

INTERNATIONAL JOURNAL OF LEGAL ENFORCEMENT

ISSN: 2582 8894|UIA: AA1003/2020



Volume 1 Issue 2

|June 2021|

Website: www.internationaljournaloflegaleenforcement-ijle.com

Email: editorialboard.ijle@gmail.com

About Us

International Journal of Legal Enforcement is an online peer review journal dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative of the young students. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. With this thought we hereby present you, International Journal of Legal Enforcement.

“Dharma is to protect the Needy”



Research Article on
Agency of an Auctioneer

- Pravertna Sulakshya

- Student, Rajiv Gandhi National University of Law, Punjab

Abstract

The laws governing agencies allow significant contribution to business fair play and commerce. The principal-agent relationship is a fiduciary one, hence, a strong framework of laws is important to regulate it time and again.

The essentials of agency require competency of the principal and for the agent, it depends on who the agent is to stand responsible to.

Auctioneer acts as an agent by means of auction where he conducts open sale of the products given to him by the principal seller for the purpose of sale to a third-party buyer. Thus, an auctioneer acts as a connecting link between the buyer and the seller.

An auctioneer gets his authorities to perform transactions on behalf of the seller by obtaining it expressly or as implied by the circumstances. An agent is not allowed to give warranties of the goods but must inform the buyer about the facts.

Apart from this, an auctioneer owes several duties to the seller such as duty of diligence and skill, duty of disclosure, and not delegating his authority further to anyone else. To a buyer, an auctioneer holds the duty of being buyer's agent, and disclosing him the facts as per the mode of auction. An auctioneer holds rights to remuneration from the principal and has the rights to be indemnified.

The laws governing agencies are essential to commerce and sale of goods. Awareness regarding all the duties and rights regarding auctions can create a better market system devoid of frauds and full of asset partitioning. This article tries to discern the same.

INTRODUCTION TO AGENCY AND ITS FEATURES

With the ever-increasing growth of trade and industry, it is consequent for anyone to be unable to do all the transactions himself. Thus, a person needs an opportunity to have someone to act as a connecting link and aid his business ties with the target party. For this reason, the concept of agency relationship was developed, which has laid the groundwork for efficient business operations.

Large corporations have agents in various parts of the same country but every major city of the world. Any large corporation conducts its corporate operations by a bewildering series of agents who work out the corporation's dealings and bind it through the contracts they enter. Indeed, the more significant the amount of business propagates, the more remarkable the number and types of agents involved. Thus, understanding the law of agency and the rights, duties and authorities of the actors involved in an agency relationship becomes of greater importance.

THE PRINCIPAL AND AGENT IN AN AGENCY RELATION

In Commentaries on the Law of Agency, Justice Joseph Story defines the foundational elements of an agency relationship to explain the relationship as a whole. Story states:

“In common language, the person *sui juris* and competent to do any act for his own benefit and employ another person to do it are called the *principal* and the person thus employed is called the *agent*. The relationship thus created between the two parties is termed *agency*, and the power delegated is called an *authority* in law.”¹

This clarifies agency as a relationship where one-person (principal) delegates an authority to act on his behalf to another person (agent) who agrees to do so.

However, an extension to this definition includes an agent's employment representing the principal to a “third person.” This emphasis is laid down in the definition of agent and principal as per section 182 of the Indian Contract Act, 1872. It defines “agent” as a person employed to do any act or represent another in dealing with third persons, and the person acted for or so represented the “principal.”²

¹ 2 Eric Blackwood Wright, Law of Principal and Agent 1 (Stevens and Sons 2010).

² The Indian Contract Act, 1872, §182, No. 9 of 1872 (India).

IS A SERVANT DIFFERENT FROM AN AGENT?

Story's definition makes the scope of the terms too broad as he prefaces the words "in common language." This makes the inclusion of the law of master and servant as well, which is different from what an agent is to the principal.

