NALSAR UNIVERSITY OF LAW

HYDERABAD

Lecture On:

Module: IV & V

Fundamental Aspects of Law and Its Relevance to Air Law

by

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Module-V

1. **Law of Contracts**
2. **Law of Property**
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6. **Law of Consumer Protection**

Module-IV

1. **Law of Torts**
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MODULE-V

MODULE-V

FUNDAMENTAL ASPECTS OF CORPORATE LAWS AND ITS RELEVANCE TO AIR LAW

1. Law of Contracts

- **Introduction**
- Importance
- Nature and Scope of Contract Law
- Basis of Law of Contracts (Intention ie. common intention)
- Main Purpose (Definiteness)
- Legislative Limitations on Freedom of Contract

Essentials of a Valid Contract

1. Proposal and Acceptance
2. Legal Relationship
3. Lawful Consideration
4. Capacity of Parties
5. Free Consent
6. Lawful Object
7. Certainty of Terms
8. Possibility of Performance
9. Void Agreements
10. Legal Formalities

Proposal (Offer)

Legal Rules as to Offer

- Offer must be capable of creating legal relationship
- The terms of the offer must be definite and certain
- The offer must be communicated
- The Offer may be conditional
- The Offer may be general or specific
- Offer must be made with a view to obtaining assent
- Offer must not thrust the burden of acceptance
- **Exceptions:** Mere Declaration of Intention; Tenders; etc.

Acceptance (Promise)

- Definition
- Modes of an Acceptance
- Rules
  - Acceptance must be absolute and unqualified
  - Acceptance must be expressed in some usual manner
  - Acceptance must by the party name in the offer (Specific)
  - Acceptance must be communicated to the Offeree
  - Acceptance must be made within a reasonable time
  - Acceptance cannot be in ignorance of an Offer
- **Exceptions:** (By Express Conduct/Implied Conduct)

Competency of Parties

Definition

Rules

<u>Exceptions:</u>

Minor

Unsound Mind

Intoxicated

Disqualified by Law

Free Consent

- Definition
- Coercion
- Undue Influence
- Fraud
- Misrepresentation
- Mistake

Consideration

- Definition
- Rules
- Exceptions
- Rule: No Consideration No Contract
- Exceptions
- What is meant by Privity to Contract?

Lawful Object and Consideration

1. If it is forbidden by law
2. If it defeats the provisions of any law
3. If it is fraudulent
4. If it involves or implies injury to the person or property of another.
5. If the Court regards it as immoral or opposed to public policy:
   a) If the Court regards it as immoral
   b) If the Court regards it as opposed to Public Policy

What is meant by Public Policy?

1. Trading with Enemy
2. Agreements interfering with the administration of justice
    a) Interference with the course of justice
    b) Stifling Prosecution (Tampering with administration of justice)
    c) Maintenance and Champerty:
3. Trafficking in Public Offices and Titles:
4. Agreements tending to create interest opposed to Duty
5. Agreements in restraint of Parental Rights
6. Agreements interfering with Marital Duties
7. Agreements restraining Personal Liberty
8. Agreements in Fraud of Creditors.

Void Agreements

- **Meaning of Void Agreements:** Agreements which are invalid in the eyes of law and are also not enforceable before the law.

- **An Agreement may be either:**

  a) Agreements which are Void ab initio

  b) Agreements which are Declared to be Void

Performance of Contract

- Meaning
- By whom contracts must be performed
- When Contracts need not be performed
- Devolution of Joint Rights and Liabilities
- Time and Place for Performance
- Time is the essence of the Contract
- Appropriation of Payments
- Assignment of Contracts

Discharge of Contract

- **Modes of Discharge**
  - By Performance
  - By Mutual Consent or agreement (novation, alteration, rescission, remission, waiver, merger)
  - By Lapse of Time
  - By Operation of Law
  - By Breach of Contract
  - By Subsequent Impossibility

Remedies for Breach of Contract

1. Rescission (party agrees to rescind or breach by one party or under voidable contract)
2. Damages (Liquidated Damages) **(Note: Damages different from Penalty)**
3. Quantum Meruit
4. Specific Performance
5. Injunction
6. Rectification and Cancellation

