BUSINESS LAW

I. Course Objectives

i) Students will be able to recognize the political, social, ethical, and global context underlying the rules of contract law and other business law.

ii) Students will be able to apply the rules of contract law and other business laws to real world conflicts and management challenges.

iii) Students will be able to demonstrate good business analytical and communication skills through collaborative oral and writing assignments.

iv) Students will cooperate with a team to eliminate misconceptions and enhance understanding of course

Program of Study

i) Lectures will be presented by the Lecturer on various aspects of the legal environment of business. Study assignments will be made from the texts, Business Law by S.B.Karki, B.P. Misra, M.C.Kuchhal. Students are expected to read, study and be responsible for the material in the assigned chapters according to the attached class schedule.

ii) Discussion Questions will be assigned to students for group presentations. Each group will do one discussion question, discuss (orally) its question each week, and several groups will also submit a written answer each week. This system will function as follows: the class will be divided into groups of three, for discussion purposes. Each week, each discussion group will present an approximate 5 minute summary of its answer to the discussion question. In addition, a designated group will also submit a written answer.
Meaning of Law:

The term law refers to that instrument which expresses various rules and principles. Law is the guidance of the society. It treats all equally. The term law has been differently defined by various authors, scholars, and jurist. Since the law has been defined differently by different scholars, we can't find the unanimous definition of law.

In the words of Hooker," Any kind of rule or canon whereby actions are framed is law.

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

According to Austin- A law is rule of conduct imposed and enforced by the sovereign.

According to Green- Law is the system of rights and obligations which the state enforces.

The term law is thus used to denote the rules of conduct of the society enforced by the state. As a matter of fact, there are certain common rules, which the people living in an organized society, must follow. In the absence of such rules, a society cannot prosper (flourish or grow). For creating a sense of moral ethics, humanity and legal values in the society, people must be bound by certain common rules, and if people breach such rules, he/she must be penalized according to the provisions of the related rules. Each and every person of the nation is supposed to know the law of the country and bound to bear the punishment on violating the law and can't say "Sorry" because "ignorance of law is no excused" is a universal recognized principle. So, every person should have knowledge about the existing law in force.

Nature of Law

The nature of law refers to its quality. The nature of law is act for the betterment of the maximum number of people but also not to ignore the interest of the minor number of people. Law is of wide nature. The nature of law is centralized to fulfill the various objectives. The nature of law can be discussed as follows.

1. Pervasiveness
   The law is pervasive. It interacts with and influences various systems of every civilized society. They are political, economic and social.

2. Aim
   Law has certain aims and justice is the ultimate aims of law.

3. Changeability
   Law is changeable according to the change in time and aspiration of the people. Law can't be remaining the same all the time.

4. Hard and Soft
Law is hard and soft in nature. Law is hard in the sense that it is made by adopting certain difficult procedure and it is soft in nature it is because it is developed by certain practices and uses based on the principle of equity and good conscience.

5. Treatment
The law treats all equally. It doesn't discriminate the people on the base of sex, color, caste, religion, etc.

6. Regulating behavior
It regulates and controls the human behavior. The main centre of law is the human behavior. It stops the man doing wrong behavior and encourages for the better works.

7. Peace and Order
It perfectly works for maintaining peace and order in the country. Without law, establishment of peace and order in the society is entirely impossible.

8. Relation
It establishes good relation with other nations in the world.

9. Administration
Every citizen must follow the law. Those who disobey the law must bear the punishment.

**Characteristics or Features of Law**

If we will analyze the definitions of law very carefully, we can reach at a conclusion that law is a body of rules recognized and maintained by the state to regulate the human behavior and conduct in a society. A law will present the following characteristics.

1) Equal Treatment: Law treats all equally. Everybody is equal in the eyes of law. It doesn't discriminate people on the ground of their gender, cast, wealth and rank but in the certain special case, it favors child, tribe, women etc.

2) Enactment of law: Law is enacted by the sovereign or the supreme power of the state and is enforced in the society.

3) Power: Law has ultimate power behind it. The power of this kind is called sanction, due to which law is obeyed.

