

CONTRACT OF EMPLOYMENT: ILLEGALITY AND PUBLIC POLICY CONSIDERATIONS

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The concept of labour has undergone a catalytic change in recent years. We have traversed a long way from the days of absolute capitalism governed by the doctrine of *laissez faire* to the days of industrial democracy where labour and capital have come to be regarded as joint partners of production.

The origin of exploitation of labour can be traced back to the days of slavery in the Roman period. Rome was founded by Romulus in 753 BC and was ruled by Kings until 510 BC. Thereafter, the Republic was instituted together with the Twelve Tables. Most of the Roman law known to us was codified by Justinian who died in 565 AD. Slavery was legally recognized under the Roman Law. Initially, slavery was an institution of the *ius gentium* by which man was subject to the ownership of another contrary to nature because they were captured in war. However, much of the law of slavery was *ius civile*² and was acquired by sale³. The important point is that a slave, under Roman Law, was subject to the ownership of another and was regarded as ‘*res*’⁴. Slaves had no rights even for their own lives in certain circumstances. In some of the American States and in South Africa, slavery in different forms continued even at the beginning of the 18th Century.

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² Prichard, A.M., LEAGE’s Roman Private Law, p. 65, Macmillan & Co Ltd, London, 1961.

³ The reason for such sale may be (a) for being caught in act of stealing, (b) for evasion of tax or military service, (c) non payment of debts, (d) to punish women for cohabiting with slaves (e) poor parents were allowed to sell their children in exceptional circumstances.

⁴ To the Romans, *res* was a chattel or thing capable of expression in pecuniary terms. The Roman definition of *res* was economic and not physical.

Slaves were also a part of the society in the ancient Ceylon. In “An Historical Relation of the Island of Ceylon”, Robert Knox states;

The slaves may make another rank for whose maintenance, their Masters allow them land and cattle, which many of them do so improve: that except in dignity, they are not far behind their masters, only they are not permitted to have slaves. The masters will not diminish or take away ought, that by their Diligence and Industry they have procured, but approve of it, as being persons capable to repose trust in⁵.

Slaves in ancient Ceylon were treated in a much more dignified manner and had a different meaning than in Roman times.

The concept of labour was subject to change in the early 17th Century. The pre-Industrial Revolution age was mainly an age of handicrafts and if at all, machines were used, they were very simple machines which could be handled by unskilled labourers. Agriculture was the primary occupation of the people at large. The extreme poverty of the people forced them to send their children to work as farm hands at low wages as well as to workshops and mines. Generally, working hours were long. Such terms of employment was not termed as slavery, yet, wages and other facilities available to workers did not take them far from slavery.

The birth of the Capitalist Class and the Labour Class

The factory system led to the growth of a capitalist class along with a labour class in society. Workers were ill-paid, ill-housed and were shabbily treated. Their hours of work were as high as eighteen hours in the day. Women and children of tender age were employed in factories and mines on lower wages than men. The wages and hours of work were determined by the law of demand and supply. This was an age of “free contract” entirely left to the sweet will of the owners of the factories. There was no State interference in the running of factories. The Laissez Faire doctrine (the doctrine of non

⁵ Robert Knox; An Historical Relation of the Island of Ceylon, Edited by J.H.O. Paulusz, Page 210, Tisara Prakasakayo, Dehiwala, Sri Lanka, 1989.

interference by the State) governed the entire economic system. Thus, the Industrial Revolution gave birth to its twins; the Capitalist Class and the Labour Class.

Right to Hire and Fire

The traditional theory of employment rested on the right to hire and fire. This theory looked at employment as a mere contractual relation between master and servant, which either party could terminate at will, subject to notice, in certain cases. The classical theory of contract of employment assumed that in the absence of physical restraint or other direct compulsion, parties were free not only to contract on whatever terms they wished (provided they were legal), but also assumed quite erroneously, that they contracted on equal terms. In the early days, contract of employment was seen as another ordinary contract where the parties were considered to be equals.

Contract of Employment Interfered with

The expansion of welfare and social functions of the State had led to state intervention in the common law contract of employment by introducing legislation modifying or adding to the contract of employment in order to minimize the gap between the formal freedom of contract between the workman and the employer. Labour legislation introduced in this country over the past one hundred and fifty years has severely restricted the freedom of contract between parties. New conceptions of law developed and created social and public concern relating to the protection of economically weaker members of the society from exploitation by regulating the terms and conditions of labour.

