

# Business Laws

As per new B Com CBCS syllabus 2017 for CU

REVISED SECOND EDITION

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*Dedicated to my father, late Santosh Kumar Das*

*—Dr Sujit Kumar Das*

*Dedicated to my wife, late Sweta Roy*

*—Dr Pankaj Kumar Roy*

Oxford University Press

# Features of

## Case Study Gousmohoddin versus Appasahib A.I.R. (1976) Knt. 90

**Fact of the case** A landlord filed a case against his tenant for possession of premises and arrears of rent. The suit was decreed in his favour. In the process of execution, landlord obtained an order for attachment of moveable property of the tenant. The landlord allowed the tenant one month time for payment of the decreed amount and to vacate the premises in consideration that the tenant would not appeal against the decree.

**Decision** The agreement was valid.

**Point of discussion** An act done or forbearance which is obtained from doing something is also a valid agreement.

## Case Study Royal British Bank versus Turquand

**Date of judgment**—1856

**Facts of the case** The articles of association of the Royal British Bank incorporated a provision that directors have the power to borrow money through bonds by taking a resolution in the general meeting of the company. The directors borrowed money from Turquand without passing resolution in the general body meeting of the shareholders.

**Decision of the case** It was held that Turquand could recover the bond amount from the company on the plea that an adequate resolution has already been passed. The outsider is aware of the external situation and not the indoor management of the company.

**Reason** Doctrine of indoor management has been completely violated.

## Cases

Provides numerous case studies to explain various laws.

## Tables

A large number of tables are provided for easy understanding of concepts.

Table 7.1 Difference Between Coercion and Undue Influence

Coercion	Undue Influence
Consent obtained under threat is an offence. In this, consent is obtained by threatening to commit some act harmful and forbidden by IPC.	Particular relationship is exploited to dominate the will of a person for obtaining the consent to an agreement of a person under moral influence.
It is an act of threatening or detaining person or his property.	In this case consent is obtained under a mental or moral influence intentionally.
Coercion involves physical power or use of physical or violent force.	Involves. It influence is of moral threat to use of physical or violent force. Character involves use of mental pressure.

Table 31.1 Difference between equity share and preference share

S.No.	Point of difference	Equity share	Preference share
1.	Nominal value	Normally the face value of equity share is much lower than Preference Share.	Normally the face value of preference share is much higher than Equity Share.
2.	Owner	Equity shareholders are the owners of the company and have the voting right in all respects including the election of directors.	Preference shareholders have the voting right only to protect their interest.
3.	Risk	As they are the owner of the concern, they have to take risk of the company.	Preference shareholders are not the owners of the concern they have to bear less amount of risk.
4.	Redemption	Except buy-back equity holders cannot get their money-back.	Redeemable preference share of a company at the time of liquidation get their money-back.
5.	Preference	Equity shares have no preference.	Preference shares have preference in two ways at the time of getting dividend prior to equity and at the time of liquidation they got their money-back prior to equity.

# the Book

## Exercises

Includes relevant questions at the end of every chapter for students to practice.

### EXERCISES

#### Short Questions (2 marks)

1. What is a partner by holding out? [CU, B.Com 2001, 2011, 2013(H)]
2. What is partnership by estoppel? [CU, B.Com 2012, 2014(H)]
3. What is partnership at will? [CU, B.Com 2012, 2013(G), 2015(G)]

#### Long Questions (12 marks)

1. Distinguish between partnership and private limited company. [CU, B.Com 1992]
2. How does a partnership differ from co-ownership? [CU, B.Com 2015(G)]

#### Selected Readings

1. Kapoor, N.D. (2009), *Elements of Mercantile Law*, Sultan

#### Medium Questions (6 marks)

### EXERCISES

#### Short Questions (2 marks)

1. Define Promoter. [CU, B.Com 1993]
2. Define Articles of Association. [CU, B.Com 2012, 2013]
3. What do you understand by Certificate of Incorporation? [CU, B.Com 1997, 2005, 2007]
4. What do you understand by commencement of business? [CU, B.Com 2008, 2010]
5. What is pre-incorporation contract? [CU, B.Com 2006, 2010]

#### Medium Questions (6 marks)

1. State the usual steps to be taken in the formation of a company. [CU, B.Com 1993, 1996, 2003]
2. Discuss the legal position of a promoter to the company. [CU, B.Com 2011]
3. Discuss the steps involved in the formation of a company.

