

MULLA ON THE INDIAN CONTRACT ACT (11th ed. 1990). By Harshendu S. Pathak. N.M. Tripathi Pvt. Ltd., Bombay. Pp xliii + 340. Price Rs. 65. [Students' Edition].

MULLA'S CONTRACT Act (Students' Edition) has been popular amongst students ever since its publication in 1921. The first three editions were by Mulla himself, and the next five by Sharaksha, followed by two editions by J.H. Dalal. The present edition by Harshendu S. Pathak is the 11th one.

The book has been known for its simplicity of style, avoidance of too much detail that would confuse the student, correct presentation of the substance of the law and critical comparison with English law. *First*, it is no small task to write a students' book on the Indian Contract Act. The Act is not a masterpiece of draftsmanship, and (unlike much of the great Anglo-Indian Codes such as the Transfer of Property Act or Evidence Act), it cannot be credited with a very accurate exposition of the basic principles. *Second*, the law of contracts itself consists of abstract propositions whose scope and operation cannot be adequately appreciated without illustrations that exemplify those abstractions. *Third*, in so far as such illustrations are available in case law, Indian case law on many points is rather scanty and one may have to fall back upon English (or Commonwealth) cases for fully understanding the implications of provisions couched in generalities.

All these aspects make the task of the author of a book on the subject difficult. They impose a certain amount of strain on his resources. Not only will his physical work increase. He must ransack and explore a multitude of cases in order to furnish guidance on specific points left obscure by enacted law. Besides this he must also dig out from the recesses of his mind, dependable solutions to knotty problems that may arise under the enacted sections. This is not all. When one is writing for students, one has to strike a happy mean between too much of detail and too little of it. One has to come down to the level of the audience which, in this case, consists of young minds pressed for time, and which often do not receive adequate guidance from pedagogic instructors. At the same time, the author of a book for students may have to keep in mind the requirements of teachers as well, because his book will, at least for certain purposes, be consulted by them also. Mulla kept all these aspects in mind when he wrote the book under review<sup>1</sup> and revised it while alive. Subsequent editors have not disregarded these aspects. It is further a pleasure to find that the present editor has been careful enough to maintain all the good features of the book. The publishers on their part have tried to maintain the quality of the print so that printing errors are very few. The reviewer, however, came across one on page 10, line 18, where "Instance" is printed with a capital I, and another on page 218, after the text corresponding to

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1. Harshendu S. Pathak, *Mulla on the Indian Contract Act* (11th ed. 1990). [Students edition].

footnote 50, where also "Under" is printed with a capital U.

The fact that out of the cases reported since the last edition (1977), not all have found their place, does not mean that the book is wanting in that respect, because the editor (particularly of a students' book) has to make a selection. But before doing so, he has to go through so many cases, a labour which may not find patent reflection in the book.

When a book has run into eleven editions, one can take it that it would not have serious defects. However, there may still be scope for some improvements. The reviewer would like to mention a few points on which improvements are possible. These relate to matters that escaped the notice of previous editors. There are certain topics on which more matter can be added without unduly burdening the book. Thus, on some pages, "Bombay State" still appears, and so does "Madras State". The discussion as to conflict of law rules relating to "Foreign contracts"<sup>2</sup> may well be amplified by mentioning the recently evolved theory of "close and substantial" connection of the contract with a particular place. Incidentally, the case of *Dhanrajmal*<sup>3</sup> is not primarily one on the substantive law applicable but relates to jurisdiction, etc. There is a good discussion of the evergreen topic of enforceability of a contract at the instance of a third person.<sup>3a</sup> The subject, it may be mentioned, received some attention at the hands of the Law Commission of India in its Report,<sup>4</sup> which contains some valuable material and proposals.

Incidentally, the case of *Scruttons Ltd.* (1962)<sup>5</sup> continues to be described as "recent" in the text<sup>6</sup> which needs correction at the present day.

The special situations in which a third party can enforce a contract are enumerated in the book, of which assignment is dealt with in a brief discussion.<sup>7</sup> It would be useful to include a cross-reference<sup>8</sup> where the topic of assignment is dealt with. Either at the place the doctrine of consideration has been dealt with,<sup>9</sup> or at some other place, the book should contain some mention of the developments in UK and India, concerning promissory estoppel. It has been wrongly assumed (in India) that this applies only against public authorities. The subject is analogous or akin to contract, even if the Indian cases in recent times have involved only litigation against public authorities.

Under the heading "Void contracts" the Privy Council case of *Mahanth Singh* (1939) has been described as "recent",<sup>10</sup> which obviously needs to be corrected.

With reference to the topic of "Communication of special conditions",<sup>11</sup> the

2. *Id.* at 4, commentary on section I.

3. *Id.*, f.n. 20.

3a. *Id.* at 9.

4. Govt. of India, *Thirteenth Report (Contract Act 1872)* [1958].

5. *Supra* note 1 at 9.

6. *Id.*, corresponding to f.n. 47.

7. *Id.* at 11, item 5.

8. To p.18 (section 37, second para).

9. *Id.* at 11.

10. *Id.* at 14.

11. *Id.* at 17-8.

question of forum selection clauses or jurisdiction clauses<sup>12</sup> is also relevant and there have been some Indian cases where jurisdiction clauses unilaterally imposed were disregarded by the High Courts. It is good that telex contracts have been dealt with.<sup>13</sup>

The matter is of practical importance now. The topic of "bid bonds" has also been dealt with in the book.<sup>14</sup> Under "Indian Oaths Act",<sup>15</sup> it is now necessary to state the position under the Oaths Act 1969 which abolishes special oaths.

The book also discusses the extremely interesting topic of agreements not to proceed with the prosecution of non-compoundable offences.<sup>16</sup> This point is directly at issue in the controversy now going on before the Supreme Court, arising out of the Bhopal disaster. The position as to agreements to procure a spouse, has also been stated.<sup>17</sup> What about "marriage bureaus" now functioning (many with respectable antecedents) in several cities? Further on, there occurs the statement (probably coming down from the 4th edition) that "In India, however, suicide is not a crime... .",<sup>18</sup> apparently based on the *Oudh* case of 1945. If that was the reasoning in that case, it is somewhat puzzling and needs comment. Even today, attempt to commit suicide is an offence in India, though some High Courts have declared the relevant provision to be unconstitutional. The point is of practical importance.

Insurance policies in the context of wagering agreements have also been dealt with.<sup>19</sup> Since marine insurance policies have been mentioned, it may be desirable to refer to the Marine Insurance Act 1963 enacted on the recommendations of the Law Commission of India.<sup>20</sup> The extremely interesting case of *Bashir Ahmad*<sup>21</sup> has been discussed illustrating as to when a contract is not a contingent one.

The book deals with the difficult topic of frustration.<sup>22</sup> The important and authoritative cases on this point have been noted. In this context, some discussion of the (wider) concept of "force majeure" appears to be desirable, because the expression is too often loosely used by business executives (both in the public and private sectors).

These are some of the points which have occurred to the reviewer. The book should continue to be regarded as a valuable possession for all students of law. The present editor is an enthusiastic teacher of law and has been able to do justice to the task.

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12. *Id.* at 190.

13. *Id.* at 21-2.

14. *Id.* at 23.

15. *Id.* at 22.

16. *Id.* at 84.

17. *Id.* at 86.

18. *Id.* at 88.

19. *Id.* at 110.

20. Govt. of India, *Twenty First Report (Marine Insurance)* [1961].

21. *Supra* note 1 at 114.

22. *Id.* at 149.

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