

4. Unfair Trade Practices. §§ 17000-17101

CHAPTER 1

Contracts in Restraint of Trade

- § 16600. Unauthorized contracts
 § 16601. Sale of goodwill or corporate shares
 § 16602. Partnership arrangements
 § 16603. Requiring purchase of horror comic book as condition to sale or consignment of magazine or other publication
 § 16604. Requiring purchase of any other publication as condition to sale or consignment of magazine, etc.
 § 16605. Distributor's duty to retake unsolicited publications from retail dealer
 § 16606. Customer list of telephone answering service deemed trade secret
 § 16607. Customer list of employment agency deemed trade secret

Collateral References:

Annotations:

Construction of § 1 of the Capper-Volstead Act (7 USCS § 291) authorizing persons engaged in the production of agricultural products to act together in association. 20 ALR Fed 924.

§ 16600. Unauthorized contracts

Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

Added Stats 1941 ch 526 § 1.

Prior Law: Former CC § 1673. ✓

Cross References:

Sale of good will or corporate shares as exception to rule: § 16601.
 Partnership arrangements as exception to rule: § 16602.
 Combinations in restraint of trade: §§ 16700 et seq.
 Combinations to obstruct sales of livestock: §§ 16800 et seq.
 Fair trade contracts: §§ 16900-16905.
 Lawfulness of sale under agreement restricting choice of finance agency: § 18403.
 Alcoholic beverages fair trade contracts: §§ 24750 et seq.
 Contracts between nonprofit co-operative marketing associations and their members as not in restraint of trade: Fd & Ag C §§ 54038, 54039.
 Contract to pay or allow brokerage charge, rebate, etc., void: Fd & Ag C §§ 58351-58353.
 Compliance with statutes concerning agricultural products as defense to action under this statute: Fd & Ag C §§ 58665, 58681, 58713, 58743.

Collateral References:

Witkin Summary (8th ed) pp 369, 2029.
 12 Cal Jur 3d Conflict of Laws § 77; Cal Jur 2d Monopolies, Combinations, and Restraints of Trade §§ 1, 5, 6, 33-35, 37, 43, 47.
 9 Cal Practice, Action for Damages for Breach of Contract for Performance of Unique Personal Services

§ 1, amended by
 1953 ch 239 § 1,
 1961 ch 1647 § 1.]

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contracts of natural persons in restraint of trade is to make them unenforceable. *Havemeyer v Superior Court* (1890) 84 C 327, 24 P 121.

Although this statute declares contracts in restraint of trade void, it does not declare them illegal. *Brown v Kling* (1894) 101 C 295, 35 P 995.

This section does not invalidate protection of trade

secret or trust. *State Farm Mut. Auto. Ins. Co. v Dempster* (1959) 174 CA2d 418, 344 P2d 821.

13. Judicial Review

Whether a condition subsequent prohibiting the carrying on of a particular business upon property conveyed is a monopoly is a question of fact to be determined by the trial court. *Los Angeles Land & Water Co. v Kane* (1929) 96 CA 418, 274 P 380.

§ 16601. Sale of goodwill or corporate shares

Any person who sells the goodwill of a business, or any shareholder of a corporation selling or otherwise disposing of all his shares in said corporation, or any shareholder of a corporation which sells (a) all or substantially all of its operating assets together with the goodwill of the corporation, (b) all or substantially all of the operating assets of a division or a subsidiary of the corporation together with the goodwill of such division or subsidiary, or (c) all of the shares of any subsidiary, may agree with the buyer to refrain from carrying on a similar business within a specified county or counties, city or cities, or a part thereof, in which the business so sold, or that of said corporation, division, or subsidiary has been carried on, so long as the buyer, or any person deriving title to the goodwill or shares from him, carries on a like business therein. For the purposes of this section, "subsidiary" shall mean any corporation, a majority of whose voting shares are owned by the selling corporation.

Added Stats 1941 ch 526 § 1; Amended Stats 1941 ch 845 § 1; Stats 1945 ch 671 § 1; Stats 1963 ch 597 § 1.

Prior Law: Former CC § 1674.

Amendments:

1945 Amendment: Added (1) "or any shareholder of a corporation selling or otherwise disposing of all his shares in said corporation,"; (2) "or that of said corporation,"; and (3) "or shares" after "good will".

1963 Amendment: (1) Amended the first sentence by adding (i) "or any shareholder of a corporation which sells (a) all or substantially all of its operating assets together with the goodwill of the corporation, (b) all or substantially all of the operating assets of a division or a subsidiary of the corporation together with the goodwill of such division or subsidiary, or (c) all of the shares of any subsidiary,"; and (ii) "division, or subsidiary" after "said corporation,"; and (2) added the second sentence.