4. Briefly explain the procedure for registration of a public limited company. [CU, B.Com 2015(G)]
5. State the procedure for registration and incorporation of a public company. [CU, B.Com 2015(H)]
6. Discuss the duties and liabilities of a promoter of a company? [CU, B.Com 2012]
7. Discuss briefly the steps to be taken for the formation of a public limited company under the Companies Act, 2013. [CU, B.Com 2007, 2010, 2011]
8. Discuss the steps involved in the formation of a company. [CU, B.Com 2011]
9. Discuss briefly the steps to be taken for the formation of a public limited company under Companies Act. [CU, B.Com 2012]

#### Selected Readings

1. Kapoor, N.D. (2009), *Elements of Mercantile Law*, Sultan

Jendra Kumar Mitra (2008), *Company Law*, World Press, Act. 1932, (Bare Act), Universal Ltd. 2010.

(2011), *Business Law*, Everest

## Model Question Papers (without answers)

### FIRST SET

Group – A

8 × 2 = 16

1. (a) "A threat to commit suicide"
  - (b) What is a standing offer?
  - (c) What is meant by passing?
  - (d) What are ordinary damages?
  - (e) Define "Contract of sale"

## Model Question Papers (with answers)

### FIRST SET

Group – A

**Question A-1(a)** What is Countermanding of a cheque? 2 × 8

**Answer** "Countermanding of a cheque" means cancellation of a cheque. It may be done by the drawer of a cheque by issuing "Stop payment" by the drawer of a cheque to the bank. Under some circumstances a cheque may be countermanded by the banker.

**Question A-1(b)** Are promissory notes bearer instruments anymore?

**Answer** Normally, a promissory note cannot be payable bearer on demand. It is prohibited by Section 31 of the Reserve Bank of India Act, 1934. Only Reserve Bank of India or The Central Government can issue negotiable promissory note.

**Question A-1(c)** Define acceptance for honour.

**Answer** When a bill of exchange or promissory note is dishonored for non-acceptance or non-payment;

## Solved and Model Question Papers

Helps to understand and prepare for the university examination.

# Preface

The laws governing the appropriate ways to carry out business in India date back to the late nineteenth century. The laws created then, such as the Indian Contract Act, 1872, are still relevant and in effect today. Some of the Acts have been amended from time to time to make them relevant to modern business practices. Still others, like the Companies Act, 1956 have been thoroughly overhauled to make them contemporarily relevant. Moreover, new laws have been framed when entirely new methods of transacting businesses have come up, such as the IT Act, 2000 which was necessitated due to influences of modern-day technologies such as computers and the Internet.

The University of Calcutta (CU) has combined the study of several relevant Acts, which are crucial to a student of commerce, in its first semester course Business Laws. The aim of the course is to provide a thorough understanding of various laws that a business practitioner will need to know.

## About the Book

*Business Laws* is designed to serve as a textbook for first semester undergraduate commerce students of the CU. It aims to provide simple and easy coverage of various laws through its lucid explanations of relevant sections, discussion of case law, and landmark cases with facts and judgements.

## Key Features

- Appropriate diagrams are used wherever necessary for clear understanding of the concepts.
- Three sets of University Question Papers are provided with solutions to short questions. Two sets of model questions are also provided for practice.
- Exercises are provided at the end of every chapter. They are divided into short, medium, and long questions in keeping with the university examination pattern.
- A chapter-wise question bank of solved questions is provided at the end of the book.
- Case studies along with facts of the case and decision of the case are given in sufficient numbers to enrich the book.
- A separate collection of case laws is provided at the end of the book.
- Several illustrative examples are provided throughout the book to make learning of difficult laws more easy and understandable.
- A glossary of keywords is provided at the end of each chapter to recapitulate the new legal words that the students learn while reading the chapters.

## Structure and Content of the Book

The book comprises 28 chapters. A brief description of the contents of each chapter is provided below:

*Chapter 1* introduces the subject by discussing the evolution and necessity of business laws.