4) Position of Law: No one is above the law. Law is therefore considered as the King of Kings. Law, therefore, be respected and followed both by king and his people. He should obey law whether he is ruler or ruled.

5) Role of Law: Law imparts justice, maintains peace and security in the society and speed up the society as a whole.

6) Administration of Law: The courts administers the law. So, if a person acts against the law, he/she will get punishment according to the decision of the court.

7) Justice: Law is so related with justice. Law without justice and justice without law is meaningless.

**Objective, Need and Importance of Law**
Since the relation of law is with the people, society and national and international field, it has tremendous importance. Without law nothing is possible to achieve and to conduct any activities. The objectives, needs and importance of law can be discussed as follows:

1. To maintain peace and order

   The main objectives of law is to establishment peace and order in the society. In the absence of law man feel insecured to live in the society. The main role and responsibility of the state is to give the guarantee of peace and order to the people making an effective law. In the absence of law society gets disturbed.

2. To bring uniformity in the social pattern

   Law is very much important to bring uniformity in the society. Law treats all equally. In the absence of law, it is not possible to bring social uniformity.

3. To prohibit to do wrong activities

   Law prohibits for doing wrong activities. Law punishes the persons who get involve in wrong illegal behavior. Fear of punishment discourages the people to be involved in wrong activities.

4. To enhance economic, social, cultural and political development

   In the absence of law, there is no possibility of economic, social, cultural and political development in any country. Economic, social, cultural, political development of any country is possible only in the good base of law.

5. To protect and guarantee the fundamentals as well as legal rights of the people

   The protection of the fundamentals and legal rights of the people is possible only in the lawful state. In the absence of law, protection of people's rights is not possible.

6. To remove social evils

   Law is important for the removal of the social evils which have been deeply rooted in our society. The increasing social evils like theft, murder, cheating, dacoity can be removed only by the effective use of the law.

7. To keep international relations

   International relation of the country can only be established if we have got effective law. Without law, international relation can't be established. Only the law can open the door for international relations. To have a good relation among the countries, every country should have law. Only the law can establish good relation in the various fields like diplomacy, trade and commerce, economy, education etc.
8. To provide justice to the people

The ultimate goal of the law is to provide justice to the people. We can't expect justice in the absence of law. Law punishes the people who acts against the rule and regulation made for the effective running of the society.

**Sources of Law**

Simply, source means a place from where something emerges. Sources of law means the origin from where the laws emerges. It also refers to the sovereign or the state from which the law derives its force or validity. Several factors of law have contributed to the development of law. These factors are regarded as the sources of law.

i) **Precedents**

Precedent is one of the sources of law. A decision made by the court is called precedents. It refers to the decisions made by the supreme court. When law is lacking or silent as regards to certain case and the judge is to decide it, he decides it according to the principles of equity and good conscience. Such decisions applies as law to other similar cases as the major sources of law and is followed by lower courts in making decisions on similar cases later. Unless a new law is made to repeal or to substitute the precedents, the lower courts should take it as the law. Precedent is more flexible than legislation and custom.

ii) **Custom**

Custom is such a law which is derived from the behaviors or usages practiced for a long period of time. Custom is a law which has not been written and being established by long use and consent of our ancestors and is put daily into practice. This is the law derived from religion and tradition. Custom is the outcome of certain, reasonable, and regular practice followed by human beings since long time.

iii) **Legislation**

The law made by legislative body and enforced upon public by supreme power is called the legislation or statutory law and is recognized by the courts as the major source of law. Legislation is the principle source of law of any democratic country in the present world.