Law of Contract and Aviation

Focusing Airports

- Land on Lease
- Slot Allocation
- Concession/OMDA Agreement
- Airports v. ATC
- ATF Contracts
- Restaurants etc.
- Ground Handling
- Night Parking
- ATMs
- Ground Transportation Service

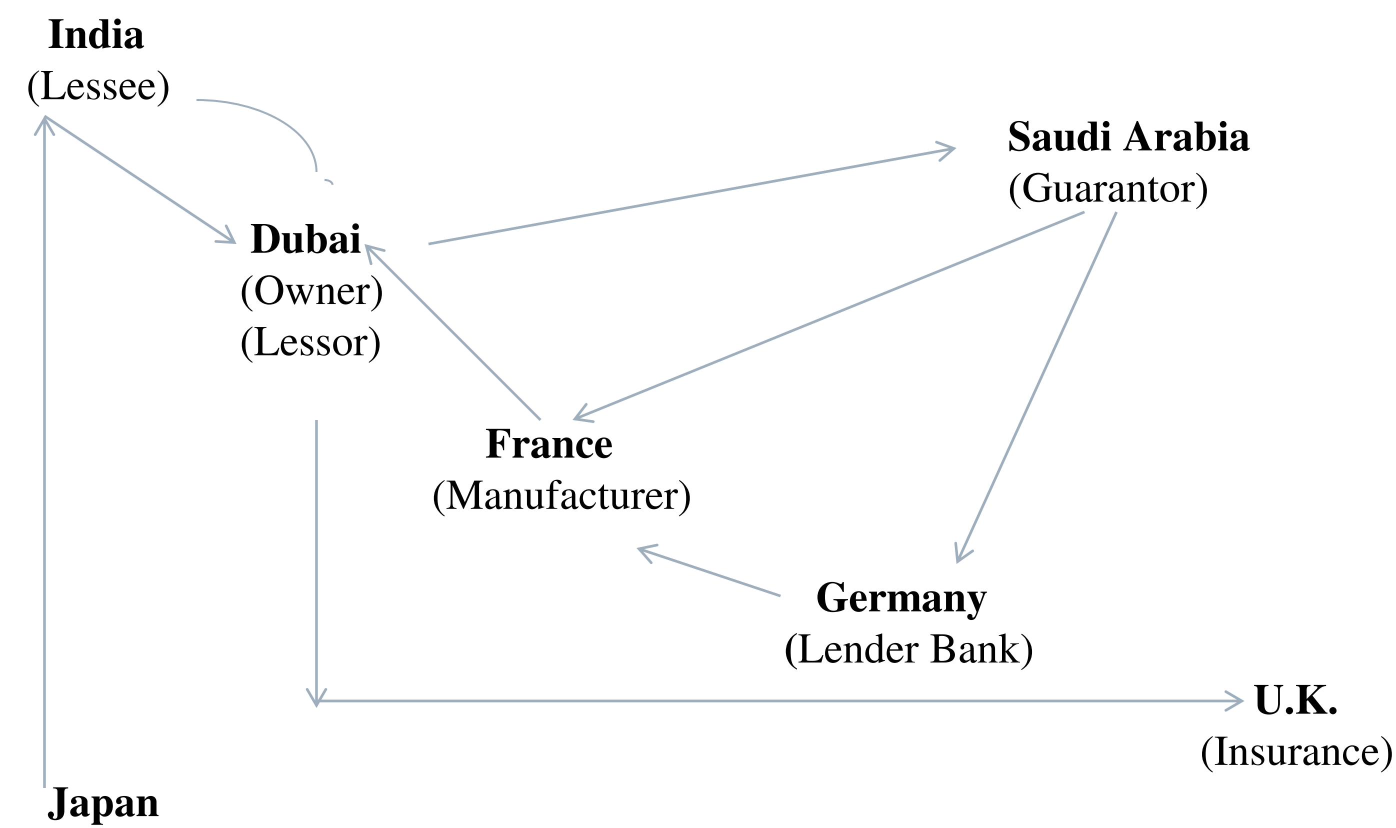
Focusing Airliners

- Airline Agreements
- Slot Allocation Agreements
- Landing and Take-off
- ATC Services
- Ground Services
- Leasing of Aircrafts (Wet/Dry)

Communication & Utility Services

- Fiber, Cable, Internet
- Telephone Service

Aircraft Leasing and Financing Agreement



(Passengers) (If there is a default in payment or an accident what happens?)

