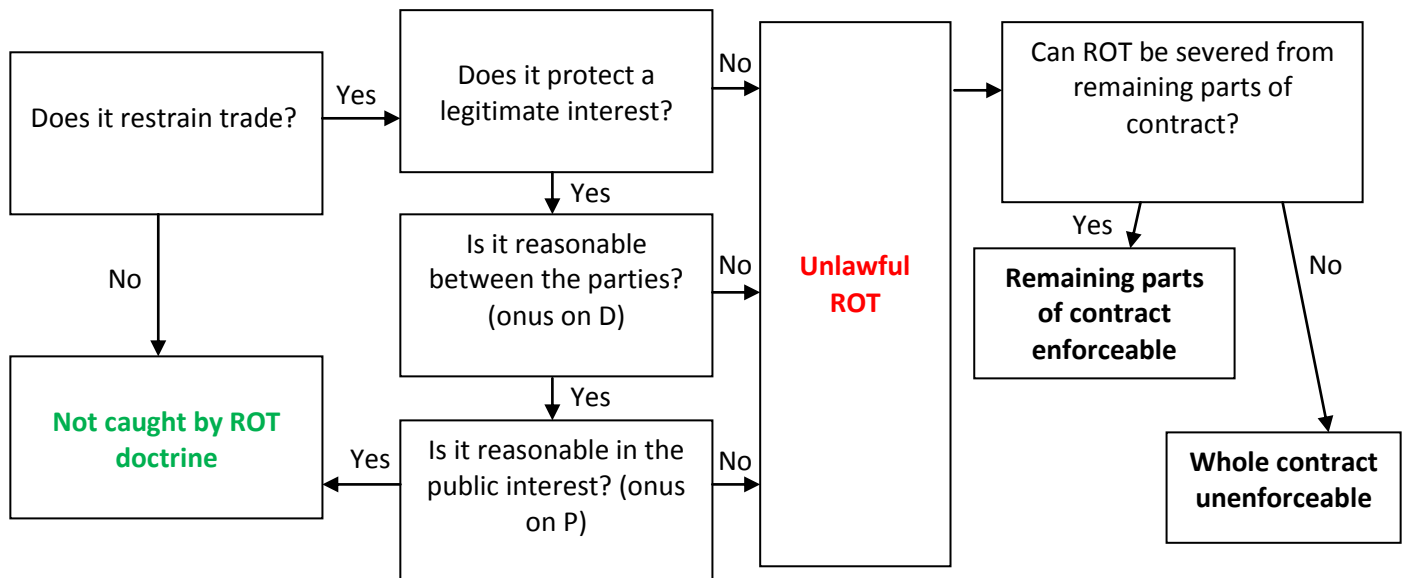


## TOPIC 2: Restraint of Trade

All agreements in ROT are unlawful unless reasonable.

1. Does it restrain trade?
  - a. No – it merely regulates it = **Not caught by ROT doctrine**
  - b. Yes...
2. Does it protect legitimate interest?
  - a. No = **Unlawful ROT**
  - b. Yes...
3. Is it reasonable between the parties? (Onus on D – enforcer.)
  - a. No = **Unlawful ROT**
  - b. Yes...
4. Is it reasonable in the public interest? (Onus on P – restrained party.)
  - a. No = **Unlawful ROT**
  - b. Yes = Not caught by ROT doctrine
5. If = **Unlawful ROT**: Can ROT be severed from remaining parts of contract?
  - a. Yes = **Remaining parts of contract enforceable**
  - b. No = **Whole contract unenforceable**



**Situation:** Imposition of a restraint on a person's trade.

**Examples:**

- After selling gun business, entering into restrictive covenant not to trade in guns or compete
  - Nordenfelt
- Footballers prevented from playing at other clubs
  - Buckley

### Step 2. Legitimate Interest

- Restraint must be for the purpose of protecting the interest and do no more than protect it.
- Examples of interests: protecting trade secrets, goodwill.

### Step 4. Reasonable in public Interest

- The extent to which the public is deprived of competition as a result of the restraint.
- eg

**Types of restraints:** vertical, horizontal, non-contractual.