

# BOOK REVIEW

LAW OF SALE OF GOODS, 7<sup>th</sup> Edition, Avtar Singh, Eastern Book Company, Lucknow, 2011. Pages 312. Price: Rs. 275.

A book which is intended to be nothing more than a commentary on an area of law is expected to have specific objectives. Firstly, the book should map out the general principles that are a part and parcel of the concerned field of study. Secondly, the book should provide explanatory notes with lucid illustrations, explaining the various situations where the general principles have been applied. Thirdly, the book should give an updated account of case laws, which ought to fall into two categories- the cases should either be such that the decision therein adds a new dimension to the existing understanding of the subject area or they may be such as to reaffirm the existing notions and authorities.

This book by Avtar Singh, declared its agenda *viz.* to be a commentary and nothing more, in its preface to the first edition. The following words, quoted from that preface, amply clarify this view: “The present work, being a brief study...only restates the fundamental and the underlying principles.” Therefore even if the book is marketed as a “well-acclaimed work” on Sale of Goods, it is nothing more than a brief commentary on the Indian Act i.e. Sale of Goods Act, 1930. Thus, when one has to measure the quality of this work, as a commentary on the Law of Sale of Goods, one will test it against the parameters enumerated in the preceding paragraph. The book is divided into ten chapters, of which nine are on the Sale of Goods Act, 1930 and the tenth chapter is on the Hire-Purchase Act, 1972.

The first chapter gives a brief overview of the definitions, as given in the Sale of Goods Act, 1930. The author has, however, merely reproduced §2 as given in the Act. Furthermore, of the fifteen clauses of §2, only three are accompanied by explanations. The explanations to the three which have been explained, *viz.* document of title, future goods and goods are too abbreviated and and may at times be difficult for the reader to understand. One major reason for this is that the illustrations used herein to explain the concepts are not elaborate. The consequence is a collage of one-liners, taken from the cases that appear in the footnote of this chapter.

The second chapter is titled ‘Formation of the Contract’ and covers §4 to §10. §4 of the Sale of Goods Act, 1930 defines and differentiates between a contract of sale and an agreement to sell. The author has, with the help of cases, explained the various concepts that define the nature of a contract of sale. He has explained the concepts of bilateral contract, money consideration and goods. The author has also differentiated between sale and contract for work and material, sale and agreement to sell, sale and hire-purchase and contract of sale and contract of agency. Nonetheless, there are gaping holes in the text, which hamper the reader’s understanding of the subject.

For example, in explaining goods, the author has failed to mention the BSNL case<sup>1</sup> and the TCS case.<sup>2</sup> An overview of these two cases would have kept the reader abreast with the contemporary issues surrounding the concept of goods. Further, the commentary on sale and contract for work and material has completely ignored the controversy surrounding composite contracts. The chapter has relied heavily on English cases and has substantially overlooked Indian cases. For example, in explaining §7, English cases have been relied upon to illustrate commercial impossibility, without corresponding Indian cases. One would be left confused and clueless as to the scope of §7 of the Sale of Goods Act, 1930 as compared to that of §56 of the Indian Contract Act, 1872 which deals with impossibility.

The third chapter is titled ‘Conditions and Warranties’ and covers §11 to §17. These sections deal with the concept of condition and warranty. Condition of a contract is that term which is intended by the parties to form the fundamental feature of the contract. This in effect means that breach of a condition gives the innocent party right to both repudiate the contract and sue for damages. On the other hand warranty is that term of the contract, which is intended by the party to be ancillary to the main contract. This means that breach of a warranty will allow the innocent party to sue for damages but will not enable the party to repudiate the contract.

§11-17 thus elaborate the various terms which should be regarded as a condition or a warranty in a contract of sale. Here too, as in the previous chapter, the author has explained all the concepts that have been used in these sections. The usage of cases to explain the scope of these sections follows the methodology of the previous two chapters. Hence like the previous chapters, there is enough room to point out the flaws in this chapter as well. The lack of coherence in the text is glaring.