2. Law of Property

Transfer of Property Act, 1882

- **General Rules for Transfer**
- Transfer of Property Defined
- What may be Transferred
- Operation of Transfer
- Transfer of property for benefit of public
- Conditions: Precedent/Subsequent

Transfer of Property Act, 1882

- **Specific Transfers**
- Sale
- Mortgage
- Lease
- Gift
- Exchange

Law of Property and Aviation

- **Based on "Land-Use Planning and Management (Annex-16 Environmental Protection) and ICAO Doc 9184.**

- Airport Site Evaluation and Selection
- Airside Development (Runways and Taxiways)
- Aprons (Parking Apron etc.)
- Cargo Facilities
- Air and Ground Navigation
- Air Traffic Services
- Ground Transport
- Vehicle Parking
- Landside Development (Passenger Processing; Baggage Processing) etc
- Airport Support Facilities (Medical, Generators, Meteorological etc.)
- Aircraft Fuel Facilities; Security Considerations

3. Law of Company

- **What is a "Company"?**
- Section 2(20) of the 2013 Act defines the term "company" to mean "a company incorporated under the Companies Act 2013 or any previous company law." ... The sub-section states that for the purposes of such definition, the expression company includes "body corporate".
- **Characteristics:** Corporate Personality; Limited Liability; Perpetual Succession; Transferability of Shares; Separate Property; Common Seal; Capacity to Sue and Be Sued; Acquire, Enjoy and Dispose of Properties; Enter into Contracts.

Law of Company an Aviation

- **In Airports**
- **Example:** Special Purpose Vehicle/Entity - SPV/SPE' - A special purpose vehicle/entity is a subsidiary company with an asset/liability structure and legal status that makes its obligations secure, even if the parent company goes bankrupt.

- **In Airlines**
- **Example:** SPV to free Air India of debt in the works. South Asia's oldest airline, Air India, is seeking to jettison its decades-old debt baggage as part of a programme that would allow the country's flag carrier to transfer loans to a dedicated company and create a capital structure underpinning its turnaround initiatives.

4. Law of Insurance

- **What is “Insurance”?**
- Insurance is a means of protection from financial loss. The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insurer will compensate the insured.
- Insurance is a **“Contract”** and is based on various “**Clauses”**
- **Example:** Indisputability Clause; Renewability Clause; Reasonability Clause; Contribution Clause

- ***Refer: Article 19 of Chicago Convention 1944:***
- *National Laws Governing Registration: The registration or transfer of registration of aircraft in any contracting State shall be made in accordance with its laws and regulations.*

- **Requirements for Registration:**
- Airworthiness (Refer: CAR under Indian Law)
- Permanent Residence and Place of Business
- **Insurance coverage**
- Crew and Proper Licence to Operate

- **Aviation Insurance Types:**
- Hull; Cargo; Product Liability; Airport Operations Liability; War and Hijacking etc.

5. Law of Competition

- **What is "Competition" in the market?**

- In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit (or other business objectives).

- A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit.

- **What constitutes Competition law and policy?**

- Competition law and policy **is defined** as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare. There are two elements of such Government measures:-
- **A Competition Policy:** Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.
- **A Competition Law:** To prevent anti-competitive practices with minimal intervention

- **What is an Anti-competitive Agreement?**

- An anti-competitive agreement is an agreement **having appreciable adverse effect on competition**.

- **Example:** Agreement to fix price

Law of Competition and Aviation

- **In Airlines:**
  - **Example: Predatory pricing**, is a pricing strategy in which a product or service is set at a very low price with the intention to achieve new customers, or driving competitors out of the market or to create barriers to entry for potential new competitors.
- **In Airports:**
  - Section 32 of MRTP Act 1969, was challenged in “HIAL” and “BIAL” case in Andhra Pradesh and Karnataka High Courts. (Ex: Banks; Telecommunications; Insurance etc.) *(AAEU v. Union of India)*

6. Law of Consumer Protection Act

- **An Act to make provision:**
- for the greater protection of consumers,
- to establish a consumer protection commission and
- for the functions and powers of that commission and
- related matters.
- **Act focuses on: “Goods” or “Services”**

