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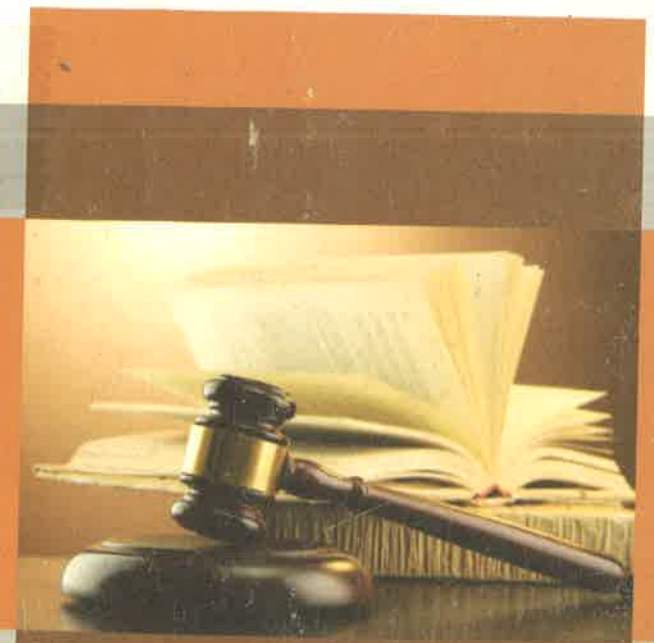
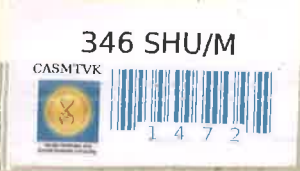
A Manual of Mercantile Law

M.C. SHUKLA



Revised Edition

A Manual of Mercantile Law



M.C. SHUKLA

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A MANUAL OF MERCANTILE LAW

A MANUAL OF MERCANTILE LAW

(INCLUDING INDUSTRIAL LAW)

M.C. SHUKLA

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PREFACE TO THE FIRST EDITION

The addition of yet another book to the large number of works on Mercantile Law demands, if not apology, certainly an excuse. The excuse for the production of this volume is that it covers the whole teeming ground in a manner differing from the usual textbook, by giving in One volume, a thorough, lucid and easily understandable explanation of the various principles of that branch of law which has to deal with mercantile transactions and mercantile community.

The book is intended primarily as a textbook for Pass and Honours students preparing for the various University and Professional Examinations in Mercantile Law, but it cannot fail to be useful to businessmen who have from time to time to deal with several branches of the subject. My aim is to explain the provisions of the different enactments, and in doing so, I have dealt with the law, subject by subject, grouping together the sections of the respective Acts so as to make them simple and logical to the student, convenient to the businessman and interesting to the casual reader who may care to use it as a reference. Even lawyers and practitioners will find the book of practical use inasmuch as it contains in a handy volume the whole range of Mercantile Law, supported by citation of both English and Indian cases and references to the relevant sections of the various Acts. Where controversial points occur, I have based the exposition on the general consensus of standard authoritative opinion of leading writers, and the considered judgments of the Courts. At places I have allowed myself the freedom of expressing my own opinion, with due deference, of course, to the authorities. To facilitate the work of recapitulation, at the time of examination, a summary is given at the end of each chapter. To meet the needs of students preparing for the various examinations held by several British Professional Societies, English law is explained fully under separate heads. In short, the present work presents the subject from the composite view-point of the student, the businessman, the lawyer and the layman. A maximum range of illustration has been used to illuminate the subject-matter.

I am under considerable obligation to various well-known and monumental legal treatises and take this opportunity to acknowledge the assistance I have derived from them in the preparation of the book.

To thank my wife is but to inadequately express my indebtedness to her, for in the midst of day-to-day lecture work the completion of the book would have been impossible without her unflagging assistance and advice at every stage of its production.

July 1948

Delhi

M.C. SHUKLA

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INTRODUCTION

Nature and Sources of Mercantile Law

PART A

LAW AND SOCIETY

Some knowledge of law is necessary to a greater or lesser extent for all persons. The truth of this statement is obvious, because life of each member of society must proceed to a large extent in conformity with recognised rules and principles of social conduct. Indeed, an individual is confronted almost daily with situations that demand legal information for correct action. Just as a game of football or hockey could not be played satisfactorily without rules to govern the players, so life in general and the business world in particular could not continue without law to regulate the conduct of people and to protect their property and contract rights. Without rules the athletic contest would soon become a brawl. Without law life and business would soon become a matter of the survival not only of the fittest but also of the most ruthless. Without law, our rights would not be secure because we would not know whether rights existing today would be respected tomorrow.

What is Law? Law in its legal sense, as distinguished from other uses of the term, means those rules and principles that govern and regulate social conduct and the observance of which can be enforced in courts. It operates to regulate the actions of persons in respect to one another and in respect to the entire social group or society.

Law is either Public Law or Private Law. **Public Law** concerns the public as a whole and is divided into three classes — Constitutional Law, Administrative Law and Criminal Law.

Private Law pertains to individuals. It is separated into such special fields as contracts, agencies, sales, surety-ships, negotiable instruments, etc. These areas generally are the ones that pertain to business and are termed as Business Law or Commercial Law or Mercantile Law. Our immediate concern is with this branch of law. **Mercantile Law** may be defined as that branch of law which deals with the rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property. An individual, a partnership or a company, carrying on business, is a mercantile person. This law, in turn is founded on the law of contract. The present book deals with the various segments of mercantile or business law as well as some sections of industrial law.

SOURCES OF MERCANTILE LAW

Indian Mercantile Law is, in the main, an adaptation of the English law, it is incorporated in a number of Acts, which follow to a considerable extent the English Mercantile Law with some reservations and modifications necessitated by the peculiar conditions obtaining in India. To ascertain the sources of Indian Mercantile Law we have, therefore, to trace the sources of the English Mercantile Law. The sources of English Mercantile Law are: (1) The Common Law; (2) Equity; (3) The Law Merchant; and (4) The Statute Law.