



CONTRACTS AND THEIR MANAGEMENT (2005). By B.S Ramaswamy. LexisNexis Butterworths, New Delhi. Pp. xii + 331 Price Rs. 325/-.

THE PEDAGOGY of law of contracts in different schools of learning exhibits a fairly uniform trend throughout the continental as well as common law jurisdictions which is well reflected in the books on this subject. The authors generally explain legal principles in the light of statutory or case law or both and then make critical assessment of these principles.

In India too, authors of contract law have expounded legal principles with the help of English and Indian cases and have not traversed beyond this point. A student of law of contract cannot find himself well equipped, after reading these books, to draft a contract that would comprehensively safeguard the interests of the contracting parties. These books are too legalistic, devoid of any practical utility and thus leaving a big void between the ‘law in books’ and ‘law in practice’.

The book under review<sup>1</sup> has broken this trend. This book has been written with a realization that there are very few other books on this subject which deal with the concepts, principles and significance of each of the clauses in a commercial contract, explaining the ramifications and pitfalls to be avoided while negotiating a contract and implementing it. It attempts to strike a balance between theory and practice of contracting without making it too legalistic.<sup>2</sup>

The book is divided into 33 chapters which is somewhat unusual. A good number of chapters are of one or two pages which could have been discussed under one broad heading.

Chapter first titled as, “Contracts – General Principles” in fact discusses all the legal principles governing a valid contract in two pages only. The author himself admits that the legal acceptability of contracts is governed by the criteria laid down in the Contract Act. There are, however, certain general principles which have to be borne in mind while negotiating and concluding commercial contracts.<sup>3</sup> Surprisingly, the author has not himself borne in mind the importance of these legal principles. He should have given a detailed account of these legal provisions. A very brief enumeration of the legal provisions given in the book is going to raise many doubts than

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1. B.S Ramaswamy, *Contracts and their Management* 331(2005).

2. *Id.* at vii (preface).

3. *Id.* at 4.



answers to the questions that would crop up in the minds of persons having no background knowledge of the legal principles governing contractual relationship of the parties.

Chapter second captioned as, “Structure of a Contract” has outlined 27 possible clauses which may be incorporated in a contract. Some of these clauses have been separately discussed as independent chapters ranging from three lines to two pages in a chapter.

Chapter eighth very rightly uses a new terminology of “Price Variation” in preference to “Price Escalation” for the reason that there has been a growing recognition of the fact that economic conditions could also be favourable and levels of inflation can also decline. The need for passing on the benefits of downward variation to the buyer has been considered as fully meeting the conceptual framework of such clause and the terminology has been changed to price variation clause.<sup>4</sup>

The author has very lucidly explained the formula of F+M+L<sup>5</sup> in order to calculate price variations that have taken place between the base level and the scheduled delivery date. This formula will prove very handy for all those who are entrusted the job of computing quantum of compensation in case of price variation at the scheduled time of performance of the contract.

The chapters titled “Bank Guarantees,<sup>6</sup> Taxes and Duties,<sup>7</sup> Scheduled Delivery Date,<sup>8</sup> Force Majeure,<sup>9</sup> Passing of Title and Risk,<sup>10</sup> Warranty,<sup>11</sup> Patents and Copyright<sup>12</sup> and Indemnities”<sup>13</sup> do not even refer to the relevant provisions of the Contract Act or Sale of Goods Act as the case may be. How can one understand implications of a clause in a contract unless he knows the relevant legal provisions?

Chapter 24 carries the title, “Resolution of Disputes”. This chapter at the outset makes a case for resolution of commercial disputes through arbitration by outlining its various advantages. It also elucidates various features of the Arbitration and Conciliation Act, 1996 along with the added provisions incorporated in this Act which were missing in the Arbitration Act, 1940 which has been now repealed. With this background of relevant legal provisions, the author reproduces five judgments of the Supreme

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4. *Id.* at 22.

5. F stands for the fixed element, M stands for the material element and L stands for labour element.

6. *Supra* note 1, Ch. 9.

7. *Id.*, Ch. 11.

8. *Id.*, Ch 12.

9. *Id.*, Ch. 13.

10. *Id.*, Ch. 18.

11. *Id.*, Ch 19.

12. *Id.*, Ch. 20.

13. *Id.*, Ch. 21.



Court of India to understand and appreciate the nature and scope of various provisions of the Arbitration and Conciliation Act, 1996.

There are three very useful appendices. The first appendix outlines specimen clauses in a contract which could prove useful in drafting a commercial contract. The second appendix contains a long list of possible articles which could be incorporated in a treaty entered into by two businesses. The third appendix details out salient features of the world bank procurement procedures.

The author has made a good attempt to look at the law of contract from a practitioner's perspective. The book makes to understand how teachers should approach this subject in the class and how a student could put into practice provisions of the law of contract. Teaching bare provisions of the law of contract in the class would not serve the desired purpose unless it is linked with the training of drafting of different contracts. This book would to a great extent serve this purpose. Himself being actively associated with negotiating and handling contracts at various governmental levels,<sup>14</sup> the author has come up with a treatise which will be of immense help to all those associated with the drafting of commercial contracts. However, a limitation of the book is that it is not self sufficient. It has to be read with other books on the law of contract so as to have a clear understanding of the theoretical as well as practical aspects of the subject. The relevant law on the subject has not been given due space. If the relevant law is analyzed together with the practicalities of the subject as discussed, the book will prove immensely useful to the students of law, bench and bar, commercial attorneys, businesses and all those associated with the commercial contracts and their arbitrations.

The book has a good get-up. The quality of the printing is excellent. It is almost free from spelling mistakes but the price is, however, on the higher side.

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14. As claimed by the author at the back of the cover page.

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