

DHRM
GOLDEN HUMANS

1004 - DCBL

Commercial And Business Low



Status:

Companies Act No.7 of 2007

Consumer Affairs Authority Act of 2003

Consumer Credit Act No.29 of 1982

Consumer Protection Act No.01 of 1979

Control of prices (Amendment) Act No.16 of 1966/1964

Electronic Transactions Act of 2006

Fair Trading Commission Act No.01 of 1987

Intellectual Property Act No 36 of 2003

Regulation of Insurance Industry Act No.43 of 2000

The National Environment Act (NEA) of No: No 48 of 1982

And other related statutes.

Course Content and Class schedule

Session	Topic
1	Introduction to the Course
	Introduction to business law
2	International Trade law
3	Environmental Law
4	Company Law/ Law relating to associations
5	Insurance Law
6	Consumer Protection Law
7	Intellectual Property Law
9	Concluding Session

Introduction

- Business Law
- Commercial Law
- Mercantile Law

Mercantile Law – (probability in Old English Law)

Laws concerning trade, industry, and commerce

The terms “Commerce” and “Business” always means the same thing

Business Law

- Business Law comprises;
 - The laws that effect the right duties and obligations of persons involves in BUSINESS, COMMERCE, INDUSTRY and TRADE.
 - Laws that cover activities and transactions which normally occur in business.
 - Laws that regulate different methods by which any business is conducted
- Generally, includes the laws pertaining to
 - Contracts
 - Sales of goods
 - Partnership
 - Companies
 - Negotiable Instruments
 - Insurance
 - International table
 - Agency
 - Taxation

With the fast development and globalization, increasing complexities of the business world there with, scope of Business Law is widening to cover the changing circumstances...

What is Business?

Business is an **economic activity**, which is related with continues and regular production and distribution of goods and services for satisfying human wants.

Characteristics or Features of Business

- Exchange of goods and services
- Buyer and seller
- Profit is the main Objective
- Business skills for economic success
- Deals in numerous transactions
- Ricks and Uncertainties
- Connected with production
- Marketing and Distribution of goods
- Deals in goods and services
- Satisfy human wants
- Social on obligations

Law

- The term “Law” is said to be derived from an old English word – “lag” – “something laid down or fixed”
- **Law** – ‘Law’ means “rule made by authority for the proper regulation of a **community or society or for correct conduct in life**”

Law is an Integral part of **society**. No civilized society can function **without Law**. (Why?)

Law have been enacted/[developed] by Parliament, by the a Court and society (custom) – **Sources of Law**

(Links with the sources of Business Law)

- Just because it is legal, do not assume it is the right thing to do.
The dictum “Ignorance of law is no excuse” – *Ignorantia juris non excusal*
- Every person is presumed to know the law

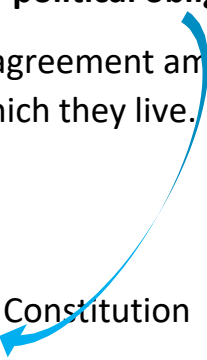
The law (constitution) is the social contract so it must be a contract

Social contract theory,

Nearly as old as philosophy itself, is the view that persons'

moral and/or political obligations

are dependent upon a contract or agreement among them to form the society in which they live.



Example-

Preamble and ART 27/28 of SL 1978 Constitution

Background

Origination during the **Age of Enlightenment**, that typically address **the questions of the origin of society** and the **legitimacy of the authority of the state over the individual**

Connection between the State and individual

2nd Century BC text of earlier Buddhism Mahawasthu

The social contract - 1762 book by Jean-

Pactum Unions **Pactum Subjections**

People sought **PROTECTION** for their lives and property

[as a result of this, a society was formed where people undertook to respect **to each other and live in peace and harmony**]

People **united together and pelage to obey an authority and surrendered the whole part of their freedom and right to as authority**

The most prominent of 17th – and 18th – century theorists of social contract

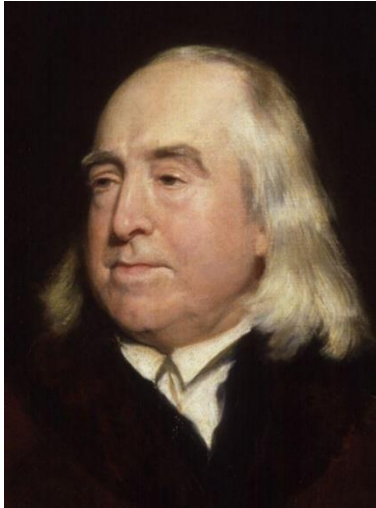
- Hugo Grotius (1625),
- Thomas Hobbes (1651),
- Samuel Pufendorf (1673),
- John Locke (1689),
- Jean-Jacques Rousseau (1762),
- Immanuel Kant (1797),

Solved the
problem of
political
authority in a
different way

Ex – Hobbies started that **humans consent to give up their rights** in favor of the absolute authority of government (whether monarchical or parliamentary)

Modern form of the 'Social Contract'?

