is not present in insurance contracts, it becomes a wagering contract and is therefore void.

Now consider a house and the event of it burning down. The individual who insures his house has a legal relationship with the subject matter of insurance the house. He owns it and is likely to suffer financially, if it is destroyed or damaged. This relationship of ownership exists independent of whether the fire happens or does not happen, and it is the relationship that leads to the loss. The event (fire or theft) will lead to a loss regardless of whether one takes insurance or not.

Unlike a card game, where one could win or lose, a fire can have only one consequence – loss to the owner of the house.

The owner takes insurance to ensure that the loss suffered is compensated for in some way.

Section 6 of the Marine Insurance Act 1963, provides that every contract of marine insurance by way of wager is void; and that a contract of marine insurance is deemed to be a wagering contract where the assured has not an insurable interest. The (English) marine insurance act 1906, also provides that a contract or Marine Insurance is deemed to be a gaming or wagering contract if the insured has no interest in the adventure. Without insurable interest it will be a wagering agreement.

In, Northern India General Insurance Co Ltd V Kanwarjit Singh Sobti<sup>7</sup>

A truck, owned by A (true owner), was transferred to B (benami/Registered owner) who got it insured in his own name. The truck was involved in an accident and it seriously injured a young army officer who claimed heavy damages from the true owner, driver and the benamidar and the insurance company. It raised the plea that an ostensible owner (a benamidar) had no insurable interest and that it was a wager for that reason. But these pleas were negated by the high court.

The first clause in the terms of the policy is as follows:-

"Subject to the limit of liability the company will indemnify the insured in the event of the accident caused by or arising out of the use of the motor vehicle in a public place against all sums including claimant's costs and expenses which the insurer shall become legally liable to pay in respect of death of or bodily injury to any person."

Justice Asthana delved into the legal intricacies surrounding the concept of insurable interest under the Motor Vehicles Act.

- **Insurable Interest of Registered Owners:** The court held that the registered owner of a motor vehicle holds a sufficient insurable interest to affect an insurance policy, irrespective of the true ownership. This interpretation aligns with Section 94 of the Motor Vehicles Act, which does not restrict the capability to insure to the actual proprietor alone. Reinforces that the individual or entity whose name is registered as the owner is liable under the insurance policy, thus providing clarity in cases of disputed ownership.
- **Benami Relationship:** The judgment recognized that Binamidar, though not the real owner, held the truck in a benami relationship with the true owner. Despite this, the tribunal affirmed that for tort liability and insurance purposes, the registered owner is deemed liable.

A transaction of insurance resembles a wager as both involve a contingent event where one party may have to pay the other based on the outcome of an uncertain future event. But the contracts of insurance are not wagering at all because these are the contracts of Indemnity. These contracts are entered upon to safeguard and protect the interest of one party from any damage hence it is not a wager. And in an insurance contract, the insured party has an "insurable interest (policyholder would suffer a financial loss if the insured item or person were damaged, lost, or destroyed)" in the outcome, meaning they stand to lose something tangible if the event occurs, while in a wagering agreement, neither party has a legitimate interest beyond the potential winnings or losses from the bet, making wagering agreements generally void under law.

### Insurance Contracts vs. Wagering Agreements: Similarities

While insurance contracts and wagering agreements serve different purposes and are governed by different legal principles, they do share some similarities. Here are the key points of similarity between the two:

- **Risk Transfer**  
Both insurance contracts and wagering agreements involve the transfer of risk. In an insurance contract, the insured transfers the risk of a potential loss to the insurer in exchange for a premium. In a wagering agreement, the parties agree to transfer the risk of an uncertain event to one another, with the outcome determining who wins or loses.
- **Contingent on Future Events**  
Both types of agreements are contingent on the occurrence of a future event. In insurance, the event is typically a loss or damage (e.g., fire, theft, accident). In wagering, the event is usually an uncertain outcome (e.g., the result of a sports match, the outcome of a game).
- **Consideration**  
Both involve consideration. In insurance, the consideration is the premium paid by the insured to the insurer. In wagering, the consideration is the stake or bet placed by the parties involved.
- **Speculative Element**  
Both involve a speculative element. In insurance, the speculation is about whether a loss will occur and, if so, when and to what extent. In wagering, the speculation is about the outcome of an uncertain event.

### Insurance Contracts vs. Wagering Agreements: Differences

Despite these similarities, it is important to note the fundamental differences between insurance contracts and wagering agreements:

- **Purpose**  
The primary purpose of insurance is to provide financial protection against potential losses and to spread risk. Wagering agreements, on the other hand, are primarily for entertainment or profit from the outcome of uncertain events.

### - **Insurable Interest**

Insurance contracts require the insured to have an insurable interest in the subject matter of the insurance. This means the insured must stand to suffer a financial loss if the insured event occurs. Wagering agreements do not require any insurable interest; the parties are simply betting on an outcome. In wagering agreement, neither party has any interest in happening or non-happening of an event. But in a contract of insurance, both parties are interested in the subject-matter.

### - **Contract of Indemnity**

Contracts of insurance are contracts of indemnity except life insurance contract, which is a contingent contract. But a wagering agreement is a conditional contract.

### - **Legal Validity**

Insurance contracts are legally enforceable and are regulated by specific laws and regulations. Wagering agreements, depending on the jurisdiction, may not be legally enforceable and can be considered void or illegal.

### - **Regulation**

Insurance is a highly regulated industry with specific laws governing the conduct of insurers and the protection of policyholders. Wagering, while also regulated in many jurisdictions, does not have the same level of regulatory oversight and consumer protection.

### - **Public policy**

Contracts of insurance are regarded as beneficial to the public and hence encouraged by the State but wagering agreements serve no useful purpose.

### **Conclusion**

In summary, while wager agreements and insurance contracts may appear similar at first glance, they are fundamentally different in their nature, purpose, and legal standing. Contract of insurance are based on scientific and actuarial calculation of risks, whereas wagering agreements are a gamble without any scientific calculation of risk. Wager agreements are speculative and often unenforceable, lacking any insurable interest. In contrast, insurance contracts are designed to provide financial protection against genuine risks, requiring an insurable interest and being subject to stringent regulation. Understanding these differences is crucial for anyone involved in legal, financial, or risk management activities.

### **References**

1. <https://www.legalservicesindia.com/article/283/Wagering-Agreements.html#:~:text=Literally%20the%20word%20'wager'%20means,way%20of%20wager%20are%20void%E2%80%9D>
2. Section 297 of BNS - Bharatiya Nyaya Sanhita 2023
3. 1959 AIR 781
4. Avatar Sigh, pg. 336
5. AIR 1967 Cal 25
6. Moore v Elphick, 1945
7. 1972