The concept of agency and an agent's role was distinguished from that of a servant by the Madras High Court in *P. Krishna Bhatta v. Mundila Ganapathi Bhatta*, where Justice Ramaswami noted that every person who acts for another is not an agent, as per the legal phraseology.³ When a person acts as a "representative" of the other in business creation, modification or termination of contractual obligations between that other and the third person, he is an agent.⁴ Mere rendering of personal services to the master does not make a person an agent, but a servant, since the representative character, derivative authority and dealing with a third person situation is absent in a servant's capacities.⁵

ESSENTIALS OF AGENCY

The agency relationship raises obligations on both the agent and the principal and changes both parties' legal relationships with third parties. As a result, the agent-principal relation becomes a fiduciary one.⁶ The agent is bound to the principal with obligations such as allegiance, due care, and compliance, while the principal holds an obligation to comply with his contract, most specifically, to pay the agent's salary. Thus, the requisites for a lawful agency must be fulfilled beforehand in order to look upon the consequences.

Competency of the Principal and Agent

A principal gives authority to an agent to perform acts on behalf of the principal and bind him with a third party. However, since this authority is given to enter into a legal relationship, the base of agency becomes an agreement⁷, for which the principal should be competent to contract.

According to section 183 of the Indian Contract Act, if the principal is a minor or unsound mind, he cannot employ an agent. In *Shephard v. Cartwright*, Justice Denning noted that an infant could not appoint an agent to act for him since an infant is likely not to have

³ P. Krishna Bhatta v. Mundila Ganapathi Bhatta, AIR 1955 Mad. 648.

⁴ *id.*

⁵ *id.*

⁶ 29 JACK BEATSON, ANDREW BURROWS, JOHN CARTWRIGHT, ANSON'S LAW OF CONTRACT, 687-688 (Oxford University Press 2010).

⁷ Garnac Grain Co Inc v. HMF Faure and Fairclough Ltd, 1986 AC 1130.

sufficient discretion and would choose a wrong man; so, the law declares him incapable of choosing an agent.⁸ However, nothing in the section prohibits a minor's guardian from appointing an agent for him.⁹

This further protrudes the question of the competency of an agent. Section 184 clarifies that as far as the agent's capacity to bind the principal and the third person is concerned, any person may become an agent.¹⁰ This is because, even if the agent is incompetent, he can create a valid legal relationship between his principal and the third party¹¹, none of which affects the agency relationship. However, with regards to the agent's capacity to bind himself with the principal, the agent must be a major and of sound mind¹² to become responsible for his acts to the principal. If fulfilled, competency requirements allow the formation of a valid agency and allow the principal to delegate authority and the agent to obtain his rights.

Consideration not required

Section 185 provides that no consideration is necessary to create an agency relationship.¹³ Law does not require any consideration to have a validity of the contract so formed.¹⁴ Since the principal is willing to be bound by the acts done by his agent serves as sufficient detriment to the principal¹⁵, and the agent cannot be deprived of remuneration unless proved¹⁶, the agency does not require consideration effectively at the time of the agent's appointment. Furthermore, the law imposes a duty on the principal to indemnify his agent, as evident from the case of *Adamson v. Jarvis*. Thus, no consideration is required at common law to determine authority delegation and liabilities of an agent to the principal.

Other essentials

- The agency established must be done to do any act which the principal can do lawfully
- Agency cannot be created for acts a person cannot himself do or delegate to the agent
- The agency relationship must be established either expressly or implied

⁸ Shephard v. Cartwright, 1 WLR 460.

⁹ Madanlal Dhariwal v. Bherulal, AIR 1965 Mys 272.

¹⁰ The Indian Contract Act, 1872, §184, No. 9 of 1872 (India).

¹¹ 7 RK BANGIA, CONTRACT-II 120-118 (Allahabad Law Agency 2017).

¹² The Indian Contract Act, 1872, §184, No. 9 of 1872 (India).

