

THE SALE OF GOODS ACT, 1930 (1st ed. 1990). By Praful R. Desai
N.M. Tripathi, Pvt. Ltd., Bombay, pp. 148. Price Rs. 40.

BUSINESS LAW in India has suddenly become important not only with the increase in the volume of business, but also with the growing desire on the part of businessmen and now, business women to acquire some familiarity with the legal problems arising out of business transactions. A pretty large slice of business law is contributed by the law of contracts and the law relating to sale of goods. The author of the book under review¹ has offered us a useful publication dealing with the Sale of Goods Act 1930. Within a span of about 138 pages, he has tried to give a concise account of the main statutory provisions on the subject, supplemented by reference to, or brief summary of, the important Indian and English cases on the subject. The main topics covered are the contract of sale, conditions and warranties, passing off property, performance and delivery and rights relating thereto, carriage by sea in so far as it involves questions of sale of goods, remedies of the seller and the buyer and auction sales. The scheme of the book is to give, topicwise, the gist of the relevant sections and to illustrate it by examples drawn largely from case law. As a book for law students, it is a welcome attempt. It is stated that the book might be useful also for students for the B.Com. degree or for diplomas in banking and the like, including competitive examinations for the civil services.

By and large, the statement of the law as offered in the book is accurate and the summary of the relevant case law supplementing the exposition is of considerable assistance. The style is simple and the utility of the book for students preparing for various examinations is increased by the "summary chart" given at the end of each chapter, followed by exercises (model questions). A busy student or person preparing for an examination normally may not be inclined to consult more detailed treatises. Books of the nature under review are intended to meet their needs.

However, there are two main directions in which the book can be made more useful. The first suggestion which the reviewer would like to make is that of substance. The topics dealt with in the book do cover the traditional areas of the law of sale of goods. But the needs of modern business have added a few more areas, particularly by reason of the increased avenues for import and export. Transnational transactions now bring in the forefront many aspects of sale which suddenly become of practical importance to the man of commerce. It is not suggested that this should be turned into a book on transnational trade but at least an attention may be drawn to the developments on the subject, many of which are now reflected in international conventions or uniform laws. The distinction between a contract of sale and a contract of work or a contract for works^{1a}

1. Praful R. Desai, *The Sale of Goods Act, 1930* (1990).
1a. *Id.* at 14.

deserves more detailed treatment not merely because it has its importance in the law of sales tax, but also because occasionally, it may involve important theoretical and practical questions. Since the book is also aimed at students of accountancy, this aspect should be regarded as of some importance.

Traditionally, damages for breach of a contract for sale are calculated on the basis of market price or other relevant criteria.² Here also, some practical problems deserve treatment. Finally, consumer protection legislation may need to be explained in, say, two or three printed pages even in a book of this sort. The Monopolies and Restrictive Trade Practices Act, sections 36A and 36B introduced recently, have much to say on the legal relationship between the intending or actual seller and the intending or actual buyer. Without formally modifying the law of sale of goods, it has suddenly brought into prominence the importance of some of the seller's duties and the abundant and ever growing case law on the above mentioned sections, illustrates the tremendous practical utility of this legislation. A person who sells goods, whether as a manufacturer or as a wholesaler or as a retailer can ill-afford to remain ignorant of the newly imposed burdens flowing from the Monopolies and Restrictive Trade Practices Act.

Coming to matters of form, the book stands in need of considerable improvement in regard to points of detail. The reviewer came across several misprints. Actionable claims appear as actional claims.^{2a} The distinction between sale and agreement is stated as "much of vital importance."³ The name of a Supreme Court judge is spelt as "Wanchho".⁴ On page 19, it is stated that sale is always for a price "of consideration". The commodity which was at issue in *Martindale v. Smith*⁵ was not "stocks" of "oaks", but "stacks"^{5a}. It is stated that the reason for the above rule in England [is] that failure in payment does not go to the whole consideration for the sale. The word "is" has been omitted.⁶ On page 31, under section 13(1), the word intended is "voluntarily", but is printed as "voluntary". The case of *Dorab Ali*^{6a} was against the executors and not (as printed) against the executive. On page 38, in the text corresponding to footnote 36, dealing with the case of *Andrew & Co.*,⁷ the defect in the hessian cloth (printed as "hessain" cloth) was probably of the smell of the cloth, and not of the size only. On page 48, while discussing the doctrine of 'caveat emptor', the name of the judge in the text corresponding to footnote 67 is given as "Fitz Cribbon" but this was a judgment of

2. See. *id.* 127-130.

2a. *Id.* at 4.

3. *Id.* at 12.

4. *Id.* at 15.

5. (1841) 1 Q B. 389.

5a. See, *id.* at 29.

6. *Ibid.*

6a. *Id.* at 34, f.n. 20.

7. A.I.R. 1932 Cal. 879.

the Court of Appeal (Ireland) delivered by Lord Justice Fitzgibbon. On page 50, footnote 71, the name of the tramway company was Bristol, though given in the footnote as Briston. On page 63, in the text corresponding to footnote 29, "Lord" Pearson is stated to have pronounced the dicta in *Carlos* 1957 but in 1957, Lord Pearson would not have gone to the House of Lords. On page 64, footnote 31, the case of *Shankar Das v. Bhanna Ram* (1926) appears without the name of the High Court.

