

KAUṬILYA ON LEGAL AND ILLEGAL CANCELLATIONS OF CONTRACTS

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INTRODUCTION: TRANSACTIONS CAN GO WRONG

- The seller may not be the owner.
- The seller may not deliver after agreeing on a contract.
- The buyer may refuse to accept the item after agreeing on a contract.
- The seller may not have informed the buyer about a defect.
- The item (including a bride or groom) may be defective.
- The item can be returned by the buyer after a trial period when defects become apparent.

INTRODUCTION: AŚ III.15.1-10

¹*vikrīya paṇyam aprayacchato dvādaśapaṇo daṇḍaḥ, anyatra doṣopanipātāviśahyebhyaḥ* ²*paṇyadoṣo doṣaḥ*
³*rājacorāgnyudakabādha upnipātaḥ* ⁴*bahugunaḥīnam ārtakṛtaṃ vāviśahyam*

⁵*vaidehkānāṃ ekrātram anuśayaḥ, karṣakānāṃ trirātram, gorakṣakānāṃ pañcarātram* ⁶*vyāmiśrāṇāṃ*
uttamānāṃ ca varṇānāṃ vṛttivikraye saptarātram

⁷*ātipātikānāṃ paṇyānāṃ 'anyatrāvīkreyam' ity avarodhenānuśayo deyaḥ* ⁸*tasyātikrame caturviṃśatipaṇo*
daṇḍaḥ, paṇyadaśabhāgo vā

⁹*krītvā paṇyam apratigrhṇato dvādaśapaṇo daṇḍaḥ, anyatra doṣopanipātāviśahyebhyaḥ* ¹⁰*samānaś*
cānuśayo vikretur anuśayena

INTRODUCTION: AŚ III.15.1-10 (OLIVELLE)

SALE

¹For someone selling a merchandise and not delivering it, the fine is 12 Paṇas, except in the case of a defect, a disaster, or unacceptability. ²A defect is a defect of the merchandise. ³A disaster is a hardship caused by the king, thieves, fire, or water. ⁴Unacceptability is when it lacks numerous attributes or is contracted by someone in distress.

⁵For traders, the period for cancellation is one day; for agriculturists, three days; for cattle herders, five days; ⁶for people of mixed or the highest social classes, when they have sold their means of livelihood, seven days.

⁷In the case of perishable merchandise, cancellation must be done with the restrictive clause: “It shall not be sold elsewhere.” ⁸For its violation, the fine is 24 Paṇas or one tenth of the value of the merchandise.

PURCHASE

⁹For someone buying a merchandise and refusing to accept it, the fine is 12 Paṇas, except in the case of a defect, a disaster, or unacceptability. ¹⁰Cancellation (by the buyer), moreover, is identical to cancellation by the seller.

THE KAUṬILYA RECENSION AND THE ŚĀSTRIC REDACTION

McClish (2009)/Olivelle (2013):

- The Arthaśāstra has been composed by a man named Kauṭilya between 50 and 125 C.E.. This original composition is called “Kauṭilya Recension” and “consisted of material presented in the books 1-4, 6-7, 9-10, and 13”.
- The version that we use is mainly the result of the “Śāstric Redaction”, “carried out by a scholar well versed in Dharmaśāstras”. This scholar was responsible for several changes, among them
 - “the division of the *AŚ* into 15 books and 150 chapters” and
 - “perhaps also for other changes that brought the *AŚ* more into line with the mainstream of Brāhmanical social ideology expressed most prominently in the Dharmaśāstras”.
- The redactor (or someone else) may also have been responsible for “commentarial interventions”, such as “marginal glosses that have found their way into the text proper”.

THE KAUTĪLYA RECENSION AND THE ŚĀSTRIC REDACTION

- Olivelle on AŚ III.15.6: “This provision, tagged at the end, appears to be an interpolation or a part of the later redaction of the AŚ that laid emphasis on Brāhmanical notions such as caste.”
- AŚ III.15.2-4 a commentarial interpolation?