*Chapter 2* deals with jurisprudence. It explains the philosophy behind law.

*Chapters 3 to 10* deal with the Indian Contract Act, 1872. The Contract Act is considered to be fundamental to business law and it lays down the foundation of other laws.

*Chapters 11 to 14* cover the Sale of Goods Act, 1930, which deals with sales and agreement to sales and is considered as the cornerstone of business deals.

*Chapters 15 to 20* deal with the Indian Partnership Act, 1932, which defines and amends the law relating to partnership and different types of partnership.

*Chapter 21 to 23* cover The Negotiable Instrument Act, 1881. The Act deals with exchange of money with national and international implications.

Chapters 24 to 27 cover the Consumer Protection Act, 1986. The Act deals with the rights of the consumers and the roles played by the District forum, the State Council, and the National Council.

Chapter 28 covers Limited Liability Partnership Act, 2008 which deals with the laws concerned with the setting up of partnership firm with limited liability, perpetual existence, and separate entities.

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We would like to thank Dr Ila Das and Sweta Roy for their illustrative support, Prof. Pranab Kumar Bhattacharjee and Dr Tarashankar Roy for acting as fountains of inspiration, and also Indranil Das and Swapnil Roy for assisting us in the development of this book.

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**Pankaj Kumar Roy**

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<b>Unit 4: The Negotiable Instruments Act 1881</b>	(a) Definition, Features, Types, Parties of Negotiable Instruments: Promissory Note, bill of exchange, Cheque (Definition and Types) (b) Endorsement: Types of Endorsement (c) Holder and Holder in Due Course, Privileges of Holder in Due Course. (d) Dishonour of Negotiable Instruments: Modes, Consequences, Notice of Dishonour; Noting and Protesting (e) Discharge of Negotiable Instruments: Meaning and Modes	<b>21-23</b>
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'Law is originated out of social evolution'. During the passage of social evolution, an enactment of law becomes more pragmatic. That is why it is said, 'change of law depends on the change of societies'. Sources of law originate from human conduct and legal forces. All the pillars of democracy, constitution, parliamentary system, judiciary, and media are interrelated and working together for strengthening a vibrant democracy. In the words of Barker, 'ideally law ought to have both validity and value.' Validity without value makes the law painful to all. Prof. Laski reminds us, 'all are equal in the eyes of law. 'It is common paradigms that without proper administration and not by eliminating prevailing social inequality enforcement of law become cumbersome.'

Holland stated that law is a 'general rule of external human action enforced by a sovereign political authority.' 'By analysing Holland definition, we can say that

- Law is a rule of action of human being;
- Law is the external action of human being; and
- Law is enforced by law.

In the words of Salmond, 'law is the body of principles recognized and applied by the State in the administration of justice.'

The objective of law is 'to establish socio-economic justice and remove the existing imbalance in the socio-economic structure.' 'Law in the broader sense has to fulfil socio-economic objective bounded by our constitution.'

One of the familiar maxims is '*Ignorantia juris non excusat*,' which means 'ignorance of law is not an excuse.' Law is the most important thing in our daily life. It is not possible to know all the laws but it is equally important to be aware regarding the law, that is, *knowledge of law*.

Law of the country and its implementation provides an environment in the country where the people of the country are to live, perform, and work for their development as well as for the development of the country.

The business activities of a country are subject to a number of regulations and operate within the legal framework of the country. Indian mercantile law provides a standard practice of legal framework inside a country for smooth operation and less hazardous business activities. Indian mercantile law has its origin in the English Mercantile Law. The source of Industrial and Commercial Law connotation of Business Regulatory Framework is based on states and acts of the Indian legislation, English mercantile law, and Indian mercantile usages, modified, and adopted by judicial decisions.

Before independence, the Judicial Committee of the Privy Council of Great Britain was the supreme authority of appeal for Indian laws, and its decision was a binding for Indian courts. However, after independence, Supreme Court of India is the supreme appeal authority.

Case law may be considered as an important source consisting of previous decisions and may be considered as reference for the lawyers and judges. Judicial decision may be used in future as reference for similar cases. Customs and usages accepted by the court and also incorporated in the judicial decision may be considered as the recognized customs.