Legislature frames new laws, amends the old laws and cancels the existing inconvenient laws in all countries. In modern times this is the most important source of law making. It not only creates new rules of law it also sweeps away existing inconvenient rules.

iv) **Conventional Law**
Conventional law is such a law which is derived from the agreement between two or more persons to direct themselves in their dealings. Conventional refers to any rule or system of rules agreed upon by parties to regulate their conduct. The general rules embodied in a contract are conventional laws, which determines the rights, duties, and liabilities of the parties.

v) **Direct or immediate author**

Person who is involved in making or promulgating law is called the direct or immediate author. Direct or immediate author refers to a sovereign person or a group of sovereign persons from whom law is originally derived. Legislature, judiciary, subordinate legislature, and subordinate judiciary are the example of direct or immediate author.

vi) **Historical documents**

Those documents which produced law in the past are called historical documents which assist in making law. Historical documents are considered as a major sources of law. Justinian code (the Justinian Code, was the result of Emperor Justinian's desire that existing Roman law be collected into a simple and clear system of laws, or "code."); Writings by Bracton (English jurist who is famous for his writing on law), writings by coke (who was an English barrister, judge and politician considered to be the greatest jurist of the Elizabethan and Jacobean eras), writings by Littleton are the example of historical documents.

**Types of Law**

With the growth of civilization people's social and economic behavior has assumed a multiple dimensional character. It is therefore neither desirable nor feasible to control all kinds of people's activities through a uniform set of rules and principles. Most civilized society therefore provides and enforces different sets of rules and guiding principles for different kind's social behavior. Hence there are several branches of law, such as -

1. **Civil and Criminal Law**

   a) **Civil Law**

   Civil law is defined and studied as the main law in Jurisprudence. It is made by the state and enforced by courts through physical force of the country. The law determining rights and duties of a person and restituting the deprived of rights by realizing from the wrongdoer is a civil law. It speaks of rights, duties or liabilities as to post, title and property. This law is specially related to the property right of the people. The law which regulate, systematize and preserve the right and obligation of person's property right is called civil law. All civil and criminal laws including constitution fall under this law. Business law which is main subject matter of this course, is also a part of civil law.
b) **Criminal Law**

The law dealing with crimes and their punishment, as well as with the procedure for that purpose is called criminal law. It is the body of rules that defines conduct prohibited by the law because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the charge of such acts. Criminal law is the part of law which controls crime and punishes the guilty person if such person is found to have committed any act forbidden by law. However, sometimes punishment is imposed on such person who does any act forbidden by the law, which he is supposed to do as per law. So, the crime is to do something forbidden by law or not to do any act which is to be done as per law. Theft, Murder, Beating, brawling or fight, looting etc are the criminal offences.

2. National and International Law

a) National Law

National law is a law or group of laws that apply to a single country or nation, within a determined territory and its inhabitants. National law cannot be applied outside the boarders of the country. National law is made by the state and is centre to the entire nation.

b) International Law

International law is the law of nations. International law may be defined as a set of rules recognized and accepted by the sovereign states which governs or regulates their dealing with each other. This is a law, which the states make for establishing their relationship with each other. This law is binding on the states. Because of this, the states obey it and conduct their dealings according to it.

Indeed, international law is not as same as national law. It has no physical force to enforce the law. It is obeyed on the ground of morality. Hence international law can be said to be only weak law but can't be said not to be a law. **International law** is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one another. **International Law** can be defined as the body of rules that nations recognize as binding upon one another in their mutual relations. Sources of international law include treaties, customs, general principles of law, resolutions and declarations of international organizations, equity, and writings of judges and legal scholars.

**Importance of International Law**

In modern times the world has greatly shrunk as a result of scientific and technological developments. As a consequence events in one part of the world have an immediate impact on the rest of the world. Therefore, States maintain regular relations with other states because a modern State can't lead an isolated life in the present context of world affairs. The more a State is
civilized and perfect in its organization, the greater and more intimate shall be its intercourse with other States. Just as men could not live together in a society without laws and customs to regulate their actions, so States could not have mutual intercourse without usages and conventions to regulate their conduct. International Law impinges on state sovereignty by creating new structures for regulating relations across borders. International Law and international norms limit state sovereignty in another way. They create principles for governing international relations that compete with the core realist principles of sovereignty and anarchy. International Law derives not from actions of a legislative branch or other central authority, but from tradition and agreements signed by states. It also differs in the difficulty of enforcement, which depends not on the power and authority of central government but on reciprocity, collective action and international norms. Without International laws and customs, it is impossible for states to maintain relations on the basis of peace, harmony and mutual cooperation. Rather, then the rule 'might is right' will prevail that would be destructive for the global peace and humanity.

