

A Textbook of COMMERCIAL LAW

(For all Undergraduate & Post Graduate Classes)

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PREFACE



This textbook of **Commercial Law** is the outcome of my teaching this subject to the M.B.A., B.B.M., B.Com. and CA Classes.

The present book has got some special features. The language used throughout this work is simple and easily understandable. Suitable case laws and examples have been presented in a quite intelligible manner making the subject more clear to the students.

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. Though this book is primarily meant for the **B.B.M. & B.B.A.** courses, it will be very useful to those who appear for the **M.B.A., B.H.M., L.L.B., C.A.I.I.B., C.A., I.C.W.A. & C.S.** examinations.

I am highly indebted to the **Edwise Publishers** who have readily consented to bring out the book.

I would feel amply rewarded if the book could meet the expectations of the readers. Any suggestions to augment the usefulness of the book would be welcome and gratefully acknowledged.

2021

Dr. Umesh Maiya



SYLLABUS

COMMERCIAL LAW

Objective: To familiarize the students with the relevant legislations affecting business.

Module I

Nature and significance of Law- Branches of Law - Sources of Mercantile Law- Law of contract- Definition, Difference between Agreement and Contract, essentials 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; Acceptancemeaning and types, Essentials of valid acceptance.

Module II

Consideration- 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.

Module III

Legality of Object- 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.

Module IV

Negotiable Instruments Act -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.

Module V

Information Technology Act - Objectives - Digital signature (meaning only) – **Cyber Crimes** – Meaning, legal provisions – Crimes against Persons – Crimes against Property – Crimes against Government - Right to Information Act – Meaning – Meaning – Request for obtaining information – Disposal of Request – Exemption from disclosure of information – Grounds for rejection. Duties of Information Officer.

The relevant legal point, facts and the judicial decision relating to the following 10 case laws are to be specifically dealt with –1. Balfour VsBalfour 2. CarlillVs Carbolic Smoke Ball company 3. Felthouse Vs Bindley 4. LalmanShuklaVs. Gauridutt 5. DurgaprasadVsBaldeo 6.Chinnayya VsRamayya 7.Mohiribibi Vs. DharmodasGhosh 8. RanganayakammaVsAlvarChetty 9. Hadley VsBaxendale 10.Planche Vs Colburn.

Books for Reference:

1. Anson, Contract Act, 29thEdn, Oxford University
 2. Autar Singh, Mercantile Law, 11thEdn, Eastern Book Company
 3. Dr.Umesh Maiya, Commercial Law.
 4. Gogna, Commercial Law, 6thEdn, S.Chand Publishing
 5. N.D. Kapoor, Elements Of Mercantile Law, 34th Rev Edn, Sultan Chand & Sons
 6. S.S.Gulshan, Business Law, 3rdEdn, New Age International Pvt Ltd.
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CHAPTER - 1

NATURE, SCOPE AND SOURCES OF COMMERCIAL LAW

Introduction: - *As a social being man comes into contact with different persons in different capacities. For example: with Government as a taxpayer, with a landlord as a tenant, with a bus as a passenger, with shopkeeper as a customer, with the college as a student etc. In all these associations human beings are expected to observe a set of rules.*

The main object of these rules is to see the welfare of the state and its people. Thus, it is rightly said '**No community can live without the rules**'.

Meaning of Law: The term 'law' is a general word. It has different meanings for different people. A citizen may think of law as a set of rules and regulations which he must obey. A lawyer may think of law as a profession or vocation. A judge may think of law as guiding principles to be applied in making decisions. Therefore, it is difficult to give a single accurate definition of law. However, generally speaking law can be defined as 'a set of rules and regulations laid down by the state to regulate the external behaviour of human beings'. It includes all the rules and principles, which regulate our relations with other individuals and with the state. Such laws may be mandatory, prohibitive or permissive. A mandatory law calls for affirmative act, as in the case of law requiring the payment of taxes. A prohibitive law requires negative conduct, as in the case of law prohibiting the carrying of dangerous weapons or running a lottery. A permissive law is one, which neither requires nor forbids action, but allows certain conduct on the part of an individual if he desires to act.

Nature of law: Law is not static. As circumstances and conditions in a society change the laws are to be changed to cater to the requirements of the society.

Object: The main object of law is to establish socio-economic justice and remove the existing imbalance in the socio-economic structure.

Need for the knowledge of law : Though it is difficult for a layman to learn every branch of law, yet it is essential for him to know something of rules and regulations by which he is governed. It is clear from the familiar maxim '**Ignorance of law is no excuse**'.

