

COMMERCIAL LAW

(For Undergraduate Classes)

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PREFACE

This Book of **Commercial Law** is specially prepared for Undergraduate students. It is prepared according to the syllabus given in this book.

I do not claim any originality in the subject-matter of this book. I have drawn immense material from many standard books on this subject. Yet, this book is original in the exposition and presentation of the subject-matter. The subject-matter has been dealt with exhaustively and in very simple language.

I express my profound gratitude to my well-wishers for their encouragement in the preparation of this book. I am also thankful to the **United Publishers, Mangalore** for bringing out this book.

I shall consider my efforts amply rewarded if this book is found useful by the teachers and the students.

Suggestions for improvement of this book will be gratefully accepted.

Mangalore,

B.S. Raman

SYLLABUS

COMMERCIAL LAW

Unit -I : Nature and Significance of Law (12 hrs.)

Branches of Law- Sources of Mercantile Law - Law of contract - Definition. Difference between Agreement and Contract, essential of Contract- Types of contract based on formation, performance, enforceability; Offer - Meaning, types- Rules governing offer. Meaning of cross offer, Meaning of Standing offer, Meaning of Tender; Acceptance - meaning and types, Essentials of valid acceptance.

Unit - II : Consideration (12 hrs.)

Meaning-Rules governing consideration-Stranger to a contract cannot sue and its exceptions- Exceptions to the rule "no consideration no contract". Capacity to contract - Minor - effects of minor's agreement. Persons of unsound mind - Legal incapacity; Free consent - Coercion - Undue influence - Fraud - Misrepresentation - Mistake. Differences between Coercion and Undue influence, Differences between Misrepresentation and Fraud.

Unit - III : Legality of Object (12 hrs.)

Meaning - Unlawful objects -objects forbidden by law, objects defeating the provisions of law, fraudulent objects, objects injurious to person or property, immoral objects. Agreements opposed to public policy; Discharge of Contract -Modes of discharge - Breach of Contract - Remedies for breach of contract -Wagering agreement and contingent contract (Meaning only) Quasi contract- meaning and types.

Unit - IV : Negotiable Instruments Act (12 hrs.)

Meaning, features and presumptions. Bills of Exchange, Promissory Note and Cheque (meaning - form or specimen, features and differences) Crossing - (meaning and types only) - dishonor of Cheque under Section 138; Intellectual Property Rights- Meaning - Patents- Trade Marks - Copy Rights- Industrial designs.

Unit - V : Information Technology Act (12 hrs.)

Objectives - Digital signature (meaning only) - Cyber Crimes - Meaning, legal provisions- Crimes against Persons - Crimes against

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UNIT I : NATURE AND SIGNIFICANCE OF LAW

Definition and Meaning of Law :

In the words of Austin, "A law is a rule of conduct imposed and enforced by the Sovereign".

According to Salmond, "Law is the body of principles recognised and applied by the State in the administration of justice".

Holland defines law as "a general rule of external human action enforced by a sovereign political authority, i.e., the State".

In the words of Blackstone, "Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions, whether animate or inanimate, rational or irrational".

Woodrow Wilson defines law as "that portion of the established habit and thought of mankind which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the Government".

From these definitions, it is clear that law refers to a code of conduct established and enforced by the Government for the proper regulation of society and for the orderly conduct in life. In other words, law is the body of rules and principles recognised and enforced by the Government to regulate the external human action and conduct of individuals in their dealings with other individuals and with the State (i.e., the Government). In short, law means the rules recognised and enforced by the State for regulating the rights and obligations of the people for securing justice, peaceful living and social security.

Characteristics of Law:

The essential features or characteristics of law are :

- (i) Law is a code of conduct (i.e., a set of rules) relating to human action.
 - (ii) Law attempts to regulate the external action of human beings (i.e., man's contacts, associations, dealings or relationships with others and with the State).
 - (iii) Law is recognised and enforced by the State (i.e., the Government).
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- (iv) **Law is enforced by the State on the people** so as to secure social justice, peaceful living and social security in the community.
- (v) **No doubt, the law is recognised and enforced by the State. But the State itself is conditioned (i.e., regulated) by the same law. That means, law applies to all without discrimination.** In fact, law attempts to achieve uniformity in its application.
- (vi) **Law always remains supreme.** (The supremacy of law is technically called **the rule of law**.)
- (vii) **Law is not static. It is dynamic.** It changes when circumstances and conditions in the society change. For instance, in the past, law was concerned with mere maintenance of law and order in the society. But, today, law is mainly concerned with the establishment of socio-economic justice and removal of imbalance in the socio-economic structure.

Nature of Law :

Law is not **static**. It is **dynamic**. It changes when circumstances and conditions in the society change. For instance, in the past, law was concerned with the mere maintenance of law and order in the society. But, today, law is mainly concerned with the establishment of socio-economic justice and removal of imbalance in the socio-economic structure. Thus, law is a dynamic and living phenomenon, having a real existence in relation to the facts of human affairs.

In fact, law must be dynamic. That is, the law prevailing in society at any point of time must be in conformity with the conditions, customs and general sentiments and aspirations of the people of that time.