¹³ The Indian Contract Act, 1872, §185, No. 9 of 1872 (India).

¹⁴ Allahabad Bank Ltd. v. Simla Banking Co. Ltd., AIR 1929 Law 182.

¹⁵ Thomas v. Thomas, (1842) 2 QB 851.

¹⁶ Mohd. Moinuddin v. Mir Ahmed, AIR 1965 AP 409.

- There must be the intention of the agent to act on behalf of the principal and not on his own behalf

KINDS OF AGENTS

Agents are of several kinds and, depending on the authority delegated, perform different acts. However, the word “agent” is most commonly and constantly abused.¹⁷ It is often used as a complementary business phrase such as dress agency, secret agent, private inquiry agent¹⁸, or as in mechanics, “catalysing agent, cleansing agent” rather than a legal one. Nevertheless, the law classifies agents into two categories— mercantile agents, engaged in commercial activities, and non-mercantile agents, which are not usually engaged in activities revolving around sales of goods or properties. Mercantile agents are further classified based on rights (general and special agents) and based on functions (factor, commission agent, del credere agent, broker and auctioneer).

Among all the types of agents in law, auctioneers have been found to be discussed the least. Thus, this project attempts to deal with the auctioneer as a mercantile agent, specifically, his duties, authorities and other aspects.



¹⁷ Kennedy v. De Trafford, 1897 AC 180, 188.

¹⁸ 12 AVTAR SINGH, LAW OF CONTRACT (EBC 2015).

AGENCY AND AUTHORITY OF AN AUCTIONEER

It is commonly seen in the movie version of auctions where valuable pieces of art are bid on in lavish spaces, bids of millions of dollars made with a slight lift of a hand. Tense bidding back and forth happens in the world of cinema when rich, and desperate actors try to outmanoeuvre each other as the crowd in the auction house looks on and gasps in anticipation. It is suitable as movie material, but seldom what happens in real life.

In practice, auctions are a reasonably popular way to buy and sell a wide range of items, from art to real estate, to household furniture. They are a popular way for charities and churches to collect funds and a common way for a probate estate to sell real estate or a trustee in bankruptcy to liquidate a company. Auctions will occur in a packed building, on the courthouse's steps, in the courtroom, over the internet, or on the phone. Thus, it is natural for such an everyday activity to be governed by laws.

In short, auctions are a popular business method that the participants frequently misunderstand. The law of auctions is complex, and people who use this purchasing and selling system should be aware of issues such as when a binding contract to purchase is formed, what guarantees apply, and what license is needed. Apart from these, the duties, authority and limits of an auctioneer as an agent are also essential to be noted.

AUCTIONEER AS AN AGENT

An auction is a form of sale where a property is publicly put up for sale to a varying number of prospective buyers. To carry on the process of auction, the person who owns the property or goods for sale (principal) employs a person, known as auctioneer (agent), who regulates sale and negotiations to finally make a sale to the buyer (third party). Thus, just like an ordinary sale, an auction also has a seller and a buyer. The difference is that the auction consists of several prospective buyers called *bidders*.¹⁹ Among various bidders, the one who offers the highest price²⁰ from what the auctioneer initially offers gets a successful purchase. An auction gets complete when the bid is accepted, and the auction creates a binding contract.

¹⁹ STILMMEL, <https://www.addtoany.com/share?url=https%3A%2F%2Fwww.stimmel-law.com%2Fen%2Farticles%2Faw-auctions&title=The%20Law%20of%20Auctions> (last visited Apr. 13, 2021).

²⁰ Pitchfork Ranch Co. v. Bar TL, 1980 WY 73.

