



NALSAR UNIVERSITY OF LAW HYDERABAD



MODULE-III (GENERAL PRINCIPLES OF LAW)

Presentation

On

***FUNDAMENTAL ASPECTS OF LAW AND ITS RELEVANCE TO
AIR & MARINE LAW***

by

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INTRODUCTION

- **Importance** of Law of Contracts
- Nature and **Scope**
- Basis of the Law of Contract (**Intention**)
- Main Purpose of Law of Contracts (**Element of Definiteness**)
- Intention to Contract (**There must be Common Intention**)
- Legislative **Limitations** on the **Freedom** of Contracts
- Contract Law based on '**Promises**'
- Based on '**Consensus-ad-idem**'

1. Law of Contracts

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|----------------------------------|-------------------------------------|
| 1. Proposal | 9. Void Agreement |
| 2. Acceptance | 10. Contingent Contract |
| 3. Revocation | 11. Performance of Contract |
| 4. Creation of Legal Relations | 12. Discharge of Contract |
| 5. Lawful Consideration | 13. Remedies for Breach of Contract |
| 6. Lawful Object & Consideration | 14. Quasi Contracts |
| 7. Capacity of Parties | 15. Classification of Contracts |
| 8. Free Consent | |

Relevancy of Law of Contracts in Aviation Sector

- **Airport Clearance Agreements**

- **Aeronautical Agreements**

- BCAS- Security clearance Terminal, aerodrome,
- Airport security- CISF, local police etc
- AAI- ATM- CNS agreements
- Meteorological services
- Fueling

- **Non-Aeronautical Agreements**

- Car rentals ,Hotel Booking, *Swagath seva*
- Cafeterias, Book shops, Duty free shops,
- Money exchange, House keeping
- ,Advertisement rights

- **Expenditure Contracts**

- Maintenance- Civil. electrical,
- House-Keeping
- Aerobridges
- Trolleys

Relevancy of Contracts in Maritime Contracts

- ❑ **Maritime contract** refers to a **contract** relating to a vessel.
- ❑ **Maritime contract** is an agreement pertaining to the operation, navigation, maintenance, and repair or provisioning of a vessel.

2. Law of Property

- ❑ Immovable Property
- ❑ Transfer Defined
- ❑ Various Types of Interests
- ❑ Conditional Transfers
- ❑ Doctrine of Part-Performance
- ❑ **Specific Transfers**
 - Sale
 - Mortgage
 - Gift
 - Lease
 - Gift

Relevancy of Property in Aviation Sector

- ❑ Land Acquisition
- ❑ Leasing of Land by State to Private Property (Lease Deed)

Relevancy of Property Law in Maritime

- ❑ Any equipment attached to the ship
- ❑ Navigational apparatus

3. Company Law

❑ **Company is an artificial person**

❑ **Types of Companies:**

➤ By Royal Charter (Formed by grant of a charter by the Crown)

➤ By Act of Parliament (Statutory Companies) (Ex: LIC)

➤ By Registration (Registered Companies)

❖ **Classification:**

❖ (a) Unlimited Companies

❖ (b) Companies Limited by Guarantee

❖ (c) Companies Limited by Shares (Public Companies and Private Co's) etc.

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- ❑ **Formation of a Company:** (a) Promoters (b) Pre-Incorporation contracts
 - ❑ **Registration of a Company:** (a) Registrar of Companies; (b) Documents required for Registration (AA and MA); (c) Certificate of Incorporation
 - ❑ **Company's Characteristics:** Corporate Personality; Limited Liability; Perpetual Succession; Transferability of Shares; Separate Property; Common Seal; Can enter into Contracts; Can sue and be sued;

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- Corporation Veil
 - Piercing the Corporate Veil
 - ❑ **The Corporate Constitution :**
 - Memorandum of Association (Name Clause; Registered Office Clause; Liability Clause; Capital Clause)
 - Articles of Association (Alteration of Name; Alteration of Registered Office; Change of Objects)

Relevancy of Company Law in Aviation

- ❑ Special Purpose Vehicle

Relevancy of Company Law in Maritime

- ❑ A **shipping** line is a **company** or organisation that:
- ❑ owns and operates vessels,
- ❑ responsible for the handling and
- ❑ transporting of cargo aboard their ships.
- ❑ They deal with the cargo from point of origin to destination (port to port), transiting regular routes on fixed schedules aboard their own vessels.