Labour in Ceylon – Colonial Regime

The earliest labour legislation under the colonial regime prior to 1900 in Ceylon was intended to regulate the employment of estate labour and workers engaged in the construction of roads, bridges, railways and workers employed in graphite mines. To start with, it is hard to say that there was a great impact on Ceylon, directly, from the industrial revolution that took place in Europe for the reason that the country did not have a large labour force. The largest labour force at that time was the Indian Plantation workers from South India from where the British Planters could easily draw their supply from the

landless proletariat. The number of immigrants and dependents increased from 235,000 in 1891 to 700,000 by 1931⁶. The Sinhalese labour was reluctant to become part of the resident labour force in the estate sector, according to Kumari Jayawardene, due neither to the indolence of the Sinhalese nor to their pride and distaste for plantation work, but which was connected with their possession of land.⁷ The Contract for Hire and Service Ordinance No. 11 of 1865, by bringing the local labour and South Indian labour, consolidated the law relating to servants, labourers, journeymen and artificers. The word “servant” is defined to include manual, domestic, and other like servants, pioneers, kanganys and other labourers, whether employed in agriculture, roads, railways or other like works. The Ordinance is still in force in spite of some of its provisions being archaic.

The period between 1920 and 1933 was important for the development of the trade union rights of workmen. In 1922, A. E. Goonesinghe, who is considered to be the father of the labour movement of Ceylon, formed the Ceylon Labour Union. The new union went in to action almost from its very inception. On 15th February 1923, it called a strike at the Government Railway Workshop, which soon spread to the harbour, the Wellawatta Mills and a number of other commercial establishments.⁸ In 1926, Goonesinghe called out a strike at the Wellawatta Spinning and Weaving Mills, which lasted over two months. The formation of the Ceylon Labour Union marked the real beginning of the working class movement of Ceylon. The Ceylon Trade Union Congress held its first session in 1928 and at its first session, twenty two labour organizations appear to have been represented. The Donoughmore Commission’s recommendations to grant universal suffrage and the formation of the Ceylon Labour Union were seen as a possible influence on the legislature for reforms in labour legislation by many employers.⁹ During the period between 1900 to 1930, important legislation were passed such as the Medical Wants Ordinance¹⁰, Indian Immigrant Labour Ordinance¹¹ and the Minimum Wages Ordinance¹².

⁶ Kumari Jayawardena; *The Rise of the Labour Movement in Ceylon*, p.16, Sanjiva Prakashana, Colombo, Sri Lanka.

⁷ Ibid.

⁸ Ibid, p 4.

⁹ Supra, note 5, p 298.

¹⁰ Ordinance No. 9 of 1912.

The period from 1930 to 1948 was the most important era for labour legislation with several important labour laws being introduced during this period. Some of them were the Trade Unions Ordinance¹³, Workmen's Compensation Ordinance¹⁴, Employment of Females in Mines Ordinance¹⁵, Wages Board Ordinance¹⁶, Factories Ordinance¹⁷, and Maternity Benefits Ordinance.¹⁸

Post Independence Era

The leadership in the workers' trade unions experienced new blood during this era. Dr. N.M. Perera, Peter Keuneman, Phillip Gunewardene and T. B. Illangaratne who were left wing leaders, were also politicians who influenced the legislature to introduce many labour legislation or to amend existing legislation to bring about stronger protection of the rights of workers. The Industrial Disputes Act¹⁹ and the amendment to the said Act that introduced the Labour Tribunal can be regarded as one of the greatest contributions towards industrial peace and dispute resolution. The Shop and Office Employees Act²⁰, Employment of Women, Young Persons and Children Act²¹, Employees' Provident Fund Act²², Termination of Employment (Special Provisions) Act²³, Employees' Trust Fund Act²⁴ and Payment of Gratuity Act²⁵ are some of such legislation.

Contract of Employment today

The Legislature has interfered with, in many ways, the freedom of contract in employment contracts. However, it must be remembered that, the base of the contract of

¹¹ Ordinance No. 1 of 1923.

¹² Ordinance No. 27 of 1927.

¹³ Ordinance No. 14 of 1935.

¹⁴ Ordinance No. 19 of 1934.

¹⁵ Ordinance No. 18 of 1937.

¹⁶ Ordinance No. 27 of 1941.

¹⁷ Ordinance No. 45 of 1942.

¹⁸ Ordinance No. 32 of 1939.

¹⁹ Act No. 43 of 1950.