AŚ III.15.1-4 ON EXCUSES FOR NON-DELIVERY I

¹*vikrīya paṇyam aprayacchato dvādaśapaṇo daṇḍaḥ, anyatra doṣopanipātāviśahyebhyaḥ* ²*paṇyadoṣo doṣaḥ*
³*rājacorāgnyudakabādha upanipātaḥ* ⁴*bahugūṇahīnam ārtakṛtaṃ vāviśahyam*

- Kangle for 4: “What is lacking in many qualities or what is done by one in distress is unsuitable.”
- Olivelle objects:
 - “Qualities” are already addressed in *doṣa*.
 - The first compound *bahugūṇahīnam* refer to the merchandise and the second compound *ārtakṛtaṃ* to the transaction..
 - Olivelle’s translation has the advantage of letting both compounds refer to the transaction.
- But: conditions for valid transactions are expressed differently, by *vyavahārapratīśedha*.

AŚ III.15.1-4 ON EXCUSES FOR NON-DELIVERY II

¹*vikrīya paṇyam aprayacchato dvādaśapaṇo daṇḍaḥ, anyatra doṣopanipātāviśahyebhyaḥ* ²*paṇyadoṣo doṣaḥ*
³*rājacorāgnyudakabādha upanipātaḥ* ⁴*bahugunāhīnam ārtakṛtaṃ vāviśahyam*

- *viśahya* means “bearable, tolerable, conquerable, resistable”
- “suitable” (Kangle) or “acceptable” (Olivelle) do not really fit.
- *doṣopanipātāviśahyebhyaḥ*
 - dvandva with three elements?
 - dvandva with two elements *doṣa* and *upanipāta*, compounded with *aviśahya*.
- “unexecutables [unexecutable transactions] due to a defect [of the product] or due to force majeure”
- Compare two-element dvandva *bhreṣopanipātābhyām* (AŚ III.12.23, 12.29 and IV.1.6). Thus, *bhreṣa* may occasionally take the place of *doṣa*. These two terms seem to refer to problems with the traded good while *upanipāta* is about other difficulties.
- However, *doṣa* (“defect”) and *bhreṣa* (“decay”) are not synonymous.
 - *bhreṣa* seems to be the loss of value over time due to deterioration or spoilage
 - *doṣa* in III.15 is a defect already present but earlier undetected in the merchandise, which invalidates the sale or purchase *kanyādoṣa* (“defect of the girl”) and *varadoṣa* (“defect of the groom”) in the context of marriage (AŚ III.15.12, 14-15)

AŚ III.15.7 ON PERISHABLE MERCHANDISE I

7ātipātikānāṃ paṇyānām 'anyatrāvikreyam' ity avarodhenānuśayo deyaḥ

- Meyer: Bei Waren, die durch Zeitverlust unbrauchbar werden, ist kein Rücktritt zu gewähren, ausgenommen wo kein Verbot da ist (also volle Freiheit besteht), sie anderwärts zu verkaufen.

In the case of goods that get unusable by loss of time, the right to rescind is not to be granted, unless there is no prohibition (i.e., there is full freedom), to sell elsewhere.

- Olivelle: In the case of perishable merchandise, cancellation must be done with the restrictive clause: “It shall not be sold elsewhere.”

But: Why should the buyer put a restriction on reselling the good after he has returned it?

Why not just forbid selling rotten produce?

AŚ III.15.7 ON PERISHABLE MERCHANDISE II

⁷*ātipātikānāṃ paṇyānām 'anyatrāvīkreyam' ity avarodhenānuśayo deyaḥ*

where *avarodhenānuśayo* =

avarodhe na anuśayo deyaḥ ?

avarodhena anuśayo 'deyaḥ ?

avarodhena anuśayo deyaḥ ?

Compare

- AŚ III.14.2: *anuśayaṃ labhate* meaning “he obtains rescission” with
- AŚ III.15.7: *anuśayaṃ dadāti* meaning “he grants rescission”.

“locative, *deya*”: ⁷Cancellation is not to be granted [by sellers] for perishable merchandise if there is the hindrance that they could not be sold elsewhere/otherwise.

AŚ III.15.7 ON PERISHABLE MERCHANDISE III

⁷*ātipātikānām paṇyānām 'anyatrāvīkreyam' ity avarodhenānuśayo deyaḥ*

where *avarodhenānuśayo* =

avarodhe na anuśayo deyaḥ ?

avarodhena anuśayo'deyaḥ ?

avarodhena anuśayo deyaḥ ?

“instrum., *adeya*”: ⁷Cancellation is not to be granted [by sellers] for perishable merchandise, by reason of the limitation that they could not be sold elsewhere/otherwise.