For example, while explaining stipulation as to time the author devotes a paragraph on advance payment. A discussion on advance payment as a pre-condition is relevant at the stage of formation of a contract of sale. The sections on conditions and warranties, however, come into the realm of discussion at the stage of performance of the contract. Hence there was no need to explain the concept of advance payment, especially without justifying its inclusion herein. Further the manner in which certain terms have been used shows carelessness on the part of the author. For example, while referring to the decision of the Baldry case,<sup>3</sup> the author has used the word guarantee and warranty interchangeably. The word guarantee has a different connotation in the context of commercial law, in contradistinction with the word warranty. The author should have made an effort to keep the distinction in mind while referring to the case.

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<sup>1</sup> Bharat Sanchar Nigam Ltd. & Another v. Union of India & Others, (2006) 3 SCC 1.

<sup>2</sup> Tata Consultancy Services v. State of A.P., (2005) 1 SCC 308.

<sup>3</sup> Baldry v. Marshall, [1925] 1 KB 260; 1924 All ER Rep. 155.

At another place in this chapter, the author quotes the following text from the judgment of Lord Wright in the Grant case:<sup>4</sup>

“There is no need to specify in terms the particular purpose for which the buyer requires the goods, which is nonetheless the particular purpose within the meaning of the section...”

This quote, as reproduced, is being used by the author to explain §16(1) of the Sale of Goods Act, 1930. The author would ordinarily be expected to delineate the section that is being referred to by the judge, in the above quote, since the case is not an Indian case and has not been decided under the Indian law i.e. the Sale of Goods Act, 1930. Hence any reader would be left questioning which section the above case refers to. Finally in this chapter, like the third chapter, the author has relied heavily on English laws and discussion, without a sufficient discussion on the Indian position.

This point is best exemplified by the manner in which §16(4) has been explained. The entire explanation is nothing but a review of the English authorities and judgments and the English Sale of Goods Act. Even if one were to concede that the author is providing a comparative analysis of the law, the Indian law needs equal, if not greater attention. Further the correlation between the English and the Indian law has not been established. The mere reproduction of quotes does not explain to the reader the relevance of exclusively using English authorities to explain the scope of §16(4).

The fourth chapter is titled ‘Effects of the Contract’ and covers §18 to §26. These sections deal with ascertainment of goods, appropriation of goods, the concept of specific goods, transfer of property and transfer of risk. The methodology adopted is the same as in the previous chapters. Unfortunately, the flaws are also equally glaring and careless. For example, while explaining ascertainment of goods, the author states that “future goods for purposes of passing of property can never be specific. Future goods if and when sufficiently identified might be specific goods.” To a reader this would lead to an understanding that future goods can never be specific for the purpose of passing of property but future goods might be specific goods. If this book is meant for LL.B students to give them a basic idea of the subject, then one is fearful of the kind of idea that they will form on sale of goods. The author has not elaborated upon such contradictory and confusing statements.

At another place in the chapter while explaining the Indian position on sale on returnable packing, the author refers to the State of Maharashtra case.<sup>5</sup> However, the judgment of the United Breweries case<sup>6</sup> criticizing this case has not

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<sup>4</sup> Grant v. Australian Knitting Mills Ltd., 1936 AC 85.

<sup>5</sup> State of Maharashtra v. Britannia Biscuits Co Ltd., 1995 Supp (2) SCC 72.

<sup>6</sup> United Breweries Ltd. v. State of A.P., (1997) 3 SCC 530.

been mentioned. The author has also not referred to the test evolved by the Supreme Court to determine whether the transaction is a sale on returnable packing or bailment. Finally in this chapter there is an overall failure on the part of the author to support his conclusions with sound theoretical reasons.

The fifth chapter is titled ‘Transfer of Title’ which covers §27 to §30. The whole chapter is about the effect of the rule of *nemo dat quod non habet* i.e. no one can transfer better title than he himself has. The exceptions to this rule have also been explained. There is scope for the author to explain important facets of this topic. The examination of these sections required a mapping of the Indian position on concepts like unjust-enrichment and restitution. Furthermore, various discussions on the difference in the effect of mistake and misrepresentations on third party rights needed to be mentioned. Finally like the previous chapters, English authorities dominate the commentary in this chapter as well.

