

Topic 1:

Explain the nature of international commercial law as a subject-matter, including its nature as a collection of disciplines:

What is international commercial law:

- International commercial law is a body of legal rules, conventions, treaties, domestic legislation and commercial customs or usages, that governs international commercial or business transactions. As well as, the regulation of trade and foreign investment by countries.

Areas of international commercial law:

- International contracts under domestic law
- International contracts under major international regimes
- International carriage of goods
- Letters of credit, and other means of payment in international trade
- International trade and investment agreements
- Regional trade and investment agreements
- Foreign investment law, at the international and domestic level
- International dispute resolution

Defining international trade and commercial disputes:

- International trade and commercial disputes arise from international trade and commerce.
 - o They are disputes arising from or relating to international sale of goods, supply of services, carriage of goods by sea, air, land or multimodal means, international financing and banking, marine insurance and provision of international financing and banking, marine insurance and provision of international insurance services, tariffs and trade restrictions under the GATT and WTO agreements, regional economic cooperation, foreign investment, operations of MNE's Franchising, licensing, distribution agreements, transfer of technology, enforcement of international trade and commercial treaties, and any other matters that fall into the category of international trade and commerce.
- International trade and commercial disputes can be divided into three categories by referring to the parties to them:
 - o **(1)** Disputes between governments
 - Disputes between governments are often covered by the relevant international treaty or convention on international trade and commerce.
 - o **(2)** Disputes between a government (or international organisation) and a private person.
 - o **(3)** Disputes between two private persons

Resolving disputes between governments:

- Disputes between governments can be divided into two groups:
 - o **(1)** Those taking place within an international trade organisation
 - o **(2)** Those arising outside a trade organisation
- If a dispute falls within the scope of a trade organisation, it should be resolved according to the mechanism adopted by the organisation concerned.
 - o E.g. The WTO has special panel proceedings.
- If a dispute falls outside a trade organisation, it should be resolved by the governments in pursuance of the relevant international trade or commercial treaty (if any) between them.
- At present, most countries have negotiated bilateral trade and commercial treaties to deal with specific issues that are not covered by any multilateral trade and commercial treaties.
- In the absence of any agreement, the general principle of international trade law requires negotiation.
- The relevant parties must find a mutually acceptable way to resolve their trade dispute, if they wish to maintain their normal trading relations.
- In special circumstances, where both parties have submitted to the compulsory jurisdiction of the court, disputing governments may refer their disputes to the International Court of Justice, which is capable of adjudicating certain commercial disputes between governments.

Resolving disputes involving private parties:

- Commercial disputes involving private parties are divided into two groups:
 - o **(1)** Disputes between a government and a private party
 - o **(2)** Disputes between two private parties
- **(1)** Disputes between a government and a private party are largely subject to domestic law, because of the prevalence of the restrictive immunity doctrine, which requires a government to be liable in the same way as a private party in commercial transactions, in most countries of the world.
 - o This means that in most commercial disputes the fact that one party is a government is irrelevant for determining the means of dispute settlement.
 - o The general rule is qualified by the principles of conflict of laws, under which the court may apply different rules if the country of the court practices absolute sovereign immunity.
- **(2)** For commercial disputes between two private parties, the means of dispute settlement are largely based on domestic law and conflict of laws rules.