However, *anuśayo 'deyaḥ* would normally mean “a not-to-be-given *anuśaya*”, rather than “an *anuśaya* should not be given”. The latter would normally be expressed by *anuśayo na deyaḥ* or *nānuśayo deyaḥ*.

AŚ III.15.7 ON PERISHABLE MERCHANDISE IV

7ātipātikānām paṇyānām 'anyatrāvikreyam' ity avarodhenānuśayo deyaḥ

where *avarodhenānuśayo* =

avarodhe na anuśayo deyaḥ ?

avarodhena anuśayo 'deyaḥ ?

avarodhena anuśayo deyaḥ ?

iti clause and *avarodhena* are considered as separate limitations:

“instrum., *deya*”: *7*Cancellation is to be granted [by sellers] for perishable merchandise with obstruction [i.e., for a time span smaller than that given in AŚ III.15.5] [and] with [the argument]: ‘It cannot be sold elsewhere/otherwise.’

This alternative is not convincing because it reads a lot into *avarodhena* and is rather convoluted.

AŚ III.15.5 ON THE RIGHT TO RESCIND I

⁵*vaidehakānām ekarātram anuśayaḥ, karṣakānām trirātram, gorakṣakāṇām pañcarātram*

	has the obligation to award right of rescission	has right to rescission
buyer	(A) Transactor as buyer awards rescission to seller.	(B) Transactor as buyer has right of rescission against seller.
seller	(C) Transactor as seller awards rescission to buyer.	(D) Transactor as seller has right of rescission against buyer.

¹*vikrīya paṇyam ...* ⁹*krītvā paṇyam*
clearly structures the text.

Kangle and Meyer opt for (D).

Read:

⁵*vaidehakānām ekarātram anuśayaḥ
bhavati*

AŚ III.15.5 ON THE RIGHT TO RESCIND II

⁵vaidēhkānām ekrātram anuśayaḥ, karṣakānām trirātram, gorakṣakānām pañcarātram ⁶vyāmiśrāṇām uttamānām ca vṛttivikraye saptarātram ⁷ātipātikānām paṇyānām 'anyatrāvikreyam' ity avarodhenānuśayo deyaḥ ⁸tasyātikrame caturviṃśatipaṇo daṇḍaḥ, paṇyadaśabhāgo vā

⁵For traders [as sellers], the period for cancellation [to be granted by the buyers] is one day; for agriculturists, three days; for cattle herders, five days; ⁶for people of mixed or the highest social classes, when they have sold their means of livelihood, seven days. ⁷Cancellation is not to be granted [by sellers] for perishable merchandise if there is the hindrance that they could not be sold elsewhere/otherwise.

- Advantage:

AŚ III.15.5-6 deals with (D) in the above table. Smooth integration of AŚ III.15.6 (whether an interpolation or not).

- Disadvantage:

AŚ III.15.7 clearly belongs to (C).

Defense: AŚ III.15.5-6 on the **seller's right** to rescind and

AŚ III.15.7 on the **seller's non-obligation**

AŚ III.15.5 ON THE RIGHT TO RESCIND III

AŚ III.15.10 (in the buyer section): ¹⁰*samānaś cānuśayo vikretur anuśayena*

- First translation:

¹⁰Cancellation [granted by the buyer], moreover, is identical to cancellation [granted] by the seller.

- Second translation:

¹⁰Cancellation [as an option to be exercised by the buyer], moreover, is identical to cancellation [as an option to be exercised] by the seller.

Since AŚ III.15.10 in the buyer section clearly relates to AŚ III.15.5 in the seller section, the second alternative is to be preferred.

PROPOSAL ON *APRAYACCHAN*, *APRATIGRĤNAN*, AND *ANUŚAYA* FOR MERCHANDISE I

SELLERS: FINES FOR NON-DELIVERY, RIGHTS TO RESCISSION

¹For someone who has entered into a contract as a seller of a merchandise and who does not deliver it, the fine is 12 Paṇas, except in the case of unexecutable transactions due to defect [of the product] or due to force majeure.

⁵For traders [as sellers], [the period for] cancellation [to be granted by the buyers] is one day; for agriculturists, three days; for cattle herders, five days; ⁸For its (*tasya* referring to cancellation = *anuśaya*) violation, the fine [to be paid by the buyers] is 24 Paṇas or one tenth of the value of the merchandise.

