



Corporate law in Pakistan

An overview

What is law?

The definition of law depends on the context it is being referred to. In context of this article, law is a system of rules that lays down standards to which we ought to conform originated from legal rule, moral rule and social convention. It is a system recognised by a particular country or community for regulating the actions of its members which are enforced by the imposition of penalties. Law is a fundamental business discipline. Its study allows to develop a wider perspective on both the business and regulatory landscape and specialised expertise that will not only enrich our business career but will also lay the foundations for successful comprehension of the business environment.

What is Business Law?

Business law, also called commercial law or mercantile law; is the body of rules, whether by convention, agreement, or national or international legislation; governing the dealings between persons and/or entities in commercial matters.

Business law encompasses the law governing contracts, sales, commercial paper, agency and employment law, business organizations, property, and bailments. Other popular areas include insurance, wills, estate planning, and consumer and creditor protection. Business law may include issues such as starting, selling, or buying a small business, managing a business, dealing with employees, or dealing with contracts, among others.

Business law study is crucial to all business careers, whether in accounting, finance, management, HR, marketing, property, or entrepreneurship. Business Law complements other business majors as well. For example accounting and finance students will be enriched regarding law governing financial markets and investments, marketing students can find it useful to learn about marketing law and intellectual property law. Studying Business law will give you an array of skills that are valued highly in business world. It will develop our analytical and critical thinking skills, improve our written communication skills, and help to think strategically about business opportunities and business risks.

Business law falls into two distinctive areas:

1. the regulation of commercial entities by the laws of company, partnership, agency, and bankruptcy
2. the regulation of commercial transactions by the laws of contract, tort and related fields

The Uniform Commercial Code (UCC), which governs sales and commercial paper, has been adopted in some form by almost all states. There are agencies at the state and at federal level which administer the law in such issues such as employment affairs and consumer and credit protection. The laws aim to protect fair business practices and due process to protect rights for aggrieved workers and others.

Business law makes us aware of the legal issues involved in law and business. Broadly speaking Business law applies to the rights, relations and conduct of persons and businesses engaged in commerce, merchandising, trade, and sales. In recent years this body of law has been codified in the Uniform Commercial Code (UCC), which has been almost universally adopted.

There are various forms of legal business entities ranging from the sole trader, who alone bears the risk and responsibility of running a business, taking the profits, but as such not forming any association in law and thus not regulated by special rules of law, to the registered company with limited liability and to multinational corporations. In a partnership, members “associate,” forming collectively an association in which they all participate in management and sharing profits, bearing the liability for the firm’s debts and being sued jointly and severally in relation to the firm’s contracts or tortious acts. All partners are agents for each other and as such are in a fiduciary relationship with one another. It is inevitable that in certain circumstances business entities might be unable to perform their financial obligations.

With the development of the laws surrounding commercial enterprises, a body of rules developed relating bankruptcy: when a person or company is insolvent (i.e., unable to pay debts as and when they fall due), either he or his creditors may petition the court to take over the administration of his estate and its distribution among creditors. Three principles emerge: to secure fair and equal distribution of available property among the creditors, to free the debtor from his debts, and to enquire into the reasons for his insolvency.

Business law touches everyday lives through every contractual dealing undertaken. A contract, usually in the form of a commercial bargain involves some form of exchange of goods or services for a price, is a legally binding agreement made by two or more persons, enforceable by the courts. They may be written or oral, to be a binding contract the following must exist: an offer and unqualified acceptance thereof, intention to create legal relations, valuable consideration, and genuine consent (i.e., an absence of fraud). The terms used must be legal, certain, and possible of performance.

Contractual relations, as the cornerstone of all commercial transactions, have resulted in the development of specific bodies of law within the scope of business law regulating

1. sale of goods—i.e., implied terms and conditions, the effects of performance, and breach of such contracts and remedies available to the parties;

2. the carriage of goods, including both national and international rules governing insurance, bills of lading, charter parties, and arbitrations;
3. consumer credit agreements; and
4. Labour relations determining contractual rights and obligations between employers and employees and the regulation of trade unions.