²⁰ Act No 19 of 1954.

²¹ Act No 47 of 1956.

²² Act No.15 of 1958.

²³ Act No 45 of 1971.

²⁴ Act No 46 of 1980.

²⁵ Act No 12 of 1983.

employment is still the common law. There are areas in a contract of employment that the legislature has not interfered with and as such, the common law applies. The common law of Sri Lanka, the Roman Dutch Law, completely governs the question whether a relationship of employer and employee exists between two persons and whether there is a valid contract of employment.²⁶ The law relating to the vacation of post is also governed by the common law of Sri Lanka. In *Wijenayake v. Air Lanka*²⁷, the Supreme Court held that the duty of the employer to grant a hearing in a case of vacation of post was governed by Roman Dutch Law. Despite several statutory interventions to the contract of employment, Roman Dutch Law still remains the foundation of the contract of employment.

Common Law and Just and Equitable Jurisdiction of the Labour Tribunal

Prior to the enactment of the Industrial Disputes Act, a workman aggrieved by the termination of his employment was confined to the remedy available under the Roman Dutch Law of bringing an action in the civil court for breach of contract and the power of the court was limited to the ordinary remedies for breach of contract namely damages. Relief of reinstatement could not be granted, even where termination was held unjustified, as specific performance in contract of employment was not recognized under the common law.²⁸ The Industrial Disputes Act in 1950 made provision for the Minister of Labour to refer an industrial dispute to an Industrial Court or Arbitrator for settlement. “Industrial Dispute” included termination of employment²⁹ and the Arbitrator was required to make an award as may appear to him “just and equitable”.³⁰ Thus, an Arbitrator had the power to order reinstatement if termination was held unjust and unlawful. This remedy was found inadequate for the reason that a workman dismissed unfairly had no direct access to the Arbitration Tribunal as the Minister of Labour, in his discretion, had the power to refer an industrial dispute for arbitration and the process, even if the Minister decided to refer such dispute for settlement by arbitration, took a

²⁶ S.R. De Silva, *The Contract of Employment*, page 23, No. 4 – (Revised Edition); Employers’ Federation of Ceylon. 1998.

²⁷ [1990] 1 Sri Lanka Law Reports, 293.

²⁸ S.R. De Silva, *The Legal Frame Work of Industrial Relations in Ceylon*, page 293, H.W. Cave & Company, Colombo 1973.

²⁹ *Ibid*, Section 48, Industrial Disputes Act.

long time. In 1957, by way of an amendment to the Industrial Disputes Act,³¹ Labour Tribunals were established with similar powers and jurisdiction. Section 31B(1) made provisions for a workman or a trade union on behalf of a workman to make an application in writing to a Labour Tribunal, in respect of, inter alia, the termination of his services by his employer. It is important to note that the Tribunal's jurisdiction extends to a lawful as well as unlawful or unjust termination by the employer.³² Where an application under section 31B is made to a Labour Tribunal, it shall be the duty of the Tribunal to make such inquiries in to that application and hear all such evidence as the Tribunal may consider necessary, and thereafter make such order as may appear to the Tribunal to be **just and equitable**.³³

The dominant duty of a Labour Tribunal, Arbitrator and an Industrial Court is to make an order or award which is "just and equitable". However, the words "just and equity" had been the subject of many superior court decisions including the Privy Council. In *United Engineering Workers Union v. K.W. Devanayagam*³⁴, the Privy Council held;

...In each case, the award has to be one which appears to the Arbitrator, Labour Tribunal or Industrial Court just and equitable. No other criterion is laid down. They are given an unfettered discretion to do what they think is right and fair.

It was strongly contended on behalf of the employer in the above case that on an application to a Labour Tribunal, the Tribunal has to determine the legal rights of the applicant and that an order of a Labour Tribunal must be based on the legal rights and obligations of the parties. Rejecting this view, Viscount Dilhorne held that "***a Tribunal can order what it considers just and equitable even though that it is in excess of the workman's legal rights***"³⁵.

³⁰ Ibid, Section 17 (1), Industrial Disputes Act.

³¹ Ibid, Section 31 B, Industrial Disputes Act.

³² *The United Engineering Workers Union v. Devanayagam*, 69 NLR 289.

³³ Ibid, Section 31C (1), Industrial Disputes Act.

³⁴ 69 NLR 289.

³⁵ *Supra*, page 300.