Hence, an *auctioneer* shall be defined as an agent whose business sells goods and other properties by an open sale for which he obtains commission by the principal.²¹

AUTHORITY OF AN AUCTIONEER

An auctioneer's legal position is the same as that of an agent. Thus, the authority conferred to him also derives its features from the law of agency. As per section 187 of the Indian Contract Act, 1872, authority is expressed when given by words spoken or written, while authority is implied when it is to be inferred from the circumstances of the case.²²

Can be conferred with both express and implied authority

An auctioneer may seem to sell his own property without disclosing that he is the owner, but in the usual course of business, he acts as an agent for another, i.e., the principal/seller.²³ The § 64(2) of the Sale of Goods Act, 1930 (India) and § 57 of the Sale of Goods Act, 1979 (UK) makes it clear that the sale of an auction is complete when the auctioneer announces its completion by the fall of the hammer or in another customary manner. When an auctioneer agent is employed in a professional capacity, he is primarily, and until the fall of the hammer exclusively, the agent of the seller²⁴; but upon the descent of the hammer, he becomes the implied agent of the highest bidder as well.²⁵ No written authority is necessary to enable an auctioneer to act within the scope of his agency²⁶, thus making an auctioneer have implied authority as well.

Scope of implied authority

However, the implied agency to bind the buyer is an exception to the rule that the seller's agent cannot act for the buyer unless expressly authorised to him, thus conferring an auctioneer's authority limited to sales by auction. This means an auctioneer's authority scope is limited to sign a memorandum sufficient to satisfy any statutory formalities, perhaps impliedly delegated. Suggestable to be, in a parole authority, it is very desirable that the authority should be in writing to allow the auctioneer to bind his principal by deed, and it must be under a seal.²⁷

²¹ *supra* note 11.

²² The Indian Contract Act, 1872, §187, No. 9 of 1872 (India).

²³ PATRICK F. EVANS, BATEMAN'S LAW OF AUCTIONS 7 (Sweet & Maxwell 1838).

²⁴ *Hinde v. Whitehouse*, (1806) 7 East 558.

²⁵ *Simon v. Motivos*, S.C. 3 Burr. 1921.

²⁶ *Rucker v. Cammeyer*, 1 Esp. 105.

²⁷ *Berkeley v. Hardy*, 5 B & O. 355.

The case of *Chaney v. Maclow* describes both the situations of an auctioneer being an agent of both buyer and seller, and the auctioneer becoming an agent of the buyer, but only for signing the statutory memorandums.

Facts of the case

The plaintiff was the mortgagee of a property he entrusted to the auctioneer for sale—Messrs, Brown and Ewin. The defendant was a surveyor carrying on a business in London.

The three auctioneers conducted the property auction in thirteen lots and got out some special conditions for sale. Those conditions included: (1) The highest bidder shall be the purchaser to bid up the entire property or single lots up to a reserved price or to withdraw the property as unsold, (2) No person shall bid an advance more petite than the sum stated by the auctioneer, (3) The purchaser shall immediately after the sale, pay the purchase money and complete the sale as per the conditions of sale.

The defendant attended the auctions and bid for lot 3. Since he was the highest bidder, the lot was knocked down to him. However, someone near to him brought up his attention to a unique condition attached to lot three as to pay 56 Euros for the expenses of making up the road in which the property stood.

The auctioneers sent a junior clerk to the defendant for getting the memorandum signed. The defendant refused to sign the contract and went away. Ewin, one of the auctioneers, however, signed the memorandum in the conditions of sale for and on behalf of the defendant since he had any authority to sign it as per provision of law. Nevertheless, as Maclow, the defendant did not pay, the plaintiff brought an appeal.

Issues raised

1. Whether the auctioneer has the authority to act as an agent of the buyer and sign the memorandum?
2. What is the duration of the authority of the auctioneer, even if conferred to him?

Held

Justice Romer held that “where there is a sale by public auction, and the property is knocked down by the auctioneer to the highest bidder, the auctioneer is not only the agent of the vendor, but he is also the agent of the purchaser, the highest bidder; and that he is the

purchaser's agent clearly to this extent, that he is entitled to sign, in the name and on behalf of the purchaser, a memorandum sufficient to satisfy the provisions of the Statute of Frauds, stating the particulars of the contract.”²⁸ Thus, it was established that an auctioneer at the sale is an agent for both buyer and seller. However, the moment the sale is over, the same principle does not apply.