Law of Consumer Protection and Aviation

- **Focusing on Airliners:**
- **Example: (Services):** Denial of boarding despite holding confirmed ticket; delay; re-scheduling without prior intimation;
- **Example: (Accidents):** Mumbai landing case
- **Example:** Jet Flight – Mumbai-Jaipur- crew member forgot to flip the switch to pressurize the cabin – headache and nose bleeds.
- **Focusing on Airports:**
- **Example:** A lady was crushed in aero-bridge in Hyderabad Intl. Airport

MODULE-IV

MODULE-IV

FUNDAMENTAL ASPECTS OF LAW AND ITS RELEVANCE TO AIR LAW

1. **Law of Torts**
2. **Law of Crimes**
3. **Law of Environment**
4. **Law of IPR**
5. **Law of Taxation**

1. Law of Torts

- The word "Tort" derived from Latin "*tortum*" which means "to twist" or in English law known as "wrong"
- **Salmond** defines: 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 contract or breach of a trust, or, other equitable obligation.
- **Essentials of a Tort:**
  - Act or omission
  - Legal damage

- **Injuria Sine Damno** (violation of legal right without harm) ***(Ashby v White – Voting case) (Liable)***
- Damno Sine Injuria (infringement of an absolute private right without any actual loss or damage. ***(Gloucester Grammar School Case)(Reduction of school fee-loss sustained-but not liable)***

General Defences:

- Volenti Non Fit Injuria
- Plaintiff the wrongdoer
- Act of God
- Necessity
- Private Defence

- **Specific Torts:**
- Negligence
- Nuisance
- Vicarious Liability
- Defamation (Slander; Libel)
- Strict Liability
- Absolute Liability

Law of Torts and Aviation

- **Airliner's Civil Liability:**

- Serving stale food on board
- Landing gears stuck while landing
- Aircraft Noise – causing nuisance
- Product Liability -

2. Law of Crimes

- **Definition of Crime:** (It's a Public wrong)
  - Sir William Blackstone: defined Crime as "an act committed or omitted in violation of Public Law forbidding or commanding it".
- **Elements of Crime:**
  - Actus Reus (result of human conduct) (Positive Actus Reus: A kills B) (Negative Reus: A mother leaves a baby without feeding, baby dies)
  - Mens Rea (Guilty Mind): A with intention kills B.

- **Kinds of Punishment:**
- Death sentence (Capital Punishment)
- Imprisonment for life
- Imprisonment - simple and rigorous
- Forfeiture of property
- Fine

General Exceptions:

- Mistake of Fact
- Judicial acts
- Accident
- Absence of criminal intent
- Consent
- Trifling acts
- Private Defence

Law of Crimes and Aviation

- The Suppression of Unlawful acts against safety of Civil Aviation Act, 1982 (offences on board, at airports, damage to navigational facilities)
- The Convention of the Making of Plastic Explosives 1991
- International Convention for the Suppression of Terrorist Bombing, 1997
- International Convention for the Suppression of the Financing of Terrorism, 1999
- International Convention for the Suppression of Acts of Nuclear Terrorism, 2005

- **Bit coins Fraud:** An 18-year-old class 12 student was tracked and questioned by Uttar Pradesh ATS for allegedly making several calls to Miami airport in the US and threatening to blow it up, the state police chief said on Saturday. An FIR has been filed against him but he has not been arrested.

3. Law of Environment

- **What does "environmental regulation" mean?**

  Environmental regulations are rules and requirements that generally cover two things:

- **Pollution control:** regulating how much pollution (chemicals or other undesirable materials such as "heat", "suspended particulates") a facility releases
- **Conservation management:** maintaining health of ecosystems - protecting land, assuring diversity of species, etc.
- Environmental Protection Act, 1986

Law of Environment and Aviation

- Aviation sector contributes to 2% of total CO_2 emissions.
- Aviation sector has become more vulnerable to climate issues due to the sharp global growth. • India is also witnessing tremendous growth in this sector and hence needs to address this issue.
- Airlines Environmental Issues
- Airport Environmental Issues
- Impact of Airport related Emissions on Public Health

- ***Refer: My Article at:*** http://www.nluassam.ac.in/joelraa4.htm#4

- **Mitigation Measures**
- Defined, or noise preferential routs (NPR)
- Greener airports
- Land Use Planning;
- Levy of Environmental taxes (Green Tax) etc.