Illegality and Contract of Employment

The contract of employment that is governed by the Roman Dutch Law is also subjected to the same legal principles that an ordinary contract is subjected to under that law. Therefore, it is important to consider when a contract of employment is said to be tainted with illegality. In certain circumstances, the contract of employment *per se* may not be illegal but the contract may have been performed illegally. There can also be situations where a statutory prohibition may render the contract of employment illegal. If the contract of employment is contrary to public policy, the same may also be held illegal. The important question is what relief a workman is entitled to under the present legal regime.

Employment of a female in a factory is not illegal. However, the law prescribes the times within which a female could be employed. If no wages were paid for a period a female was employed outside prescribed hours of which the employee had knowledge, , can the employer take up the defence of illegality in an action to recover unpaid wages? Would the employment of a driver who does not possess a valid driving licence render his contract of employment illegal? Is a person employed as a book keeper in a place where bets are placed on horse racing entitled to seek relief from a Labour Tribunal? In order to answer these complex questions, it is necessary to examine the common law principles applicable to illegality and the “just and equitable” jurisdiction of a Labour Tribunal.

Legal Principles applicable under the Common Law

A contract of employment may become illegal if the said contract contravenes a statutory provision or if the contract of employment is contrary to public policy. When a contract contravenes a statutory provision, it is important to ascertain whether the legislature intended to prohibit the contract itself or whether despite the said contravention, the intention of the legislature is sufficiently achieved without rendering the entire contract illegal. In the case of the latter, ordinarily the court would not hold a contract illegal if the

intention of the legislature had been sufficiently achieved. In *Fernando vs. Ramanathan*³⁶ Wood Renton ACJ held that;

If the alleged illegality of the agreement is to depend entirely upon its being contrary to the so called policy of the Ordinance, I do not think there is much to be said against the validity of the agreement. But, I think the real question involved is whether the agreement has been made for or about any matter or thing, which is prohibited and made unlawful by the Ordinance. Maxwell, in his work on the Interpretation of Statutes, citing numerous cases, clearly lays down the rule with regard to the validity of agreements of which the terms contravene the provisions of legislative enactments. He says (P 635, 5th Edition) “it is and has always been an established rule of law that no action can be maintained on a contract made for or about any matter or thing which is prohibited and made unlawful by statute; such a contract is void”. But, he also says, “when the object of the Act is sufficiently attained without giving the prohibition so stringent an effect, and where it is also collateral to or independent of the contract.” It is also needless to consider whether Agreement D1 falls within this exception. In my opinion, it does not come within the rule at all. If given a reasonable construction, there is no part of the Agreement D1 that contravenes any provision of the Opium Ordinance of 1899. The case of Meyappa Chetty vs. Ramanathan (1913) 16 NLR 33, has been cited against this view. I do not think that I should look outside the four corners of the Judgment if I am to treat the case as an authority on a question of law. Some of the terms of the deed in question in that case cited by His Lordship the Chief Justice do not appear in the present deed. Each case must depend upon its own facts and circumstances; and dealing with the deed in question in the present case, it seems to me that there is no part of it that can be taken objection to as being contrary to the provisions of the Opium Ordinance.

³⁶ [1914] 16 NLR 337.

Contracts which are illegal on the ground of public policy are those which have as their object something which is forbidden by the common law or which intends to achieve forbidden objects. As examples of contracts of employment that have been held to be illegal on the basis of public policy and those similar to contracts with a prostitute or contract to assist in the running of a gambling business in breach of the law. In Sri Lanka, there is an attempt to categorize betting on horse racing. Whether a contract of employment with a “bookmaker” contravenes public policy will be dealt separately later in this article. Whether a particular business is illegal and therefore, the contract of employment is illegal due to public policy considerations, have to be separated from the issue as to whether an employee is entitled to any relief, despite the fact that the contract of employment is illegal.

Enforceability of illegal contracts of employment

Contracts of employment, which are illegal or contrary to public policy, are generally not enforceable. This is based on two maxims recognized under the Roman Dutch Law namely; *ex turpi causa non oritur actio* meaning that no action can be founded upon a tainted transaction and *in pari delicto potior est conditio possidentis* meaning that the court will not assist a party who has equally contributed to the performance of the illegal transaction.