4. Law of Insurance

- ❑ **Insurance** is a means of protection from financial loss. It is a form of risk management, primarily used to hedge against the risk of a contingent or uncertain loss. An entity which provides **insurance** is known as an insurer, **insurance** company, **insurance** carrier or underwriter.

- ❑ Seven Principles of Insurance:
 - i. Principle of Utmost Good Faith
 - ii. Principle of Insurable Interest
 - iii. Principle of Indemnity
 - iv. Principle of Contribution
 - v. Principle of Subrogation
 - vi. Principle of Loss Minimisation
 - vii. Principle of Cause Proxima

Relevancy of Insurance in Aviation Sector

- ❑ **Aviation insurance is an insurance** against claims and losses arising from the ownership, maintenance, or use of **aircraft**, hangars, or airports including damage to **aircraft**, personal injury, and property damage.
- ❑ *Differentiate between Domestic Airliner and International Airliner*
- ❑ *Application of Montreal Convention 1999*

Relevancy of Insurance in Maritime on Sector

- **Hull Insurance:** Hull insurance is the insurance against loss caused by damage or destruction of waterborne craft or aircraft to the owner. ...
- **Cargo Insurance:** The goods sent through waterway is known as cargo. ...
- **Marine Liability Insurance:** Freight Insurance:

5. Law of Competition

- ❑ The **Competition Act, 2002** was enacted by the Parliament of India and governs Indian **competition** law.
- ❑ To prohibit acquisitions, mergers, amalgamations etc. between enterprises which have or are likely to have an appreciable adverse effect on **competition** in market(s) in India.
- ❑ The purpose of Competition law is that The **law aims** to promote healthy **competition**. It **bans anti- competitive agreements** between firms such as agreements to fix prices or to carve up markets, and it makes it illegal for businesses to abuse a dominant market position.

Relevancy of Competition Act in Aviation Sector

- ❑ **Criticism:** In Banking, Telecommunication, Insurance sectors, Competition Act was applied where as in case of Begumpet Airport and HAL Airport opportunity was not given to Begumpet.

Relevancy of Competition Act in Maritime Sector

- ❑ **Competition issues in port concessions:** Concessions become important from the perspective of promoting competition in the ports sector. If not carefully designed, they may create entry/exit barriers, private monopoly or lead to dominant position of the concessionaire, which is prone to be abused.
- ❑ **Also if not kept away from collusive behaviour, concessions may affect the competitive environment.** Therefore, there are at least two important aspects to be considered while designing and granting concessions. The first aspect is the concession granting process and the second is the implementation of concession, especially in relation to the anticipation of potential abuse of monopolistic position caused by such concession.

6. Taxation Laws

- ❑ **Corporate Income Tax:** Income tax in India is levied under the Income Tax Act, 1961 (“ITA”). While residents are taxed on their worldwide income, non-residents are only taxed on income arising from sources in India. A company is said to be resident in India if it is incorporated in India or its place of effective management is located in India.
- ❑ **Dividends:** Dividends distributed by Indian companies are **subject to a dividend distribution tax (“DDT”) at the rate of around 15%** (calculated on a gross-up basis), payable by the company. However, except as stated immediately below, **no further Indian taxes are payable by the shareholders on such dividend income once DDT is paid.** Accordingly, there should be no withholding tax applicable on the payment of dividends to a non-resident.