Jeremy Bentham



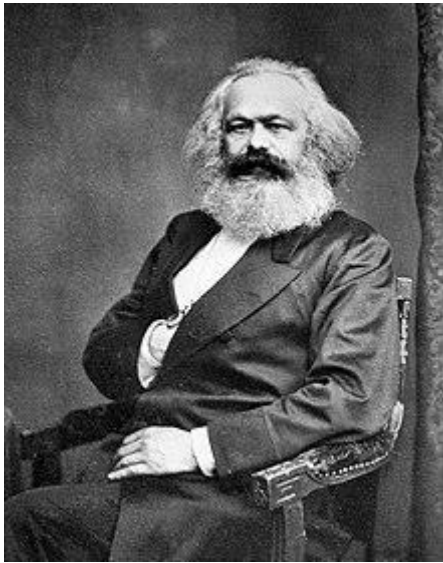
"Property and the law are born together and die together."

Jhon Locke (1689) believed that natural rights were inalienable/unchallengeable,

Jean-Jacques Rousseau (1762) believed that **democracy** (self-government) was the best way of ensuring the **general welfare** while maintaining **individual freedom** under the **rule of law**.

[Now Law – balancing process {Ex-Copyright}]

Marxism



- Marxism draws differentiation between two groups in society: the proletariat (working class), and the bourgeoisie (Business owners).
- According to Marx, the bourgeoisie exploited the labour of the proletariat for profit.
- Law emerged as a tool that supported the wealthier people to suppress the poor.

Why 'Law' is important to Business?

- Law is to **facilitate** business and commerce

Parties to contracts (Business parties)

Know that they will have to honor their promises and agreements OR the courts will enforce them OR make the defaulter liable to pay damages

e-Commerce (electronic commerce)

e-Business

The term “**Electronic commerce**” (or e-Commerce) refers to the **use of an electronic medium to carry out commercial transactions**.

Most of time, it refers to the sale of products **via Internet**

But

The term e-Commerce

Also covers **purchasing mechanisms via Internet**

A client who purchases on the internet – **cyberconsumer**

Electronic Commerce

- E-commerce (**electronic commerce** or EC) is the **buying and selling** of **goods and services**, or the **transmitting** of **funds or data**, over an electronic network, primarily the internet. These business transactions occur either

Business-to-business (B-B)

Business-to-consumer (B-C)

Consumer-to-consumer (C-C)

Consumer-to-business (C-B)

Government-to-Citizen (G-C)

Ex- mobile commerce, electronic funds transfer,

supply chain management, Internet marketing,

online transaction processing,

Electronic data interchange (EDI),

Inventory management systems,

and

Automated data collection systems (Digital Databases)

Supply chain management (SCM)

The management of **the flow of goods and services**.

It includes the movements and storage of raw materials, Work-in-process inventory, and finished goods **from point of origin to point of consumption**.

Interconnected or interlinked, channels and node businesses are involved in the provision of products and services required by end customers in a supply chain.

- [Device that receives, sends, or processes data in a telecommunication network Point at which two or more devices are interconnected or two or more lines or links terminate]

Ex- Electronic Transaction Act No 19 of 2006

- The Act **intends** to **recognize and facilities** the **formation of contracts**, the creation and exchange of **data messages, electronic documents, electronic records, and other communication in electronic form** in Sri Lanka; and to provide for the appointment of a **certification authority and accreditation of certification service providers**; and to provide for matters connected there with or incidental thereto.

Why 'Law' is important to Business?

