

**CHAPTER 88**  
**UNLAWFUL CONTRACTS**

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**§ 88101. What is Unlawful.**

That is not lawful which is:

1. Contrary to an express provision of law;
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

**SOURCE:** CC § 1667.

**§ 88102. Certain Contract Unlawful.**

All contract which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

**SOURCE:** CC § 1668.

**NOTE:** No 1970 Civil Code §1669 existed.

**§ 88103. Contract Fixing Damages.**

Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

**SOURCE:** CC § 1670.

**§ 88104. Exceptions.**

The parties to a contract may agree therein on an amount which shall be presumed to be the amount of damage sustained by a breach thereof; when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

SOURCE: CC § 1671.

NOTE: No 1970 Civil Code §1672 existed.

**§ 88105. Contracts in Restraint of Trade.**

Every contract, by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided in the next two sections, is to that extent void.

SOURCE: CC § 1673.

**§ 88106. Exception: Sale of Good Will.**

One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified district, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

SOURCE: CC § 1674.

COURT CASES: See *Shelton v. Guam Service Games*, 239 F.2d 902 (CA9 1956).

**§ 88107. Exception: Partnership Agreement.**

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

SOURCE: CC § 1675.

**§ 88108. Restraint of Marriage Void.**

Every contract in restraint of marriage and any person, other than a minor, is void.

SOURCE: CC § 1676.

NOTE: No 1970 Civil Code §§ 1677-1681 existed.

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