4. Law of Intellectual Property Rights

- Industrial Designs (Integrated Circuits)
- The Patent Act, 1970
- The Copyright Act, 1957
- The Trade Marks Act, 1999
- Geographical Indications of Goods (Registration & Protection) Act, 1999

IPR and Aviation Law

- **Intellectual and Industrial Property Rights:** The infringement of rights in intellectual property, trademarks, service marks, trade names, patents, designs, and similar rights, should be prevented if at all possible from the outset of the relationship between the parties.

Importance of Clause on IPR while Drafting an International Contract

Clause: Intellectual and Industrial Property Rights

- *“The Buyer understands that the Seller owns the exclusive rights in the designs, patents, trademarks trade names, and company names (the “Intellectual Property”) used in connection with the Seller’s Goods. The Buyer is given no rights in any of Seller’s Intellectual Property. The Buyer will not use the Seller’s Intellectual Property as if it were the Buyer’s own property, nor will the Buyer register the Seller’s Intellectual Property in any country as if it were the Buyer’s own. The Buyer acknowledges that its unauthorized use or registration of the Seller’s Intellectual Property, or of any intellectual property that is confusingly or deceptively similar to the Seller’s Intellectual Property, will be deemed an infringement of the Seller’s exclusive rights.”*

5. Law of Taxation

- Taxes in India can broadly be classified into direct and indirect.

1. **Direct Taxes**

- These include Income tax, Wealth tax and Interest Tax. The most significant of direct taxes is income tax.

- **Income Tax**

- The levy of income tax is governed by the Income-Tax Act, 1961. This is an enormously complex legislation running into over 300 Sections with several subsections. The Act undergoes changes every year with additions and deletions brought out through a Finance Act passed by the Parliament.

- **Broadly, income has been divided into five categories:**
- I. Income from salary
- II. Income from house property
- III. Profits and gains of business or profession
- IV. Capital gains
- V. Income from other sources (including dividends, interest from securities, interest income and income from winning of lotteries).

- The tax incidence on the income of assesses is determined by their residential status. Different rates of taxes are applicable to the income of individual and non-individuals. The general rules of taxation on income are:

- Resident taxpayers are taxed on their worldwide income.
- Nonresident taxpayers are taxed only on income received in India or on income arising (or deemed to arise) in India.
- Corporate income is taxed both at corporate level and to shareholders upon distribution as dividends.
- The accounting year for tax purposes is April 1 to March 31.
- Double taxation relief is offered to residents through credits under the Income Tax Act and under the tax treaties.

2. **Indirect Taxes:**

- Central Excise
- Customs Duty
- Sales Tax
- Service Tax

Law of Taxation and Aviation Taxation

- Aviation is responsible for a rapidly-growing proportion of greenhouse gas emissions. Emissions, noise pollution and congestion all provide economic rationales for aviation taxes.
- Unfortunately, international agreements prevent fuel for international flights being taxed. But taxes on tickets, passengers and flights are all permissible.
- The government proposes putting a tax on flights from November 2009, replacing the current tax on passengers, air passenger duty (APD). This should allow it to target the level of emissions more effectively than APD does at the moment.

- A reformed aviation duty on flights would strengthen incentives for aircraft to fly as fully-loaded as possible and could also be extended relatively easily to freight flights, although the revenue from taxing freight flights would likely be small.
- To be targeted precisely on the external costs of aviation, the rates of a new aviation duty might in principle have to vary by aircraft type, aircraft emissions and departure airport, as well as by distance travelled. But the more sophisticated the tax is, the more complicated it will be to administer and comply with.

- To the extent that the new tax would be passed on to passengers, if the revenue raised were to remain the same there would be both winners and losers. The winners from a relatively sophisticated aviation duty would be those flying short distances on full, clean, quiet planes from airports away from residential areas.
- Reforms to aviation taxation are likely to be followed by the inclusion of aviation in the EU Emissions Trading Scheme. The interaction of the domestic tax with this system will need careful consideration.

Thanks to One and All!

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