It was further noted that “Entering the name of the buyer in the auctioneer's book was just the same thing as if the buyer had written his own name. That does not exhaust the authorities on this point.”²⁹ The judge further stated that “it appears to me that, according to a system well known at auctions, the memorandum attached to the particulars of sale is intended to be filled up and signed by those who purchase.”³⁰ Thus, the auctioneer agent’s authority is to take a minute or record of it at the time and as part of the transaction, and such a record is held a memorandum sufficient to satisfy the statute. The purpose of the writing signed by the auctioneer is to provide reasonable evidence of the contract, and that is the limit of his authority unless expressly provided by the seller and agreed to by the third party.

Constructive Authority

Constructive authority is given by subsequently ratifying³¹ an unauthorised act of the auctioneer, thrown back to the date of the act done.³²

A simple illustration of this situation is when X, an auctioneer, entered into and signed an agreement as an agent of Y, and shortly afterwards, Y sanctioned it with words in writing, it is held that X is no longer personally liable.³³ However, the principal's competency is essential for such ratification to be given³⁴ and make the contract binding.

Authority to sell but not to give warranties

In *Payne v. Leconfield*, the defendant had sent a mare for sale to an auctioneer, with no statement of her soundness. On the day of the sale, a bystander buyer remarked the mare had a discharge from her nostril. However, the auctioneer said that she had only a cold and knocked

²⁸ Chaney v. Maclow, (1929) 1 Ch 461.

²⁹ *supra* note 27.

³⁰ *supra* note 27.

³¹ The Indian Contract Act, 1872, §196, No. 9 of 1872 (India).

³² Bolton v. Lamibert, 41 Ch. D. 295.

³³ Spittle v. Lavender, 2 B. & B. 452

³⁴ Bigg v. Strong, 3 Sm. & G. 592

down the mare to the buyer (plaintiff). Later it was found that the mare suffered from chronic glanders and eventually had to be shot. The buyer sued the seller.

It was held that “the auctioneers have authority to sell, but not to give warranties as to the property sold unless expressly authorised by the seller.”³⁵

DUTIES OF AN AUCTIONEER

DUTIES TO THE SELLER / PRINCIPAL

When an auctioneer receives items on consignment from a seller, he becomes the seller's representative on all matters concerning the sale of the seller's goods. In addition to contractual commitments, constitutional and common law place additional responsibilities on the agent against the principal. They include fiduciary obligations such as honesty, discipline, disclosure, accounting, and loyalty.

Duty of Diligence and Skill

An auctioneer is an agent retained for the purpose of selling principal's goods, thus his prime responsibility must be to obtain the best price for them. The auctioneer must do everything to excite the bid,³⁶ advertise and sell catalogues to spread the information about the auction being held.³⁷ Apart from this, an auctioneer must employ as much skill as the principal wants out of him,³⁸ and must possess care for the property in his custody.

Duty of Disclosure

An auctioneer must have an affirmative duty to employ all reasonable efforts to communicate³⁹ to his principal and render proper accounts to his principal on demand.⁴⁰ In *Cristallina v. Christie, Manson and Woods, International, Inc.*, the auction house failed to inform the principal that Christie's internal experts disagreed over the “auction appeal” of the paintings chosen for sale. When seven of his eight pictures were not sold, the director said that he violated his duty to inform.⁴¹ He said that if he had been given the correct details before the auction, he might have prevented the bad selling by removing the paintings.

³⁵ *Payne v. Lord Leconfield*, (1881) 51 LJ QB 642.

³⁶ *Jones v. Tennessee Valley Auth.*, 334 F. Supp. 739.

³⁷ Jorge Contreras, *The Art Auctioneer: Duties and Assumptions*, 13 HASTINGS COMM. & ENT. L.J. 717 (1990).