BUYERS: CORRESPONDING FINES AND RIGHTS TO RESCISSION

⁹For someone who has entered into a contract as a buyer of a merchandise and who does not accept it, the fine is 12 Paṇas, except in the case of unexecutable transactions due to a defect [of the product] or due to force majeure. ¹⁰Cancellation [as an option to be exercised by the buyer], moreover, is identical to cancellation [as an option to be exercised] by the seller.

PROPOSAL ON *APRAYACCHAN*, *APRATIGRĤNAN*, AND *ANUŚAYA* FOR MERCHANDISE II

The fine specified in AŚ III.15.8

- is to be paid by the buyers (for not granting the cancellations periods), but specified in the seller section.
- refers to the general rule of AŚ III.15.5 and perhaps also to AŚ III.15.6, but certainly not to the exception stated for perishable goods in AŚ III.15.7

Thus, AŚ III.15.7 is (also) an interpolation.

A second argument is provided by AŚ III.15.10:

¹⁰Cancellation [as an option to be exercised by the buyer], moreover, is identical to cancellation [as an option to be exercised] by the seller.

The non-obligation to grant rescission to buyers in the special case of perishable goods cannot hold for buyers and sellers alike.

PROPOSALS ON *ASVĀMIPRATIKROŚA* AND *PRATIKRUṢṬĀTIKRAMA* FOR IMMOVABLE PROPERTY I

Kauṭilya regulates the first right to purchase and briefly describes the auction procedure in AŚ III.9.1-5. He then continues in AŚ III.9.6-9:

6vikrayapratikroṣṭā śulkaṃ dadyāt 7asvāmipratikrośe caturviṃśatipaṇo daṇḍaḥ 8saptarātrād ūrdhvam anabhisarataḥ pratikruṣṭo vikrīṇīta 9pratikruṣṭātikrame vastuni dviśato daṇḍaḥ, anyatra caturviṃśatipaṇo daṇḍaḥ

Walter Slaje suggests:

⁶The bidder (*pratikroṣṭr*) at an auction has to pay the duty. ⁷In the case of an auction (*pratikrośa*) [for an immovable property] whose owner is not [present], the fine is 24 Paṇas. ⁸[However,] the seller (*pratikruṣṭa*) may sell [the house = *veśma* in AŚ III.9.3] of [the rightful owner] who does not turn up after seven nights. ⁹The fine is 200 Paṇas for a property (*vastu*) that [is traded] with a delay by the seller (*pratikruṣṭa*). In the other case [when the bidder is responsible for the delay], 24 Paṇas.

PROPOSALS ON *ASVĀMIPRATIKROŚA* AND *PRATIKRUṢṬĀTIKRAMA* FOR IMMOVABLE PROPERTY II

Comment on Slaje's proposal:

- AŚ III.16.10-28 on *asvāmivikraya*, where Kauṭilya deals with the sale by somebody who is not an owner and might therefore be treated like a thief
- Similarly, *asvāmipratikrośa* here in AŚ III.9.7 might deal with an auction organized by a non-owner.
- In both cases, we find the *guṇa* grade in the primary derivation, *vikraya* and *pratikrośa*, respectively.
- Compare also *pranaṣṭasvāmika* in AŚ III.9.17 (in a passage on disputes concerning fields) which means “a property whose owner is missing”

But:

- Does *pratikrośa* mean “auction”?
Literally, *pratikrośa* is about “crying against”, i.e., “making a bid”.
- Can sale of abandoned immobile property go ahead after only a few days have passed?
10 years are mentioned for seizing unclaimed property and even then with additional reservations.

PROPOSALS ON *ASVĀMIPRATIKROŚA* AND *PRATIKRUṢṬĀTIKRAMA* FOR IMMOVABLE PROPERTY III

Olivelle suggests:

⁶The successful bidder at the sale should pay the duty. ⁷For bidding by one who is not an owner, the fine is 24 Paṇas. ⁸After seven days have passed and he does not turn up, the person offering the property for sale may sell it. ⁹In the case of a transgression by the person offering the property for sale, the fine is 200 Paṇas in the case of immovable property; in other cases, the fine is 24 Paṇas.