Statute Law refers to the laws placed in the parliament as bill, accepted by both houses of lower house (Parliament) and upper house (Lok Sabha) with two-third majority with modifications and changes and sent to the President of India for his ascent and finally the bill converted into an act.

In our country, the Indian Contract Act, 1872, the Negotiable Instrument Act, 1881, the Sale of Goods Act, 1930, the Indian Partnership Act, 1932, the Companies Act, 1956, the Consumer Protection Act, 1986, and the Foreign Exchange Management Act, 1999 lay down the foundation of the Business Regulatory Framework.

Sir Pollock reminds us, 'Every agreement and promise enforceable at law is contract.' The Law of Contract or the Contract Act, 1872, is the most important part of commercial law as every commercial transaction starts from an agreement between two persons or more than one business house. The objective of the law of contract is to introduce definiteness in commercial and other transactions.

The Negotiable Instruments Act, 1881, has been framed to regulate the transactions effected through the instruments such as cheques, bills of exchange, and promissory note, and it is one of the important legislations in the country. The Negotiable Instruments Act, 1881, is based on the principal of mercantile Law of England.

The Sale of Goods Act, 1930, contains basic principles as well as legal framework of the transactions of purchase and sale. Earlier, the Sale of Goods Act was a part of the Indian Contract Act, 1872, and was separated in 1930. The Sale of Goods Act, 1930, contains 66 sections and is extended throughout the country excluding the state of Jammu and Kashmir.

The Indian Partnership Act, 1932, has been enacted to regulate the relations of the partners among themselves as well as with outsiders. When more than one person join together to run a business, their rights and duties during admission, retirement as well as dissolution of the firm recognized to be regulated and control regulated by legislation. The Indian Partnership Act, 1932, provides the legislation. 'Although sharing profit is an essential element of partnership, it is not the sole test.'

Today, the company is the most popular and widespread business in any country of the world. It is a form of business organization in which funds of a large number of investors are operated by a few persons for earning profits that are shared by all the members. It is, therefore, necessary to have a proper investigation in this regard. The oldest company is the East India Company, which started business with Royal Charter in the year 1600. The first legislation regarding company was passed in England in the year 1844, and on that basis, Companies Act in India was passed in the year 1850. After independence, in 1950, one committee was constituted under the Chairmanship of Shri C.H. Bhaba, and on that recommendation, the then Finance minister C.D. Deshmukh placed the ever largest bill in the parliamentary history of India and the Companies Act, 1956, came into effect from 1 April, 1956, containing 658 sections and 15 schedules. The Indian Companies Act, 1956, has been amended in the years 1960, 1962, 1963, 1964, 1965, 1966, 1969, 1974, 1977, 1985, 1988, 1996, 1999, 2000, 2002, and 2003.

The Foreign Exchange Regulations Act, 1973, deals with foreign exchange-related matters of Indian Companies related with import-export business or global companies doing business investing in India or investing in India. The foreign exchange regulation was reviewed in 1993 and undergone several amendments. On the basis of the recommendation of the Standing Committee of Finance, the then Finance Minister Jaswant Singh placed the Foreign Exchange Management Bill in the Parliament in October, 1999, and passed in the parliament as Foreign Exchange Management Act, 1999, and came into effect from 1 June 2000.

To protect the rights and interests of consumers need emerged to inculcate separate legislation. The modern marketing is consumer oriented but profit-oriented attitude would jeopardize the interest of the consumer. There are numerous instances where consumers are misled and deceived regarding quality of goods and services. The first consumer movement was launched in England. Ralph Nader is the father of consumer movement. To provide a speedy justice and protection of the consumers, the Consumer Protection Act, 1986, was passed in the Parliament and received the assent of the President of India on 24 December 1986.

The Consumer Protection Act was amended in the years 1993 and 2002. The Consumer Protection Act, 1986, prescribes machinery for protection of the consumers' interest and ensures speedy justice.

All the above laws provide business regulatory framework and strengthen the legal environment of the country in favour of business in particular and country at large.

English Philosopher John Locke reminds us, 'wherever law ends, tyranny begins.' There is an old adage, 'justice delayed justice denied.' Our former President A.P.J. Abdul Kalam has opined that, 'We need special laws to strengthen punishment.'

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