- England, in early times – business people **consulted lawyers** only when faced a problem or dispute. Now **In-house lawyers** by business peoples > the growing importance of law
- No businessman can argue that he or she is above the law [Business people and business enterprise must obey the Law]
 - Birth/death

Source of Law

- **Main sources of law in Sri Lanka:**
 - Legislation (Acts and Ordinances)
 - Judge-made law (Case-law)
 - Customs
- **Status (applicable status and purpose of them)**

Acts – Contracts Law

Sales of Goods Act

Partnership Act

Insurance Act

Negotiable Instruments Act

Payments and Settlement Systems Act [SL]

- **One of the objectives of this act as a stated in section 2 is to facilitate the presentment of cheques. The “electronic presentment of cheques” means the electronic transmission by a banker of an image and payment information of the cheque, to the banker on whom it is drawn.**

The need of law of contract

- Our society would not survive if agreements and promises could be broken without any fear of legal sanction.
- The law of contract is a part of law of obligation.
- Unlike tort, the obligation in contract arises out of agreement.

Basic doctrine in contract law

- The principal source of obligations under the law of contract must be the contract itself
- "The freedom of contract"
- "Sanctity of a contract"

How to arise a Contract

- A contract means an agreement which is enforceable by law. An agreement consists of **reciprocal promises between the two parties**. In a contract each party is bound by the promise made by him, A contract could arise in following way;
 1. By agreement and contract,
 2. By standard form contract,
 3. By promissory Estoppel

Definition of the Contract

- Law of Contract seeks to determine and define the promises to which legal effort is accorded by the law, whether by way of enforceability or by way of recognition of a **duty of performance**.
- Rights **in personam** – in rem
- Contractual obligations
- Contrahere – to tie together

Types of contracts

Contracts of records,

Contracts under seal,

Simple contract

- An agreement which legally binds the parties Contracts v. Agreements

Agreement Vs. Contract

- An agreement enforceable by law is a contract
- All agreements are not enforceable by law and therefore all agreements are not contract
- (Agreement to go to see a movie, agreement to play a cricket match, agreement to go for a dinner.... etc. may not contracts)
- But reverse is not the same all the contracts are agreements.

Basic Elements of a valid contract

- Offer
- Acceptance
- Intention to create legal relationship
- Consideration
- Capacity of contract
- Free consent
- Legality

OFFER

- An offer is an **expression of willingness** to contract on certain terms made with the intension that the offer shall become bindingas soon as it is accepted by the person to whom it is addressed.
- The person who makes the offer is called the offerer and the person to whom it is made is called the offeree.

Offer can be made;

- To a single person
- To a class of people
- To the world at large

E.g.: Carlill v. Carbolic Smoke Ball Company

Requirement of a valid offer

An offer must be definite

An offer must be Serious

An offer must be Communicated to the offeree

An offer must be Distinguished from an invitation to treat

Communication of offer and acceptance

Offer **must be communicated** to the offeree for it to be valid offer.

Postal offers too **must reach the offeree** for it to be a valid postal offer.

Offer & Invitation to treat distinguished

An invitation to treat is a preliminary step of an offer. It invites to get offers. An offer has to be distinguished from an invitation to treat.

Sometimes person may not offer to sell his goods, but make some statements or give some information with a view to inviting others to make offers on that basis.

(Sending catalogue of books)

(Inviting persons to an auction)

Garner Vs Mare (By internet)

Termination of an offer

- By notice (an offer may be revoked any time before acceptance but not afterwards)
- By lapse of time
- By death or insanity
- By counter offer
- By rejection by offeree

Acceptance

- When one person to whom the offer is made signifies his assent thereto, the offer is said to be accepted. AN offer when accepted **becomes an agreement**

Who can accept?

- An offer can be accepted **only by the person or persons for whom the offer is intended**. An offer made to a person can only be accepted by him because he is the only person intended to accept.
- But an offer made to the world at large can be accepted by any person whatsoever
- To constitute a valid acceptance the assent must be communicated to offeror. (Boulton v Jones)

Essentials for a valid acceptance

- Acceptance must be Absolute and Unqualified
- Acceptance must be communicated to the offeror
- Acceptance must be in the prescribed manner
- An acceptance must be by the offeree
- Acceptance must be Express or implied

Acceptance in special circumstances

- Instantaneous acceptance – Acceptance has to reach the offeror E.g.: Entores Ltd. V. Miles Far East Corporation
- Postal contracts – Posting of the letter of acceptance amounts to a valid acceptance
- Silence is not a valid acceptance E.g.: Felthouse v. Brindley

Consideration

- The consideration if the **price of the promise**
- Quid-pro-quo=something in return. This something may be some benefit, right, interest or profit or it may also be some forbearance, detriment, loss, or responsibility upon the other party.