³⁸ The Indian Contract Act, 1872, §212, No. 9 of 1872 (India).

³⁹ The Indian Contract Act, 1872, §214, No. 9 of 1872 (India).

⁴⁰ The Indian Contract Act, 1872, §213, No. 9 of 1872 (India).

⁴¹ *Cristallina v. Christie, Manson and Woods, International, Inc.*, 502 N.Y.S.2d 165 (1986).

Fiduciary Duty

An auctioneer must follow the directions given by his principal, and in absence of any directions, must conduct the business according to the custom of the business.⁴² An auctioneer must render utmost faith and honesty in all matters relating to an auction.⁴³ He must also not delegate his authority further to someone else, unless exceptional conditions require.⁴⁴

DUTIES TO THE THIRD PARTY

If the marketplace is an auction house, the bidder is immune to the whims of auctioneering whether he likes it or not. Sellers, on the other hand, have more leeway. They can consign their works to an auctioneer, sell to a broker, or have their own sale. Since buyers are thereby channelled into the auction arena, they may be entitled to additional security above that afforded to sellers.

Double Agency

As discussed already, the fall of the hammer makes an auctioneer an agent of the buyer as well, subject to certain conditions.⁴⁵ For example, the auctioneer cannot re-open the bidding and buy the property once the hammer has fallen on the buyer's lot.⁴⁶ Thus, to the buyer as well, an auctioneer owes the duties of fiduciary loyalty.

Disclosure of Facts and the Concept of Reserve

An auctioneer must not give warranties if not specified by the seller but must disclose the facts of the sales and auctions. There are generally two methods of making an auction, i.e., with reserve and without reserve.

When an auction sale is stated, and the information or advertisement is given to a particular bidder, the auction is said to be “without reserve,” also known as absolute auction. In such an auction, there is no price set already below which the goods or property would be sold. In effect, an auctioneer is making an offer in a unilateral contract to every auction attendee in a sense— “if you are the highest bidder for a particular lot, then I promise to accept your bid.”⁴⁷

Such a situation was first observed in the case of *Warlow v. Harrison*.

⁴² The Indian Contract Act, 1872, §211, No. 9 of 1872 (India).

⁴³ *Wadsworth v. Adams*, 138 U.S. 380 (1890).

⁴⁴ The Indian Contract Act, 1872, §190, No. 9 of 1872 (India).

⁴⁵ *supra* note 28.

⁴⁶ *Holston v. Pennington*, 225 Va. 551 (1983).

⁴⁷ 29 JACK BEATSON, ANDREW BURROWS, JOHN CARTWRIGHT, ANSON'S LAW OF CONTRACT, 687-688 (Oxford University Press 2010).

Facts of the case

An auction of a horse was advertised as ‘without reserve,’ which however, the plaintiff on attending discovered that the owner was allowed to bid. This meant that the owner was allowed to set a price below which he would not sell. The plaintiff refused bidding and sued the auctioneer.

Issues raised

Can a person hold action against an auction advertised not reserved but later found reserved?

Held

The court held the view that the auctioneer who puts up a property for sale which shall be without reserve, provides the plaintiff a right of action against the auctioneer.⁴⁸ On the other hand, in an auction held with reserve, the owner reserves the right not to sell the property. Thus, the auction acts like an invitation to contract and is not an offer to contract. This means, if the bid is low, an auctioneer is authorised not to sell the property.⁴⁹

RIGHTS OF AN AUCTIONEER

Right to remuneration

An auctioneer as an agent is entitled to remuneration if he completes the act assigned to him.⁵⁰ However, if he is guilty of misconduct in the business, he shall not be entitled to any remuneration.⁵¹ The auctioneer receives as a commission a percentage of the auction price of the objects sold, reinforcing the work ethic adage that “greater labour brings greater profit.”⁵²

Right to be indemnified

The seller is bound to indemnify the auctioneer as against the lawful acts done by him⁵³ in the exercise of the auction process. The agent is also entitled to indemnify against the consequences of the act done in good faith, even though the act causes an injury to the rights of third persons.⁵⁴

⁴⁸ Warlow v. Harrison, 29 LJ QB 14.

