

Civil law

Every aspect of the society and conduct of every member of the society has to govern by a code of conduct. Common law system evolved laws from time to time to regulate the conduct of the members of the society. The laws which relate to regulating the conduct of the members of the society while dealing with each other in respect of property while disposing of his property, inheritance, disposal of property effective after death, preservation of property of minor and disabled and regarding many other similar aspects are known as civil laws.

Civil laws in respect of trade and commerce are included in the Contract Act, the Sales of Goods Act, the Partnership Act and other Acts. Basic essential of trade and commerce is contract between the parties. Party which desires that the other party shall engage with him in some transaction in respect of transfer of property, transfer of interest in the property or trade or business with him may give a proposal to the other party. When other party accepts the proposal there is an agreement between the parties. If this agreement meets all the required legal requirements incorporated in the Contract Act it is recognised as a contract. Rules are there in the contract act to safeguard the interest of the parties and it specify which contracts are valid, which are void and which are voidable. The Act also specifies different types of contracts and has provisions demonstrating the circumstances in which the contract can be modified or a new contract can be replaced in place of old one.

The Transfer of Property Act relates to the transfer of immovable property either by sale or gift. Transfer of property under this Act is *inter vivos* i.e. transfer between two or more living persons. The Transfer of Property Act include the principles of rule against perpetuity, part performance, vested interest, doctrine of election, rule of feeding the grant by estoppel and Principle of estoppel. The Act recognises transfer of interest in immovable property by mortgage. The entire chapter on mortgage defines mortgage and lays down rules regulating the mortgages and enumerating the circumstances in which the mortgage can be redeemed or foreclosed. The Act also defines which property can be transferred and who are the persons competent to engage in the transaction of transfer of property.

The Sale of Goods Act on the other hand deals with the transactions in respect of movable properties. The Act defines when the goods can be transferred, how the goods can be transferred, when the property in the goods

passes to the purchaser and what are the rights and liabilities of the bailor and bailee under the contract of bailment. It also distinguishes guarantee and warranty and specifies when the purchaser can invoke guarantee or warranty in order to protect his interest. The provisions of this Act regulate the vast national and international business in respect of movable goods right from grain to the aeroplane.

The Specific Relief Act was enacted under the common law when it was found that the provisions of the substantive laws like the Contract Act and the Transfer of Property Act were not sufficient to provide adequate relief to the aggrieved. The act deals with novice aspects like simplified procedure for recovery of possession by person who is dispossessed of the property without due process of law, liability of the person who found goods to restore it to the person who is entitled for its possession, circumstances under which specific performance of the contract can be asked, discretionary powers of the court to grant specific performance, seeking declaration of legal right which a person holds and remedy to seek perpetual injunction to protect the property or right from any aggressor, who is trying to invade on the property or trying to defeat the interest of the plaintiff.

The Negotiable Instrument Act is for regulating transfer of money either by paper currency or by creating charge on the property involving the bank besides the parties to the transaction. Provisions of the Act dealing with dishonour of cheque gives rise to criminal liability to suffer imprisonment and to pay compensation to the party, whose interest is defeated by dishonour of cheque.

There are various other Acts like the Insurance Act, the Banking Regulation Act, the Land Acquisition Act, the Money-lenders Act etc. which deal with different branches of civil laws.

Most of the civil laws do not prescribe a procedure for invoking rights and compel performance of liabilities recognised by said laws. The procedure to seek relief before the civil court is prescribed in the Code of Civil Procedure. The Code of 1908 is amended from time to time to avoid delays in trial and recognise new modes for settlement of dispute between the parties by negotiations, mediations and arbitration. The Code prescribes procedure from a situation of preparing pleadings, institution suit to the execution of decree. The code of civil procedure recognises procedural principles like res judicata. The Code provides for remedy of summary trial for immediate relief to the

aggrieved person. It also has provision to prosecute a person for civil contempt he disobeys the orders of the court. It recognizes rights of the advocate to appear before the court and represent a party to the litigation. It also protects right of the minors and disabled persons by allowing their next friend to litigate on their behalf. The Code of Civil Procedure provides efficient procedure to determine rights and liabilities of the party and pass a degree safeguarding the right of aggrieved person.

www.drajaay.com