Currie v Misa

- Consideration is what the promisor demands as the price for his promise.

Capacity to contract

- One of the essentials of a valid contract is that the parties to the contract should be competent to make the contract
- “Every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject”

The position of the minor

- Minor's agreement is void ab initio, and he is incapable of making a contract to pay for any services rendered or goods supplied to him.
- **Leslie v Sheill**
- However, for the necessities supplied to a minor reimbursement is permitted.
- A minor may bind by beneficial contract.
- **Nash v Inman**

Position of.....

- Insane persons,
- Drunkards,
- Foreigners,
- Companies,
- Partnership,
- Embassadors,

Mistakes

Either one party to the contract, or both parties to the contract entered into the contract by making a mistake on a vital matter.

Mistakes that render a contract void

- Mistakes as to the nature of the contract itself E.G.: *Foster v. Mackinnin* (1869)
- Mutual mistakes as to the identity of the subject matter of the contract or the thing contracted for (E.g.: *Raffles v. Wickelhaus*)
- Mistake as to the identity of a party to the contract (E.g.: *Cundy v. Lindsay* (1878))
- Common mistake as to the existence of the thing contracted for (E.g.: *Scott v. Coulson*)

Intended Learning Out Comes of the Lesson

This lesson is intended to help undergraduates:

To recognize Consumer rights

To identify laws and regulations stated in the Consumer Affairs

Outline

- Who is a Consumer?
- Internationally accepted basic Consumer rights.
- Consumer Affairs Authority (CAA)
- Functions of CAA
- Powers and Duties of CAA
- Duties imposed on traders by the CAA
- Offences under the ACT
- Consumer Affairs Council

Who is a Consumer?

A person who purchases goods and service for personal use.

Consumer

Is any actual potential user of any product or Service made available for Consideration by any trader or any manufacturer

Consumer Protection

Is a group of laws and Organizations designed to ensure the rights of Consumers as well as fair trade? Competition and accurate information in the marketplace.

All traders, suppliers and manufactures in Sri Lanka must comply with relevant laws, standards and procedures relation to consumer protection

Internally accepted basic Consumer Rights

1. **The rights to satisfaction of basic needs** (Access to buy essential goods and services)
2. **The right to safety** (Protection against producers and services hazardous to health)
3. **The right to informed** (Receive facts need to make informed choice / protection from dishonest, misleading advertising and labeling)
4. **The right to choose** (Selection from a range of products and services / competitive prices / Satisfactory quality)
5. **The right to be heard** (Considering consumer interests through their representation when making government policies)
6. **The right to redress** (Fair settlement of disputes and compensation)
7. **The right to consumer education** (**Acquire knowledge and skills needed to make confident choices**)
8. **The right to a healthy environment** (**Live and work in non-threatening environment**)

Consumer Affairs Authority Act No 09 of 2003

- Main objectives;
 1. Establish the Consumer Affairs Authority
 2. Promotion of effective competition
 3. Protection of consumers
 4. Regulation of internal trade
 5. Establish Consumer Affairs Council

Establishment of Consumer Affairs Authority

- The Consumer Affairs Authority commenced its operations from July 2003 with the powers vested by the **Consumer Affairs Authority Act No.9 of 2003** which has been certified by the parliament on 17 March 2003.
- With the enactment of the Consumer Affairs Authority Act, the Consumer Protection Act No. 1 of 1987 and the Control Prices Act of 1950 were repealed and the Fair Trading Commission and the Department of Internal Trade were abolished and replaced with the establishment of the Authority.

Consumer Affairs Authority (CAA) (Sec 7)

- Objectives of the CAA
 1. To protect consumer rights against the marketing of goods or providing service which are harmful to life & property of consumers.
 2. To protect consumer against unfair trade practices & guarantee that consumers interest shall be given due attention.
 3. To ensure that wherever possible consumers have sufficient access to goods & services at competitive prices.
 4. To seek damages against unfair trade practices, restrictive trade practices or any other form of manipulation of consumers by traders.

Functions of CAA (Sec 8)

- Control or eliminate (inter alia)
 1. Restrictive trade agreements among enterprises
 2. Arrangement among enterprises with regard to prices
 3. Abuse of dominant position with regard to domestic trade
 4. Maintain and promote effective competition between persons supplying goods and services
 5. Keep consumer informed about the quality, quantity, potency, purity, standards and price of goods and services
 6. Carrying out investigations and inquiries in relation to any matter specified in the Act
 7. Promote consumer education