⁴⁹ Pitchfork Ranch Co. v. Bar TL, 615 P.2d 541 (Wy).

⁵⁰ The Indian Contract Act, 1872, §219, No. 9 of 1872 (India).

⁵¹ The Indian Contract Act, 1872, §220, No. 9 of 1872 (India).

⁵² *supra* note 37.

⁵³ The Indian Contract Act, 1872, §222, No. 9 of 1872 (India).

⁵⁴ The Indian Contract Act, 1872, §223, No. 9 of 1872 (India).

LIABILITIES OF AN AUCTIONEER

An auctioneer is normally responsible in the event of a seller failing to obey his seller's orders to cause monetary damages because of his negligence. The purchaser can also be liable to the purchaser for fraud, actions over and the delivery of the items not being carried out. As the auctioneer is an interested party, a third party designated to withhold cash or property open to dispute by two or more parties, the auctioneer is responsible to the bidder where the buyer has the right to refund the deposit.⁵⁵

An auctioneer who sells land for a non-owner and sells the product to that individual is liable directly, unless the auctioneer has behaved in good conscience and without being aware of the absence of title. the auctioneer is not liable. He or she may recover his or her losses in the form of damages that were ordered to compensate the real owner from an individual who obtained the proceeds.

AUCTIONS IN INDIA: FEATURES AND REGULATIONS

In any auction process, the main elements involved are the seller, auctioneer, buyer and the goods. Since the relationship between the seller, auctioneer and buyer is an agency relationship, and the statutory provisions regarding auction sale are governed by § 64 of the Sale of Goods Act, 1930.

However, the goods involved in the process are governed by the Sales of Goods Act, 1930 (for movable properties) and by the Transfer of Property Act, 1882 (for immovable properties). The term “goods” in the Sales of Goods Act includes every kind of movable property ranging from stock and shares, growing crops, and even grass, but excludes immovable property and money or currency.⁵⁶

Goods that remain at the time of the sale contract are be categorized as 'existing goods.' In addition, existing goods are grouped into three categories: specific goods, unascertained goods and ascertained goods. Specific goods are the ones which cannot be replaced⁵⁷, unascertained goods are the ones which cannot be specifically identified at the time of sale and

⁵⁵ *supra* note 37.

⁵⁶ The Sale of Goods Act, 1930, §2(7), Act No. 3 of 1930 (India).

⁵⁷ The Sale of Goods Act, 1930, §6(1), Act No. 3 of 1930 (India).

are in bulk⁵⁸, and ascertained goods are the ones which can be easily separated from the bulk at the time of contract of sale.⁵⁹

The other categorisation includes “future goods” which are yet to be produced and manufactured,⁶⁰ such as jewellery on the order of the buyer. The last categorisation is of “contingent goods” which may or may not be produced subject to certain conditions.

CASE LAWS

Bombay Salt and Chemical v. Johnson & Ors.

Facts of the case

The appellants were a firm with certain salt pans in Bombay. The salt pans were evacuated property and formed a compensation pool under Compensation and Rehabilitation Act, 1954. Thus, a lease was granted to appellants for a period of three years. However, without renewal of it, a regional settlement commissioner (respondent) sold the salt pans by public auction before the lease renewal. The appellant challenged the validity of the sale.⁶¹

Held

In this case, the apex court held that the highest bidder can assert claims over the auction sale property only if the sale of the auction is agreed and authorised by the seller, and the sale deed is carried out in his favour. Until then, the highest bidder cannot claim any rights over the property.