BRANCHES OF LAW: Law may be broadly classified as under:

1. Civil and Criminal law
2. Private and Public law
3. Substantive and Procedural law

1. Civil and Criminal law:

Civil law is that branch of law which deals with civil wrongs. It falls within the scope of administration of civil justice the object of which is to render justice to the aggrieved person by awarding compensation. For example Mercantile law, Company law, Banking law, Insurance law etc.,

Criminal law is that branch of law which deals with offences against the state. It falls within the scope of administration of criminal justice, the object of which is to punish the offender. For example Indian Penal Code, Anti-Corruption Law, Anti-Terrorist Law, Anti-Narcotic Drugs Law etc.,

2. Private and Public law:

Private law is that branch of law which regulates the relationship between private individuals. In that sense mercantile law falls within the scope of private law.

Public law is that branch of law which regulates the relationship between private individuals and state. Constitutional law and Administrative law are the examples.

3. Substantive and Procedural law:

Substantive law is that branch of law which defines and confers rights to the individuals. In that sense Constitutional law, Contract law, Labour laws etc., fall within the scope of substantive law.

Procedural law is that branch of law, which provides machinery for enforcement of rights. Thus, Civil Procedure Code, Law of Evidence, Criminal Procedure Code etc. come under this category.

Meaning and Definition of Commercial law: Commercial law is that branch of law which regulates commercial activities. It is also known as **Law Merchant (Lex Mercatoria)**, Business Law or Mercantile Law.

According to **Slater**, 'The term commercial law is generally used to denote those portions of the law which deal with rights and obligations arising out of transactions between mercantile persons'.

The Indian Contract Act 1872

The law relating to contract is codified in the form of Indian Contract Act, 1872. The main object of the law of contract is to introduce definiteness in business transactions. The law of contract is applicable not only to business community, but also the others. A person seldom realises that when he entrusts his scooter to the mechanic for repairs, he is entering into a contract of bailment; or when he buys a packet of cigarettes, he is making a contract of the sale of goods; or again when he goes to the cinema to see a movie, he is making yet another contract and so on.

■ **Scheme of the Act:** The scheme of the Act may be divided into two main groups:

General principles of the law of contract (Secs. 1-75)

Specific kinds of contracts viz.:

Contracts of Indemnity and Guarantee (Secs. 124-147)

Contracts of Bailment and Pledge (Secs. 148-181)

Contracts of Agency (Secs. 182-238)

Before 1930, the Act also contained provisions relating to contracts of sale of goods and partnership. Section 76-123 relating to sale of goods were repealed in 1930 and a separate Act called the Sale of Goods Act was enacted. Similarly, Sections 239-266 relating to partnership were repealed in 1932 when the Indian Partnership Act was passed.

■ **Basic assumptions underlying the Act:** Before we take up the discussion of the various provisions of the Indian Contract Act, it will

be proper to see some of the basic assumptions underlying the Act. These are:

1. Subject to certain limiting principles, there shall be freedom of contract to the contracting parties and the law shall enforce only what the parties have agreed to be bound. The law shall not lay down absolute rights and liabilities of the contracting parties. Instead, it shall lay down only the essentials of a valid contract and the rights and obligations it would create between the parties in the absence of anything to the contrary agreed to by the parties.
2. Expectations created by promise of the parties shall be fulfilled and their non-fulfillment shall give rise to legal consequences. If the plaintiff asserts that the defendant undertook to do a certain act and failed to fulfill his promise, an action at law shall lie.

■ **Law of Contract creates right-in-personam and not right-in-rem.**

'Right-in-personam' means right against a particular person or group of persons. A contract creates a right in personam only i.e. against a particular person. On the contrary Right-in-rem implies rights against the whole world.

Illustration: A takes a loan of ₹1,000 from B. B has a right to recover the said amount from A. The right of B against A is a personal right. It is called right-in-personam as it is available to B alone and none else. Again, this right is against A only and none else.

Right-in-rem means right against the whole world.

Illustration: X purchased a house from Y, X is the owner of the house. So he has a right of quiet possession and enjoyment against the whole world and not against Y alone. It is called right-in-rem. Law of Contract does not create right in rem, it creates right-in-personam only.

Scope of Indian Contract Act, 1872:

The scope of Indian Contract Act, 1872 may be broadly classified into two main groups, namely:

1. **General Principles of Contract (Secs. 1-75):** General Principles of contracts include rules and laws relating to communication, acceptance and revocation of proposals (Secs. 2-9), voidable