Business law, on national and international levels, is continually evolving with new areas of law developing in relation to consumer protection, competition, and computers and the Internet.

History of Pakistan's legal system

Before British colonization we followed Persian law under Mughal rule. With the British came the system of common law, the legal history followed by Pakistan has its main sources in common law of England and Wales. Because of our motto we incorporated Shariah in the legal system through various ordinances, amendments and bodies. Panjilat and Jirga too are a source of our law.

We inherited the legal system from British India through Government Act of 1935. The constitution of Pakistan was first made on 23 March 1956 under Chaudhary Muhammad Ali and then in 1972 the parliament passed a complete constitution under Prime Ministership of Zulfikar Ali Bhutto which was later Islamified by Zia-ul-Haq.

The corporate law of Pakistan has its roots in Partnership Act 1932, Sale of Goods Act 1930 and the Contract Act 1872, both common law acts incorporated as federal Acts in Pakistan's constitution. Contract Act 1872 was repealed by Companies Ordinance 1984. Whilst several ordinances for intellectual property rights were made over the course of time each focused on one particular right.

British Colonization has affected our everyday life and how till date we especially our legal system is still working in the same way and pace as the Britishers has left it. It also allowed us to gauge how deeply common law has penetrated in our own legal system along with a feeble attempt by Zia-ul-haq to coincide Shariah law into our legal structure.

Needed development in Pakistani law

To me it seems as if we are still living in the same legal age that our colonizers left us in and only made it more complex and cumbersome in an effort to merge Shariah in it. The only success stories in our legal history is efficiently absorbing a foreign inspired act in our legal system to partially pace us with the world we compete in. We need to develop many new areas of law especially tort law.

Tort law is a civil wrong that one commits towards another which results in legal liability regardless of a contractual relationship. So, for example, if a restaurant serves their customer expired food, they can face legal liability since they have a "duty of care" to all

those who consume food on their premises. This can be seen by the very famous case of “Donoghue v Stevenson” (1932), a case which harks back to before World War II.

The seminal case laid the basic foundations for negligence law all thanks to a dead slug in a ginger beer bottle. Two friends met up for drinks at a café when Ms Donoghue ordered a ginger beer only to find the offending slug in the drink. She claimed to get abdominal pain and shock from the sight of the slug and was awarded £500 in damages (a phenomenal sum at the time). The court found that the manufacturer of the beer had a duty of care to all those who consumed his beer.

Since that time a comprehensive body of law has developed which includes road traffic accidents and medical negligence cases. However, in Pakistan (to my knowledge) there isn't a stringent enforcement of Tort law. Every day we hear and see of countless stories of immense medical negligence involving doctors taking out the wrong organ or poisonous alcohol killing several hapless drinkers or even donkey meat being sold by food vendors. The current state of Pakistan's judiciary system would need a radical overhaul and this doesn't seem to be something that will happen anytime soon. In the meantime, we can only hope and pray for the day a case like Donoghue v Stevenson graces Pakistani courts. However, if tort law does develop in Pakistan along with law of negligence then firms will be compelled to improve the quality of service, they provide because of the sword of law hanging above their throats and the eminent threat of levying of huge fines upon them by the court.

The standard judicial classification of negligence is seen in *Blyth v Birmingham Co.* (1856) where Alderson B stated that: “Negligence is the omission to do something which a reasonable man, guided upon those considerations which regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not.” The only form of negligence code of law performed or at least seen perform in Pakistan is medical negligence.

I believe if these laws are affectively implemented in Pakistan along with laws for corruption and competitiveness we have enough skills, creativity and passion to earn heaps of money that not only Pakistani business world will come out of recession but will thrive so well that in a few years would be able to become a major economic power of the world. The problem I see in us Pakistani's is that we work only if there is a prevalent threat upon our heads otherwise, we will be ready to waste double the energy in avoiding doing the same task and indulging in negative activities. The society has a taboo of being morally corrupt, double faced and with deep merged selfishness and greed for worldly wealth.