At some places, the book could have been made more useful by giving cross references. For *e.g.*, *Chaproniere v. Mason*, (1905) appears on page 44 as well as page 50. More details would also be appreciated. Thus, on page 50, where the lucid quotation from an American case *Folley* (1930) appears, students would be interested in knowing that it was a case of a dead mouse found in smoking tobacco. Similarly, on page 85, text corresponding to footnote 6, which is concerned with the case of *Wrightson Ltd.*, (1919), it may be mentioned that the case is relevant to section 33 of the (Indian) Sale of Goods Act. Of course, this case, has many other juristic aspects, concerned with the categories of delivery. There are also some places in the book where the examples so usefully given could be more easily brought home to the reader by stating (and even repeating, if necessary) the reason why the case was decided in a particular manner. For *e.g.*, on page 42, text corresponding to footnote 46, dealing with the case of *Barlary v. Marshall*, (1925) the buyer who wanted a car suitable for touring could reject the car even though it was after seeing a specimen that he entered into the transaction, because the Bugatti car actually delivered proved to be unsuitable for touring, and because he had, in that case, *relied on the seller's judgment*. This is clear from the judgment in the Court of Appeal by Bankes, L.J. Similarly, on page 47, text corresponding to footnote 63, *Andrews v. Singer*, (1934) 1 K.B. 17: (1933) All E.R. 479 (CA), the reason why the clause excluding liability for "all conditions, warranties and liabilities, *implied by statute, common law or otherwise*" remained ineffective was, that a used car was supplied, while the agreement was for the supply of new Singer cars and thus the obligation was an express one, as pointed out by the Court of Appeal. On page 51, text corresponding to footnote 73 relating to the case of *G. Mackenzie & Co.* (1945), the Calcutta High Court was dealing with a transaction where the car was sold under a trade name.

The book being intended for students, the author has not considered it necessary to include a table of cases. But the index, though it is a fairly good one, can be made still better by giving more references. For *e.g.*, Bills of Lading are dealt with on page 133 also; C.I.F. contracts appear on pages 70 and 96 also; F.O.B. contracts appear on page 70 also. An entry in the index is also needed for second hand goods.

The get-up of the book is neat and convenient for which the publishers deserve thanks.

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BOOKS RECEIVED FOR REVIEW

ARMIA ROSENCRANZ, SHYAM DIVAN, *Environmental Law and Policy in India: Cases Materials and Statutes* (1991). N.M. Tripathi (P) Ltd. Bombay, Pp. xxviii+555. Price Rs. 115, \$ 15.

C RAMA RAO, V. VIJAYALAKSHMI TAYAR AND Y. NAGESWARA RAO, *Professional Ethics and Advocacy* (2nd. ed. 1991). Gayetri Books, 63/11 M.V.P. Colony, Visakhapatnam 530017. Pp. viii+176. Price Rs. 30.

JOHN P. PAUL, *The Legal Profession in Colonial South India* (1991). Oxford University Press, Oxford House, Apollo Building, Bombay 400032. Pp. x+263. Price Rs. 250.

N.V. PARANJAPE, *Company Law* (Hindi) (1991). Central Law Agency, 30-D/1 Motilal Nehru Road, Allahabad. Pp. 448. Price Rs. 70.

S.P. SATHE, *Administrative Law* (1991), N.M. Tripathi (P) Ltd., Pp. x+504. Price Rs. 120.

S.P. SATHE, *The Right to Know* (Fifth Campus Law Centre Endowment Lectures: Delhi University) (1991). N.M. Tripathi (P) Ltd., Bombay. Pp. XX+58. Price Rs. 50.

SRIKANTA MISRA, *Handbook of Disciplinary Proceedings and Grievance Procedure* (1991). The Legal Miscellany High Court Road, Cuttack 753002. Pp. iv+vi+198+ii. Price Rs. 100.

V. KRISHNAMACHARI, *The Law of Evidence* (1991). Asia Law House, Opp. High Court, Hyderabad-2. (A.P.) PP. 399. Price Rs. 85.

VINAY CHANDRA MISHRA (ed.), *Special Issue on Reservation Crisis in India* (vol. XIII 1990), (vol. xviii 1991). Bar Council of India Trust, AB/21 Lal Bahadur Shastri Marg, Opp. Supreme Court, New Delhi-110001. Pp. xix+660. Price Rs. 25 single issue.

VINAY CHANDRA MIHSRA (ed.), *Special Issue on Ram Jannabhoomi-Babri Masjid* (vol. XVIII, no 2, Apr-June 1991). Bar Council of India Trust, AB/21 Lal Bahadur Shastri Marg, Opp. Supreme Court, New Delhi-I. Pp. xiv+337. Price Rs. 25 single issue.

YASH GHAI (ed.), *Heads of State in the Pacific: A Legal and Constitutional Analysis* (1990). Institute of Pacific Studies of the University of the South Pacific, Suva, Fiji. Pp. xiv+276.

YASH GHAI (ed.), *Public Administration and Management in Small States: Pacific Experiences* (1990). Institute of Pacific Studies of the University of the South Pacific, Suva, Fiji. Pp. xii+257.