Cross References:

Good will: §§ 14100, 14101.

Collateral References:

Witkin Summary (8th ed) pp 370, 371.

Cal Jur 2d Goodwill § 6, Monopolies, Combinations, and Restraints of Trade §§ 33, 35, 36, 37, 40, 41, 43, 44.

20 Cal Practice, Injunction Against Violation of Agreement Not to Engage in Competing Business § 440:1.

Cal Corp Manual (2d Ed): § 587.

§ 16601

GENERAL REGULATIONS

Second Cause of Action

Plaintiff alleges for a second cause of action:

1. Plaintiff realleges and incorporates by reference each allegation set forth in Paragraphs 1 through 6 of plaintiff's first cause of action set forth above.
2. Unless defendant is restrained and enjoined from competing with plaintiff in the _____³⁰ business in the City of _____³¹, County of _____³², State of California, plaintiff will suffer irreparable injury and damage in that _____³³.
3. Plaintiff has no adequate or speedy remedy at law in that _____³⁴. Wherefore, plaintiff prays for judgment against defendant as follows:

First Cause of Action

1. For damages in the sum of \$_____³⁵;
2. For costs; and
3. For such other and further relief as the court may deem just and equitable.

Second Cause of Action

1. That defendant be permanently enjoined and restrained from competing with plaintiff in the _____³⁶ business in the City of _____³⁷, County of _____³⁸, State of California;
2. That pending a full hearing before this court to determine why defendant should not be permanently enjoined and restrained from the acts set forth above, the court issue a temporary injunction enjoining and restraining defendant;
3. For costs; and
4. For such other and further relief as the court may deem just and equitable.

[Signature]

[For verification, see form set out under CCP § 446.]

§ 16602. Partnership arrangements

Any partner may, upon or in anticipation of a dissolution of the partnership, agree that he will not carry on a similar business within a specified county or counties, city or cities, or a part thereof, where the partnership business has been transacted, so long as any other member of the partnership, or any person deriving title to the business or its goodwill from any such other member of the partnership, carries on a like business therein.

Added Stats 1941 ch 526 § 1; Amended Stats 1961 ch 1091 § 1.

Prior Law: Former CC § 1675.

Amendments:

1961 Amendment: Prior to 1961 the section read: "Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town or a specified part thereof, where the partnership business has been transacted."

1961 Amendment amended the section to read as at present.

Cross References:

Good will: §§ 14100, 14101.

Validity of contracts in restraint of trade generally: § 16600.

Collateral References:

Witkin Summary (8th ed) pp 371, 453, 4262.

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PRESERVATION OF COMPETITION

§ 16603

2. Defendant resides at ___⁴___ [address], in the City of ___⁵___, County of ___⁶___, State of California.

3. On ___⁷___, 19___⁸___, plaintiff and defendant agreed to engage in the business of ___⁹___, as partners, under the firm name of "___¹⁰___." The parties agreed that the business would be located at ___¹¹___ [address], in the City of ___¹²___, County of ___¹³___, State of California.

4. Under the terms and conditions of the partnership agreement, the parties began and continued the business at the aforementioned location until the dissolution of the partnership.

5. On ___¹⁴___, 19___¹⁵___, the partnership was dissolved by mutual consent of the parties. At such time, plaintiff purchased defendant's interest in the business, including its stock and goodwill. In consideration for the purchase, defendant agreed not to conduct the same business within the corporate limits of the City of ___¹⁶___, County of ___¹⁷___, State of California, in competition with plaintiff. A copy of the agreement not to compete is attached, marked Exhibit "___," and by reference made part hereof.

6. Plaintiff duly performed all of his obligations under the dissolution agreement and is currently engaged in continuing the former partnership business in the aforementioned city at ___¹⁸___ [location].

7. In violation of the dissolution agreement, defendant is presently conducting the business of ___¹⁹___ at ___²⁰___ [address], within the corporate limits of the City of ___²¹___, County of ___²²___, State of California, in competition with plaintiff. Defendant will continue to carry on such business unless restrained by this court.

8. Defendant's competing business constitutes a continuing irreparable injury to and interference with plaintiff's business. Such competition greatly reduces plaintiff's profits and will continue to do so unless defendant is restrained by this court.

9. Plaintiff has no adequate and speedy remedy at law in that ___²³___.

Wherefore, plaintiff prays:

1. That defendant be cited to appear and answer this complaint;
2. That defendant, his agents and employees, be enjoined during the pendency of this action, and permanently thereafter, from conducting his business of ___²⁴___ anywhere within the corporate limits of the City of ___²⁵___, County of ___²⁶___, State of California, in competition with plaintiff;
3. For costs; and
4. For such further relief as the court may deem just and equitable.