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- ❑ **Interest, Royalties and Fees for Technical Services:** Interest earned by a non-resident may be taxed at rates ranging between 5% to around 40%, depending on the nature of the debt instrument. The withholding tax on royalties and fees for technical services earned by a non-resident is 10%.
 - ❑ **Capital Gains:** Gains earned by a resident company from the transfer of capital assets situated anywhere in the world are taxable in India.
 - ❑ **Withholding Taxes:** Tax would have to be withheld at the applicable rate on all payments made to a non-resident, which are taxable in India.
 - ❑ **Double Tax Avoidance Treaties:** India has entered into more than 80 treaties for avoidance of double taxation. A taxpayer may be taxed either under domestic law provisions or the tax treaty to the extent it is more beneficial.

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- ❑ **Anti-Avoidance:** A number of specific anti-avoidance rules are enforced in India. **Cross-border transactions between related parties would be viewed for tax purposes** on an arm's length basis. Transfer pricing rules apply to certain domestic transactions as well. General anti avoidance rules ("GAAR") have become effective from April 1, 2017.
 - ❑ **Indirect Taxes:** Indirect taxes are imposed at the central and state level on expenses incurred. Currently, prominent indirect taxes being levied include customs duty and the goods and services tax ("GST"). The rate of these taxes vary depending on the product and / or service.

Relevancy of Tax Laws in Aviation Sector

- ❑ Based on contract – Domestic or international.
- ❑ Taxes on ATF.

Relevancy of Tax Laws in Maritime

- ❑ Discrimination in taxability of outbound freight in the hands of Indian shipping companies vs. foreign shipping companies.

7. IPR Laws

- ❑ Intellectual property rights refers to the general term for the **assignment of property rights through patents, copyrights and trademarks**. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.
- ❑ A right that is had by a person or by a company to have exclusive rights to use its own plans, ideas, or other intangible assets without the worry of competition, at least for a specific period of time. **These rights can include copyrights, patents, trademarks, and trade secrets.**

Relevancy of IPR Laws in Aviation Sector

- ❑ Protection to be granted for the aircrafts taken on lease.
- ❑ Much like in any other industry, aerospace companies develop products, materials, and technologies that need protection from infringement. Intellectual property protection in aerospace also provides a method for innovators to ensure that their developments can remain competitive. Moreover, IP protection leads to profitable business results and increases the potential for innovation.

Relevancy of IPR Laws in Maritime

- ❑ **Protection under IPR in Shipping and Maritime Industry.** Intellectual property rights cover a wide domain in maritime industry mainly as patents, copyright and designs. Maritime industry **encompasses** the manufacturing of ships & boats and transporting the world's largest volume of cargo sailing through the crest and trough in all the seasons.

8. Law of Torts

- ❑ Tort derived from the Latin word '*tortum*', which means 'to twist'. It includes that conduct which is not straight or lawful. It is equivalent to the English term 'wrong'.
- ❑ *Salmond*- It is a civil wrong for which the remedy is a common law action for Unliquidated damages and which is not exclusively the breach of a trust or equitable obligation.
- ❑ Gives rise to Unliquidated damages.

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- ☐ Volenti Non Fit Injuria
 - ☐ *Ex Turpi Causa Non Oritur Actio*
 - ☐ *Damnum sine injuria* (Gloucester Grammar School case)
 - ☐ Negligence
 - ☐ Nuisance
 - ☐ Defamation
 - ☐ Malicious Prosecution
 - ☐ Damages
 - ☐ Injunction

Relevancy of Tort Law in Aviation Sector

- ❑ Aerobridge removed negligently
- ❑ Unsafe landing etc.

Relevancy of Tort Law in Maritime

- ❑ The term covers cases where injury, loss or damage is caused to a person or their interests by another party's action or negligence.
- ❑ Negligent repairing of the ship.

9. Law of Crimes

- ❑ IPC: Description of Offences and Prescription of Punishments
- ❑ Stages of Crime: Intention; Preparation; Attempt or Accomplishment

Relevancy of Criminal Law in Aviation Sector

- ❑ Hijacking
- ❑ Application of various Conventions

Relevancy of Criminal Law in Maritime

- ❑ Maritime Piracy
- ❑ Smuggling Exotic Plants and Animals
- ❑ Drug Trafficking
- ❑ Human Trafficking

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