Significance of Law:

Law is of great significance to man. The significance of law is clear from the following facts:

- (a) Man is a social being. That is, he lives in society with fellow beings. While living in society, he comes into contact with others in different capacities. For instance, he comes into contact with a landlord as a tenant, with a tenant as a landlord, with an employee as an employer, with a master as a servant, with a servant as a master, with a customer as a supplier, with a supplier as a customer, with a lender as a borrower, with a borrower as a lender, with the Government as a tax payer and so on. In all his contacts, associations, dealings or relationships with others, he is expected to observe a code of conduct (i.e., a set of rules) for the peaceful
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living in the society. Otherwise, peaceful living in the society becomes impossible. **This is because, as Aristotle said, man when perfected is the best of animals, but when separated from law and justice, he is the worst of all.** So, to perfect man (i.e., to regulate the conduct of man), it becomes necessary for the state to evolve and enforce certain common or uniform rules of conduct.

- (b) Not only there is the need for law for regulating the conduct of the people, but it is also necessary for every man to have knowledge of the general principles of the law of the country in which he lives. **That is because "Ignorantia Juris non excusat", i.e., "ignorance of law is no excuse."** Though it is not possible for a layman to learn every branch of law, it is necessary for him to know at least the general principles of law of his country. A knowledge of the general principles of the law of the country will certainly help a person in protecting himself against others, when he is brought into legal relationships with others, knowingly or unknowingly.
- (c) Law helps to ensure peace and order in the society, and thereby, enables men to look ahead with some sort of security as to the future. **According to William Anson, "The object of law is order and the result of order is that men are enabled to look ahead with some sort of security as to the future."**
- (d) Law is also helpful to establish socio-economic justice and to remove the existing imbalance in the socio-economic structure. In other words, law will bring about allround improvement and welfare of the community or society.

BRANCHES OF LAW

Introduction:

With the growth of civilisation, the activities of the people have diversified. As such, it is neither desirable nor feasible to regulate the various kinds of activities of the people through a uniform set of rules and principles. In other words, different sets of rules and principles are necessary for regulating the different kinds of human activities. Accordingly, the civilised societies have evolved and enforced different sets of rules and principles, i.e., different branches of law, such as mercantile or commercial law, civil law, criminal law, constitutional law and international law.

Different Branches of Law:

As stated above, there are different branches of law. They are:

(a) Mercantile Law or Commercial Law:

Mercantile law is that branch of law which deals with the rights and obligations arising out of mercantile or business transactions between businessmen. In short, it is that part of general law which regulates and governs trade, commerce and industry.

(b) Civil Law:

Civil law is a part of private law.

Civil law is the law of the state or the law of the land. It is not the whole law of the land, but only the residue of it, after deducting some particular portion having a special title of its own. It is so termed (i.e., termed civil law), because it is the law of the civitas or the state.

Civil law consists of general commands issued by the State to its subjects, and enforced, if necessary, by the physical power of the state.

The object of civil law is enforcement of rights.

Civil law has its sole source not in consent or in custom or reason, but in the will and power of State.

(c) Criminal Law:

Criminal law also is a part of private law.

Criminal law is concerned with criminal proceedings, criminal wrongs or crimes. In this context, it may be noted that it is not correct to say that criminal wrongs or crimes are essentially offences against the State or the community at large, and civil wrongs are offences against persons. Criminal wrongs may be against the state or community at large, or against persons.

The object of criminal law is to punish criminal wrongs or crimes.

(d) Constitutional Law:

Constitutional law is a part of public law.

Constitutional law is the body of legal rules or principles which determine the constitution of the State (i.e., essential and fundamental portion of the State's organisation).

Constitutional law deals with the structure, powers and functions of the supreme power of the State together with those of the more important of the subordinate departments of the Government.

(e) International Law:

According to Lord Russel Killowen, "International law is the aggregate of the rules to which nations have agreed to conform in their conduct towards one another".

In the words of Lord Chief Justice Coleridge, "The Law of Nations is that collection of usages which civilised states have agreed to observe in their dealings with each other".

From these definitions, it is clear that international law or the Law of Nations is the body of rules which govern sovereign States (i.e., independent nations) in their relations and conduct towards each other. In other words, international law is the body of rules which have been expressly or impliedly agreed upon by States (Nations) as governing their conduct and relations towards each other.

The primary objective of international law is to regulate the conduct and relations of independent States (i.e., Nations) towards each other.

International law is essentially based on the consent of independent nations. According to Lord Coleburn, to be binding, international law must have received the assent of the Nations which are to be bound by it. The assent of the Nations may be express, as by treaty or by the acknowledged concurrence of the Governments, or may be implied from established usages.

MERCANTILE LAW, COMMERCIAL LAW OR BUSINESS LAW**Introduction:**

The terms "Mercantile Law", "Commercial Law" and Business Law" are synonymous (i.e., one and the same). Mercantile law, commercial law or business law is a branch of general law (i.e., a branch of civil law).

Definition and Meaning of Mercantile Law, Commercial Law or Business Law :

According to Slater, "The phrase 'Mercantile Law' or 'Commercial Law' is generally used to denote those portions of the law which deal with the rights and obligations arising out of transactions between mercantile persons".

From this definition, it is clear that mercantile law, commercial law or business law is that branch of law which deals with the rights and obligations arising out of mercantile, commercial or business transactions between mercantile persons or businessmen. In short, it is that part of general law which regulates and governs trade, commerce and industry.