The sixth chapter is titled ‘Performance of the Contract’ and covers §31 to §34. These sections lay down the rights and duties of the seller and the buyer towards each other. The author has thus explained, using case law, the various situations in which these rights can be enforced and these duties ought to be observed. The trend of careless authorship continues as is exemplified by the following quote from the Maple Flock case:<sup>7</sup>

“With the help of the authorities, we deduce that the main tests to be considered in applying the sub-section to the present case are...”

Once again, the author has neither identified the section being referred to nor has established the link with the section being explained i.e. §38. Similar omissions continue to bog down the text adding to the confusion of the reader. Though one must stop to point out that the explanation of FOB contracts, CIF contracts and Ex-ship contracts definitely help the reader to comprehend these terms.

The seventh chapter is titled ‘Rights of Unpaid Seller against the Goods’ and covers §45 to §54. These sections deal with the various rights available to an unpaid seller, who, as the name suggests, is a seller who has not received the price for the goods. Thus the rights are granted in relation to the goods, before they reach the possession of the buyer. Hence concepts like seller’s lien have to be explained, in addition to the others like stoppage in transit. The author has provided an explanation to all the sections, accordingly covering all the points. One does, however, come across glaring conceptual errors which confuse the reader.

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<sup>7</sup> Maple Flock Co Ltd v. Universal Furniture Products (Wembley) Ltd, [1934] 1 KB 148.

For example, while explaining the right to stoppage in transit the author claims that if the property in the goods remains with the seller then he/she will have a lien over the same. This contention is contrary to the concept of lien, which in effect is a right to retain the possession of another's property. Hence for the unpaid seller to exercise lien it is important that the property in the goods pass to the buyer. Such conceptual mistakes should be checked in the future.

The eighth chapter is titled 'Suits for Breach of the Contract' which covers §55 to §61. The chapter essentially reiterates the general principle of calculating damages, as provided under the Indian Contract Act. Thus the sections detail the principle relating to anticipatory breach and mitigation of damages. In addition, the sections also deal with claims specific to the contract of sale like suit for price, damages for non-acceptance of goods, damages for non-delivery of goods and remedy for breach of warranty.

The author has applied the same methodology, as in the previous chapters, to this chapter and used cases to explain the situations wherein these sections can be invoked. The chapter also has its own flaws. For example, like the previous chapters, one finds that cases have been reproduced without the accompanying reasoning for arriving at a particular conclusion. Furthermore, the correlation of damages with that of restitution, as evident from §75 of the Indian Contract Act is missing.

The ninth chapter is titled 'Miscellaneous' and covers the remainder of the sections of the Sale of Goods Act, 1930 viz. §62 to §65. As the name suggests these sections elaborate upon varied areas relating to the contract of sale. Thus topics like exclusion of implied terms and conditions, auction sale, determination of reasonability of time and inclusion or deduction of taxes, have been covered. The author has explained all the sections with cases. A glaring oversight is the reference to the Monopolies and Restrictive Trade Practices Act, 1969, while explaining auction sales and knock out bidding, when the new edition would be expected to refer to the Competition Act, 2002.

The last chapter is essentially a review of the Hire-Purchase Act, 1972 and touches upon concepts of bailment, guarantee, insolvency of the hirer etc. The author has used both Indian and English cases to explain the various sections of this Act. This Act primarily consists of twenty six sections. The chapter condenses the entire discussion on these twenty six sections within twenty six pages. The major flaw in this chapter is that the author fails to establish a correlation between the duties of the bailor and the bailee and the hirer and the hiree. This was important in view of the fact that hire-purchase transaction is a combination of both sale and bailment.

The book in its appendix has given the bare text of the Consumer Protection Act, 1986. This was probably done to establish the changes introduced by this Act, in the rights of a consumer/buyer. The purpose seems to be to compare and contrast these changes with the existing provision of the Sale of Goods Act,

1930. The author has, however, not made any attempt to either point out the changes nor compare and contrast the two Acts. The book needs many a additions before it can be called a good commentary.

In conclusion, the book needs many additions before it can be called a good commentary. The main failure of the book vis-à-vis the reader is its lack of lucidity in the usage of illustrations, case-law and the text. Also, conceptual clarity is lacking in some portions. The book is good for lay persons who are curious about the Law of Sale of Goods but inaccurate information is given in some places. A serious student of law must be careful that he or she is not confused or misinformed by the book.

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