Comment on Olivelle's proposal:

- Adding “successful” in AŚ III.9.6 seems justified by AŚ III.9.4-5, i.e., the buyer or bidding process seems to be completed.
- *asvāmipratikrośa* in AŚ III.9.7:
Olivelle conjectures that the bidder “is not a property owner and thus has no right to bid; perhaps he is an agent or a broker acting on someone else's behalf”.
- *atikrama* in AŚ III.9.9:
similar to AŚ III.15.1 (where a seller refuses to deliver the merchandise sold by him).

See modern commentary Śrīmūlā

PROPOSALS ON ASVĀMIPRATIKROŚĀ AND PRATIKRUṢṬĀTIKRAMA FOR IMMOVABLE PROPERTY IV

Modern commentary Śrīmūlā

*saptarātrād ūrdhvam iti | pratikruśya krayavyavahāraśuddhyartham vyavahārasthānam anabhigacchan
pratikroṣṭā āsaptarātram pratikṣaṇīyaḥ | tata ūrdhvam, pratikruṣṭo vikrīṇīta, anyasmai | pratikruṣṭātikrame
pratikruṣṭakrte tikrame pratikroṣṭāram anādrtya tadanyasmai vikraye kriyamāṇe iti yāvat | vāstuni dviśataḥ
vāstuviśaye dviśatapaṇaḥ, daṇḍaḥ anyatra catuṣpadādiviśaye, caturviṃśatipaṇo daṇḍaḥ*

“*Saptarātrād ūrdhvam*”: The bidder, who, after bidding does not turn up at the dealing place for the purpose of clearing the buying deal, has to be awaited for up to seven days. From then on, the auctioneer may sell it, to another one. *Pratikruṣṭātikrame* [is glossed as] in case of a transgression perpetrated by the auctioneer, i.e., to be precise, disregarding the bidder in case of a sale being effected to a person other than that one. *Vāstuni dviśataḥ* [is glossed as] 200 Paṇas concerning an immovable property. [The 200 Paṇas are] a fine. Otherwise, i.e., concerning animals and the like, the fine is 24 Paṇas.

PROPOSALS ON ASVĀMIPRATIKROŚA AND PRATIKRUṢṬĀTIKRAMA FOR IMMOVABLE PROPERTY V

“New” suggestion

*saptarātrād ūrdhvam iti | pratikruśya krayavyavahāraśuddhyartham vyavahārasthānam anabhigacchan
pratikroṣṭā āsaptarātram pratikṣaṇīyaḥ | tata ūrdhvam, pratikruṣṭo vikrīṇīta, anyasmai | pratikruṣṭātikrame
pratikruṣṭakrte tikrame pratikroṣṭāram anādrtya tadanyasmai vikraye kriyamāṇe iti yāvāt | vāstuni dviśataḥ
vāstuviśaye dviśatapaṇaḥ, daṇḍaḥ anyatra catuṣpadādiviśaye, caturviṃśatipaṇo daṇḍaḥ*

⁶The [successful] bidder at the sale should pay the duty. ⁷For bidding by one who [after successful bidding] does not become the owner [i.e., cancels the deal], the fine is 24 Paṇas. ⁸The auctioneer [identical with the owner] may sell [the house = *veśma* in AŚ III.9.3] [of the successful bidder] who [if the latter] does not turn up after seven nights. ⁹If he sells in case of a transgression [perpetrated] by the auctioneer, involving immovable property, the fine is 200 Paṇas, otherwise [if no transgression is involved] 24 Paṇas.

CONCLUSION

- The right to rescission does not apply to immovable property.
- Kauṭilya specifies fines for cancellations of deals for immovable property as well as for merchandise:
 - *asvānipratikrośa* in AŚ III.9.7 is related to *apratigrhṇan* in AŚ III.15.9
 - *pratikruṣṭātikrama* in AŚ III.9.9 is related to *aprayacchan* in AŚ III.15.1.
- For merchandise, these fines are the same for sellers and buyers (12 Paṇas).
- The fines for buyer and seller are also the same for immovable property, but twice the amount of those for merchandise).
- ... unless the seller commits an *atikrama*.
 - Perhaps, he sells to a third party although he knows that the winning bidder is serious about the transaction.
 - If he sells without this knowledge (perhaps the successful bidder did not turn up for a few days), he pays only 24 Paṇas.
- Why a similar differentiation (i.e., a higher fine in case of *atikrama*) not also for merchandise?
 - for items of little value the seller's temptation to cancel a contract in order to sell to another buyer (who pays more) is minimal or even non-existing