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International Trade Law

AAT Level II

BLA - Business Law

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International Trade Law

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1) What is International Trade?

- International trade is the buying and selling of goods in the global context.
- As a result of globalisation, trade in the international context has flourished over the years.
- With the increase in international trade, there was a need for a system of laws that govern trade in the international arena.

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- International trade involves parties from different legal systems.
- Therefore, to bring all parties under one identifiable law was not easy.
- However, with the assistance of international conventions to govern disputes and the use of international trade agreements to bind the parties legally made it possible for international trade to continue its growth.

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2) What is International Trade Law?

- As identified earlier, the law assists international trade to be conducted in a smooth way.
- International trade law uses both international law as found in Conventions and domestic law of both parties.
- International trade law can therefore be defined as a combination of international and domestic law.

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- Examples of international conventions include;

a) Hague-Visby Convention on Carriage of Goods by Sea
b) United Nations Commission on International Trade Law (UNCITRAL)
c) Warsaw Convention on Carriage of Goods by Air

- Examples of domestic law includes;

a) Carriage of Goods by Sea Act No. 21 of 1982

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3) Types of Contracts in International Trade Law

- As in a domestic transaction, international transactions also need certainty on the responsibilities of both importer and exporter. (Buyer and seller).
- Responsibilities include but not limited to matters such as who bears the cost of transport; which party bears the import duty, who bears the risk and until when etc.
- There are standard types of contracts which can be identified through INCOTERMS.

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- To establish certainty the International Chamber of Commerce has a list of abbreviations which refers to a type of agreement that can be used by the parties in a contract.

- These terms are called INCOTERMS.

- The purpose of INCOTERMS is to mitigate misunderstandings between parties and avoid trade disputes which lead to litigation as much as possible.

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- Here are some of the INCOTERMS through which the contract type can also be identified.

a) **FOB** – Freight on Board (commonly used)
b) **CIF** – Cost, Insurance and Freight (commonly used)
c) **CFR** – Cost and Freight
d) **FCA** – Free to Carrier
e) **EXW** – Ex-works / Ex-warehouse
f) **FAS** – Free alongside ship
g) **CPT** – Carriage paid to
h) **CIP** – Carriage and Insurance paid to
i) **DAP** – Delivered at Place
j) **DUP** – Delivered at Place Unloaded
k) **DDP** – Delivered Duty Paid

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4) FOB – Freight on Board

- FOB agreements are contracts that states the seller's main responsibility is to load the goods onto a ship in a port as instructed by the importer/buyer.
- The moment the seller loads the goods onto the ship, his responsibility is over.
- This means the seller no longer bears the **risk.**
- The risk of goods are transferred to the buyer when goods are loaded to the ship.
- This means, if the goods are lost or damaged, that loss should be borne by the importer/buyer.

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- The responsibilities of **Seller** under FOB

a) Bear transportation and loading charges
b) Pay for export duty until goods are loaded to the ship
c) All such other activities and expenses until goods are loaded to the ship

- The responsibilities of **Buyer** under FOB

a) To choose the ship that will carry the cargo
b) To have a contract with the carrier.
c) Pay ship rent
d) Obtain and pay insurance coverages
e) Freight unloading charges
f) Import duty
g) All such other activities and expenses on the arrival of the goods.

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5) CIF – Cost Insurance Freight

- In here, it is the **Seller** who is responsible for loading goods to the ship, including insurance and freight cost.
- Seller must initiate contracts relating to insurance and transportation.
- Once the goods are loaded into the ship, the documents that are related to the different agreements as entered by the seller should be provided to the buyer.

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- The **risk** is borne by the seller only until the said documents are received by the buyer.
- Once the buyer obtains the documents the **risk is passed** to him from the seller.
- The buyer should pay the seller once he received the documents (even if the goods have not yet been received) because the documents of CIF are considered as a sales agreement.
- Therefore, risk of loss is borne by the seller only until the **documents** are received by the buyer and not the goods.

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- The **responsibilities** of a **Seller** in a CIF agreement;

a) To load the goods in the manner described in the agreement
b) To enter into transportation agreements as prescribed
c) To prepare invoices for the goods
d) To form insurance contracts
e) Delivering the goods in a timely manner

- The **responsibilities** of a **Buyer** in a CIF agreement;

a) To settle the payment once the documents are received
b) To pay unloading charges, cargo charges, import duty and other taxes and expenses as incurred, when the goods arrive to the port the buyer has nominated.

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- The **rights of a Seller** in a CIF agreement;

a) To receive payments when the documents are received by the buyer.

- The **rights of a Buyer** in a CIF agreement;

a) Once the documents are received, to transfer the ownership of goods to another person before the goods arrive at the port.
b) Once the documents are received, to receive the goods from the port he has nominated.
c) Claim insurance if goods are damaged.

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- The documents that are submitted by the Seller to the Buyer in a CIF agreement are;

A) Bill of lading

B) Invoice

C) Insurance certificate

D) Other relevant documents

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A) Bill of Lading

- This is an agreement between the person who loads the goods in to the ship and the ship owner.
- Issued only by the ship owner.
- 3rd Constitution of the Hague-Visby Rules – Rule III - this rule says that when the goods are loaded to a ship, the following must be included in the Bill of Lading.