[Signature]

[For verification, see form set out under CCP § 446.]

§ 16603. Requiring purchase of horror comic book as condition to sale or consignment of magazine or other publication

Every person who, as a condition to a sale or consignment of any magazine, book, or other publication requires that the purchaser or consignee purchase or receive for sale any horror comic book, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars (\$500), or by both.

This section is not intended to prohibit an agreement requiring a person to purchase or accept on consignment a minimum number of

copies of a single edition or issue of a magazine or of a particular book or other particular publication.

As used in this section "person" includes a corporation, partnership, or other association.

As used in this section "horror comic book" means any book or booklet in which an account of the commission or attempted commission of the crime of arson, assault with caustic chemicals, assault with a deadly weapon, burglary, kidnapping, mayhem, murder, rape, robbery, theft, or voluntary manslaughter is set forth by means of a series of five or more drawings or photographs in sequence, which are accompanied by either narrative writing or words represented as spoken by a pictured character, whether such narrative words appears in balloons, captions or on or immediately adjacent to the photograph or drawing.

Added Stats 1955 ch 214 § 1.

Collateral References:

Cal Jur 2d Trademarks, Tradenames, and Trade Practices § 41.

NOTES OF DECISIONS

A "tying arrangement," for anti-trust purposes, may be defined as an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product,

or at least agrees that he will not purchase that product from any other supplier. *Corwin v Los Angeles Newspaper Service Bureau, Inc.* (1971) 4 C3d 842, 94 Cal Rptr 785, 484 P2d 953.

§ 16604. Requiring purchase of any other publication as condition to sale or consignment of magazine, etc.

Every person who, as a condition to a sale or consignment of any magazine, book, or other publication, requires that the purchaser or consignee purchase or receive for sale any other magazine, book, or other publication is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars (\$500), or by both such imprisonment and such fine.

This section is not intended to prohibit an agreement requiring a person to purchase or accept on consignment a minimum number of copies of a single edition or issue of a magazine or of a particular book or other particular publication.

As used in this section, "person" includes a corporation, partnership, or other association.

This section does not apply with respect to any contract relating exclusively to the sale or consignment of any newspaper of general circulation as defined by Section 6000 of the Government Code.

Added Stats 1961 ch 2029 § 1.

§ 16606

GENERAL REGULATIONS

- Cal Jur 2d Injunctions § 35, Master and Servant § 26.
- 1 Cal Practice, Injunctive Relief § 5:30.
- Cal Forms 27:25.
- 17 Am Jur Pl & Pr Forms (Rev ed), Master and Servant, Form 145.
- 18 Am Jur Pl & Pr Forms (Rev ed), Monopolies, Restraints of Trade, and Unfair Trade Practices, Form 41.

Proof of Facts:

- 3 Am Jur Proof of Facts 2d 785, Use of Customer List by Former Employee § 13 (proof of customer list as trade secret or confidential information).

Trial Techniques:

- 14 Am Jur Trials p 1 (actions for unfair competition—trade secrets).

Law Review Articles:

- Justifying relief in California customer list litigation. 37 SCLR 112.

Annotations:

- In camera trial or hearing and other procedures to safeguard trade secret or the like against undue disclosure in course of civil action involving such secret. 62 ALR2d 509.
- Right of employee who has wrongfully appropriated trade secrets, in accounting for profits, to set off losses. 67 ALR2d 825.
- Implied obligation not to use trade secrets or similar confidential information disclosed during unsuccessful negotiations for sale, license, or the like. 9 ALR3d 665.
- Former employee's duty, in absence of express contract, not to solicit former employer's customers or otherwise use his knowledge of customer lists acquired in earlier employment. 28 ALR3d 7.
- Validity and construction of statutes or ordinances regulating telephone answering services. 35 ALR3d 1430.

§ 16607. Customer list of employment agency deemed trade secret

(a) Except as provided in subdivision (b), the customer list, including the names, addresses and identity of all employer customers who have listed job orders with an employment agency within a period of 180 days prior to the separation of an employee from the agency and including the names, addresses and identity of all applicant customers of the employment agency, shall constitute a trade secret and confidential information of, and shall belong to, the employment agency.

(b) Notwithstanding the provisions of subdivision (a), no liability shall attach to, and no cause of action shall arise from, the use of a customer list of an employment agency by a former employee who enters into business as an employment agency more than one year immediately following termination of his employment.

Added Stats 1973 ch 1116 § 1.

Cross References:

- Privilege to protect trade secrets: Ev C § 1060.
- "Employment agency" for purposes of chapter regulating private agencies: Lab C § 1551.