The two maxims will thus be seen to spring from a common law principle and to relate to two distinct groups of problems stemming from illegal contracts. The problem of enforcement of performance in general attracts the first maxim, while the problem of restoring the status quo ante attracts the second. So long as this is borne in mind, there would appear to be no objection to returning to these two maxims as related or cognate maxims.³⁷

In considering the applicability of maxim *in pari delicto potior est conditio possidentis*, the most important issue is whether the parties to the illegal transaction ought or ought not to be regarded as *in pari delicto*. A contract of employment, as discussed above, can

³⁷ Weeramantry C.G., Vol 1, p389, H.W. Cave and Co. Ltd., 1967 Col

never be regarded as *in pari*, and therefore, they ought not to be regarded as *in pari delicto*. When contracts or transactions are prohibited by positive statutes for the sake of protecting one set of men from another set of men, the one from their situation and condition being liable to be oppressed or imposed upon the other, there the parties are not *in pari delicto*, and in furtherance of these statutes, the person injured, after the transaction is finished and completed, may bring his action and defeat the contract. It may be said generally that the doctrine of *par delictum* is inapplicable “in cases of Oppressed and Oppressed”³⁸ On this ground alone, a workman is entitled to maintain an application in the Labour Tribunal even where the contract of employment is said to be tainted with illegality.

The second exception to the above maxims is “equity”. It appears that equity will give relief to a person who has been a party to an illegal transaction.³⁹ The Labour Tribunal is entitled to grant relief, which appears to the Tribunal as just and equitable, and the Tribunal is a “court of equity”. Therefore, the jurisdiction of a Labour Tribunal is wide enough to grant relief to an applicant who has been employed in an illegal business.

Two further exceptions that may help an applicant in obtaining relief from a Labour Tribunal are discussed in Weeramantry’s “The Law of Contract”⁴⁰. They are as follows.

- I. Where the contract is substantially unperformed; and
- II. Where the defendant would be unjustly enriched at the plaintiff’s expense.

The exception to the maxim where a defendant would be unjustly enriched at the plaintiff’s expense is also buttressed by the maxim *nellus commodum capere potest de injuria sua propria* meaning that no man shall take advantage of his own wrong.⁴¹ This maxim, which is based on elementary principles, is fully recognized in courts of law and

³⁸ Broom, Herbert, Broom’s Legal Maxims, p 493, 10th Ed, Universal Law Publishing Co. Ltd., Delhi 2005

³⁹ Supra, p 493.

⁴⁰ Ibid, Weeramantry C.G., p 390 and 391.

⁴¹ Ibid Broom, Herbert p 191.

of equity: reasonableness is the basis of this rule, which a Labour Tribunal is not entitled to ignore.

Decisions of the Superior Courts.

There are only a few local authorities available in this regard. It is rather unfortunate that the said authorities are not conclusive on the question whether a workman, who has engaged in an illegal business, is entitled to claim relief from a Labour Tribunal or not. This matter has not yet been properly considered by the Supreme Court.

In *Perera vs. Dharmadasa*⁴², a clerk who was employed by the employer for 11 years sought relief under section 31(b)(1)(a) of the Industrial Disputes Act upon the termination of his services. The Respondents' business was the acceptance of bets on horse racing. The application of the Applicant-Appellant was dismissed by the Labour Tribunal without a hearing on the basis that the employer's business was illegal and "justice could not be meted out by an illegal act". It was contended on behalf of the Respondents that it is essential that for the purpose or object of a contract of service that it should be one recognized as enforceable in law, that is to say it should not be illegal or *contrabonus moras*. Thus, it was argued that there can therefore be no effective contract for domestic service between the owners of a gambling den and his cook or maid employed therein if the cook or maid was aware of the illegal objects of the employer. In support of this argument, *Pearce vs. Brooks 1886 1 Ex 213* was cited. In this case, a job master failed in his action against a prostitute for the amount of the hire of a cab, where he knew that she was using the cab in her business and also what her profession was. Rajaratnam J rejecting the aforesaid contention, held as follows;

I find it difficult to agree with these decisions in the above cases. Both the cab driver and the laundress, and there appears to be no justification from either of them to be deprived of their dues when they contract with prostitutes and keepers of gambling dens. If these decisions are correct, if what has been stated above applies to any case, then the keeper of a gambling den will enjoy the

⁴² (1975) 77 NLR 285.

service of cooks and maids free of charge unless he chooses to pay them and prostitutes can have free rides in cabs when they are about their business although they are obliged to pay the laundress for washing their clothes. I do not think the law ever intended to make life much easier for those who contravene the law and give them the immunity of diplomats.