3. **Public Law and Private Law**

a) **Public Law**

Public laws are those laws that are relevant to matters affecting the entire community (e.g. laws about criminal activity or the environment). The law relating to the organization of government and its relation to the people is called a public law. **It applies not only to a single person or a specific person or a group of persons but every person of the society.** Public law involves interrelations between the state and the general population. It is that area of the politics governing the relationship between individuals (citizens, companies) and the state. Within public law, different categories exist. These include criminal law, constitutional law, administrative law, social welfare law and all deal with matters relating to the whole country.

b) **Private Law**

Private laws are laws that are most relevant to individuals. The law dealing with relationship between individuals and organization is called a private law. It doesn't apply equally to all the persons of the society. Private law involves interactions between private citizens. Private law is concerned with the law enforced between individuals. This can include contract law, family law and other areas which deal with intellectual property rights (copyrights, designs and patent).

4. **Substantive Law and Procedural Law**

a) **Substantive Law**
Substantive law is related to rights and duties of a person. This law creates and defines the rights and duties of a person of the country. It also deals with the remedy to be provided in case of interference. It gives knowledge about the people’s right. This law also states the types of punishment (fine or imprisonment) that an individual is supposed to get for a given crime.

b) **Procedural Law**

Procedural law is related to the process of legal proceedings. The procedural law is also termed as law of process, within which falls all the procedures whether it is civil or criminal. Procedural law determines the procedures for the person willing to get remedy as provisioned by the substantive law in case of violation of rights.

**Difference between substantive law and procedural law**

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<thead>
<tr>
<th>Substantive law</th>
<th>Procedural law</th>
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<tbody>
<tr>
<td>1. It is doctrinal</td>
<td>1. It is practical</td>
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<tr>
<td>2. It is concerned with rights and duties of the members of the society</td>
<td>2. It is concerned with the process to be followed for getting rights</td>
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<td>3. It is purposed oriented</td>
<td>3. It is process oriented</td>
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<td>4. It relates only with the parties involved in the suit or case</td>
<td>4. It relates not only with the parties but also with the parties and the courts</td>
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<td>5. It fixes punishment</td>
<td>5. It fixes the ways to impose punishment</td>
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<td>6. It is superior to procedural law</td>
<td>6. It is inferior to substantive law</td>
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<td>7. It is made by the parliament(Legislative body)</td>
<td>7. It is formulated by the government(executive body)</td>
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**Other types of law are**

i) **Physical or scientific law**

This law applies equally all over the universe. This is connected with natural things so it is also termed as natural law. Law of gravitation, law of motion, law of light, law governing the planetary motion and so on are examples of this law.

ii) **Natural law**
Natural law is not man made law. It is not made in a writing form. This law is universal and remains forever. This law deals with natural justice and principles and regulates external activities and conduct of the men.

Natural refers to various affairs such as respect, honor, good conduct and so on to be done by one to another. Therefore natural law is also known as law of character.

iii) **Conventional law**

Conventional law is such a law which is derived from the agreement between two or more persons to direct themselves in their dealings. Conventional refers to any rule or system of rules agreed upon by parties to regulate their conduct. The general rules embodied in a contract are conventional laws, which determines the rights, duties, and liabilities of the parties.

iv) **Customary Law**

Customary law is such a law which is derived from the behaviors or usages practiced for a long period of time. Customary law is unwritten and being established by long use and consent of our ancestors and is put daily into practice. This is the law derived from religion and tradition. Custom is the outcome of certain, reasonable, and regular practice followed by human beings since long time.

**Model Questions:**

1. Define the term "law". Discuss its characteristics.
2. What are the types of law? Discuss any four of them.
3. What do you understand by source of law? Discuss the sources of law.
4. What do you understand by substantive law? How does it differ from procedural law?
5. Write short notes on
   a) Imperative law
   b) Conventional law
   c) Customary law
   d) International law
   e) Civil law
   f) Precedent

  **The End**