Coffee Board v. Famous Coffee and Tea Works

Facts of the case

Under the conditions of sale, they shall pay the price and supply the merchandise within 14 days of sale, which can be prolonged by the vendor for a period of three days. But the price of coffee decreased shortly after the sale, and perhaps due to the interventions introduced by the appellant. None of the buyers met their commitments. The coffee was then re-sold and the suits for re-selling the damage determined. The complaints were made for recovery of damages.

Held

The seller expressly proclaimed in this case, at the high court of Madras, that he may consider any offer regardless of the highest offer or the smallest tender he likes or considers to

⁵⁸ The Sale of Goods Act, 1930, §23, Act No. 3 of 1930 (India).

⁵⁹ The Sale of Goods Act, 1930, §18, Act No. 3 of 1930 (India).

⁶⁰ The Sale of Goods Act, 1930, §2(6), Act No. 3 of 1930 (India).

⁶¹ Bombay Salt and Chemical V. Johnson & Ors., AIR 1958 SC 289.

be a reasonable price to the land. That will be his choice entirely and he is not constrained by the highest offer.⁶²

Mcmanus v. Fortescue

In this case, the auctioneer erroneously sold the property under the reserved price, specified in a catalogue for each lot, which resulted in the seller refusing to sign the sales memorandum. As was mistakenly handled, the court discharged the auctioneer.⁶³

CONCLUSION

The laws governing agencies allow significant contribution to business fair play and commerce. The principal-agent relationship is a fiduciary one, hence, a strong framework of laws is important to regulate it time and again.

The essentials of agency require competency of the principal and for the agent, it depends on who the agent is to stand responsible to. Consideration is not found to be crucial to form an agency relationship. The agency relationship must be established to do acts which are lawful, must be established expressly or implied, and the agent must have intention to act on behalf of the principal, thus being his representative to a third party.

Auctioneer acts as an agent by means of auction where he conducts open sale of the products given to him by the principal seller for the purpose of sale to a third-party buyer. Thus, an auctioneer acts as a connecting link between the buyer and the seller.

An auctioneer gets his authorities to perform transactions on behalf of the seller by obtaining it expressly or as implied by the circumstances. An agent is not allowed to give warranties of the goods but must inform the buyer about the facts.

Apart from this, an auctioneer owes several duties to the seller such as duty of diligence and skill, duty of disclosure, and not delegating his authority further to anyone else. To a buyer, an auctioneer holds the duty of being buyer's agent, and disclosing him the facts as per the mode of auction. An auctioneer holds rights to remuneration from the principal and has the rights to be indemnified.

⁶² Coffee Board v. Famous Coffee and Tea Works, AIR 1988 SC 1487.

⁶³ Mcmanus v. Fortescue, [1907] 2 KB 1.

The laws governing agencies are essential to commerce and sale of goods. Awareness regarding all the duties and rights regarding auctions can create a better market system devoid of frauds and full of asset partitioning.



BIBLIOGRAPHY

ARTICLES AND WEBSITES

- Jorge Contreras, The Art Auctioneer: Duties and Assumptions, 13 HASTINGS COMM. & ENT. L.J. 717 (1990).
- STILMMEL, <https://www.addtoany.com/share?url=https%3A%2F%2Fwww.stimmel-law.com%2Fen%2Farticles%2Faw-auctions&title=The%20Law%20of%20Auctions> (last visited Apr. 13, 2021).

BOOKS

- 12 Avtar Singh, Law Of Contract (EBC 2015).
- 2 Eric Blackwood Wright, Law of Principal and Agent 1 (Stevens and Sons 2010).
- 29 Jack Beatson, Andrew Burrows, John Cartwright, Anson's Law Of Contract, 687-688 (Oxford University Press 2010).
- 7 RK Bangia, Contract-II 120-118 (Allahabad Law Agency 2017).
- Patrick F. Evans, Bateman's Law Of Auctions 7 (Sweet & Maxwell 1838).

STATUTES

- The Indian Contract Act, 1872
- Sales of Goods Act, 1930