Rajaratnam J in the above case also referred to *United Engineering Workers' Union vs. Devanayagam*⁴³ where, Viscount Dilhorne observed that under the Industrial Disputes Act, a Labour Tribunal is empowered to grant relief beyond an Applicant's legal rights. As the Labour Tribunal has failed to give a hearing to the applicant in this case, the Supreme Court (the first appellate court at that time) set aside the order of the President and remitted back to the Labour Tribunal for full inquiry and order.

The Labour Tribunal, having followed the guidelines set out by the above judgment of Rajaratnam J, heard the parties and held that the Applicant's services were wrongfully terminated and ordered the Respondents to pay a sum of Rs. 7,200/- (equivalent to two years salary) as compensation and the costs fixed at Rs. 250/-. Being aggrieved by the said order, the Employer-Appellant appealed to the Court of Appeal (the first appellate court at that time) and the said decision of the Court of Appeal is referred as *Perera vs. Dharmadasa*⁴⁴. It is often misunderstood that the latter is the appeal of the former. Both these cases were the decisions of the first appellate court.

In the second case, Colin Thome J went on the basis that the Applicant-Respondent had the knowledge that he was engaged in an illegal business and that there was active participation of the Applicant-Respondent in the business of the Employer-Appellant and therefore, allowed the appeal and dismissed the application of the Applicant-Respondent. In this case, Colin Thome J failed to consider the just and equitable jurisdiction of the Labour Tribunal and its impact on the relief that can be granted to an applicant. In both

⁴³ Ibid.

⁴⁴ 1978/79 (2) SLR 287.

cases, the court failed to address the real issues underlying the consequences of an illegal contract namely;

- 1.Common law principles that affect the enforcement of an illegal contract.
- 2.The exceptions to the maxims discussed above.

Today, a Labour Tribunal is not bound by the case of *Perera vs. Dharmadasa*, purely on the basis that the said case was heard by two judges. Both the cases were decisions of the first Appellate Court at that time and can be distinguished and therefore disregarded by a Labour Tribunal on the basis that both the above decisions have failed to consider the important legal provisions underlying the main issue. The Provincial High Courts in any event is not bound by the said decisions, as the Provincial High Courts are now the first appellate court with regard to appeals from a Labour Tribunal.

In *Nettikumara (Salaka Recreation Club) vs. Motten*⁴⁵, a similar situation was analyzed by the then Judge of the High Court, Hon. F.N.D. Jayasooriya. The Applicants were employed by the employer in his business concerns titled Salaka Recreation Club, which was a casino club. The Government, by Emergency Regulations, declared all casinos illegal. When the Applicants turned up for work on 16th June 1991, they were directed to go back to their homes as the business of the employer had become illegal by that time. The Applicants claimed compensation in respect of their termination of services. The Respondents maintained that the business was compulsorily closed as it was illegal and that the Applicants were not entitled to any relief. Hon. F.N.D. Jayasooriya J (as he then was) analyzed several South African decisions in this regard and held that;

The employers engaging themselves in illegal businesses in any situation and in every eventuality cannot be exempted from their liabilities towards their employees, and thereby be permitted to stand in a more favourable position than employers who carry on a legal business. Reason, Prudence and Wisdom of the law would never have intended to alleviate and to grant relief in respect of such

⁴⁵ Provincial High Court Case No. 278/1992, decided on 26th April 1994).

liabilities, and thereby render life less burdensome by granting immunities for those who contravene the law in every eventuality.

In a somewhat similar situation, where the employees of a betting centre were deprived of EPF contributions, the Court held that the Petitioner was not entitled to evade payments relying on the company's own illegal conduct, which amounts to contravening of principles of public policy.⁴⁶

Since *Perera v. Dharmadasa*⁴⁷, much water has flown under the bridge and it is time to reconsider the correctness of the said decision, firstly on the basis of the legal principles applicable to the illegality of contracts that were never discussed in any of the above cases and secondly whether employment in the business of betting on horseracing is contrary to public policy considerations. It should be noted that as a Government policy, bookmakers are not raided and by looking at the annual amendments⁴⁸ to the Betting and Gaming Levy Act No. 40 of 1988, it can be seen that bookmakers have become a major source of income to the Government.

⁴⁶ Mudalige Group (Pvt) Ltd vs. Commissioner of Labour (2003) 3 SLR 359.

⁴⁷ 1978/79 (2) SLR 287.

⁴⁸ Acts Nos. 7 of 2001, 11 of 2002, 23 of 2003, 9 of 2005, 12 of 2005 and 14 of 2006.