

MARA INSTITUTE OF TECHNOLOGY
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THE DOCTRINE OF RESTRAINT OF TRADE.
AN OVERVIEW OF ITS APPLICATION IN MALAYSIA.

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CHAPTER ONE

1.0 Introduction

1.1 Definition

An agreement in restraint of trade is defined as one in which a person, for example an employee or the vendor of a business, agrees with the other contracting party to restrict his rights of trade freely or to offer himself on the employment market for some period after the completion of the sale or of his employment.

1.2 General Rule Regarding the Doctrine of Restraint of Trade

As a general rule, all contracts restraining a person from carrying on a lawful profession, trade or business of any kind is to that extent prima facie void. To become valid they must be reasonable, both as between the parties themselves and in the public interest. Section 28 of The Contracts Act 1950 (Revised 1974) states that "Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. However, there are three exceptions under section 28 of The Contracts Act 1950.

Exception 1

One who sells the goodwill of a business may agree with the buyer to restrain carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business there in :

Provided that such limits appear to the court reasonable, regard being had to the nature of the business.

Exception 2

Partners may upon or in anticipation of a dissolution of the partnership, agree that some or all of them will carry on business similar to that of the partnership, agree that some or all of them will not carry on a business similar to that of the partnerships within such local limits as are referred to in Exception 1.

Exception 3

Partners may agree that someone or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Whether these three exceptions were applicable in Malaysia will be discuss in the proceeding chapters.

1.3 Historical Background of Restraint of Trade in Malaysia

The story of Section 28 of the Malaysia Contract