  - Quantity of Goods
  - Quality of Goods
  - Weight of the Goods
  - Specification to identify the Goods

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- The importance of a bill of lading is that;

a) It is a document that proves title
  - This document can prove ownership of goods and is recognized by Port authorities as a document that proves ownership to release the goods from the Port.
  - It can be endorsed and transferred even before the goods arrive at the Port.

b) It can act as a contract of affreightment
  - This can be a proof that the person who loaded the cargo and the ship owner / shipping company has a contract.

c) It can be considered as a receipt for shipped goods.
  - It is the duty of the shipping company to deliver the goods in the manner prescribed by the bill of lading. (Includes quantity and quality).

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Case Law :

Vanathawilluwa Vineyard Ltd V Commercial Bank of Ceylon Ltd

In this case the Supreme Court of Sri Lanka held that;

a) The Bill of Lading can be used as a document to prove ownership.

b) It can be transferred by endorsement to a another party well before the goods arrive at the Port.

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B) Invoice

This is a written document on the contract of sales. It is also a quotation which can be used to obtain advance payments. It includes the following;

- ➢Price of goods
- ➢Payment terms
- ➢Transportation agreements
- ➢Manner of rejection of goods

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- The invoice helps to obtain the following;
- ➢Credit letters
- ➢Import licenses
- ➢Assists to obtain preferential tariff tax reliefs (nominal invoice)

C) Insurance Certificate

– this document is proof that the insurance company has accepted the risk of the goods.

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6) What are the methods of payment used in International Trade?

a) Letters of Credit
b) Bills of Exchange
c) Advance Payment
d) Payment through Open Accounts
e) Documentary Collection Agreements
f) Electronic Payments
g) Money Order

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a) Letters of Credit

- A letter of credit is a written document issued by the importer or buyer's bank on importer's behalf.
- By issuing it, the exporter/seller is assured that the importer's/buyer's bank will make a payment to the exporter for the international trade conducted between both the parties.
- A letter of credit is beneficial for both the parties as it assures the seller that he will receive his funds upon fulfillment of terms of the trade agreement and the buyer can portray his creditworthiness and negotiate longer payment terms, by having a bank back the trade transaction.

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- The process is as follows;

a) The importer will apply to his bank to issue the Letter of Credit
b) Letter of Credit will be sent by importer's bank to the exporter's bank.
c) The exporter's bank will verify the validity of the Letter of Credit issued.
d) After verification is done to the satisfaction of the exporter, he will export/ship the goods to the importer.
e) After shipping the goods, the exporter will provide the necessary documents to his bank.
f) The exporter's bank will send the documents to the importer's bank.
g) The importer's bank will verify the documents and obtain payment from importer.
h) Once payment is obtained and paid to the exporter, documents will be released to the importer by his bank to get the possession of the goods.

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b) Bills of Exchange

- These are common in international trade law and usually happens through the help of banks.
- The importer may issue a bill of exchange such as a cheque in favour of the exporter.
- The exporter can present it to the bank and collect payment.

c) Advance Payment

- This is a way to mitigate the risk of total non-payment by the importer. The exporter may request for an advance payment prior to shipping the goods.
- Then, the importer if satisfied with quality and any other requirements of the received goods, can make the balance payment to complete the transaction.

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d) Payment through Open Accounts

- The exporter ships the goods and send the relevant documents to the importer.
- When goods are received and satisfied after inspection, the importer will make the payment on an agreed date.
- The dates are usually pre- agreed.
- For example, it can be 30 days, 60 days or even a 90 days period.

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e) Documentary Collection Agreements

- This is a process in which the bankers of the importers and exporters are engaged.
- The exporter will load the cargo into the ship.
- The relevant documents will be sent to the importer's bank by the exporter's bank.
- The documents are needed to obtain the possession of the goods.
- The importer's bank will not release the documents until the payment is made by the importer to the exporter.
- The documentation cost is lower compared to letter of credit however, the seller bears the risk of rejection by the buyer.

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f) Electronic Payments

- Payments such as Direct credit transfers, the use of credit cards, debit cards, electronic valet have become famous in the modern world.
- For example, purchases over Amazon, Alibaba, Daraz etc. allows electronic payments
- International trade, however, uses more encrypted systems such as PayPal to make secure payments to avoid or mitigate cyber risk.

g) Money Order

- In here, a cable message is sent from one bank to another.
- Payment is made to a nominated person by the bank that received the cable message.

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7) Settlement of International Trade Disputes

- The key to settling international trade disputes is identifying the law which is applicable.
- This is because the parties are governed by two different systems of law.
- However, the issue can only be settled by one system of law.
- Therefore, the parties themselves will pre agree on the governing law in case a dispute arises between them.
- They will have signed an agreement which will state the Court or Centre in which the dispute should be resolved.

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- Generally, the law that is applicable is the territorial law in which the agreement was entered upon by the parties.
- For example, if importer is in Sri Lanka and exporter in Singapore, and the agreement was signed in Sri Lanka, then generally Sri Lankan law will be applicable.
- However, if it was signed in Singapore, then Singapore may have jurisdiction.
- A judgment made in another country can be enforced in Sri Lanka through the Enforcement of Foreign Judgements Ordinance.

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8) Alternate Dispute Resolution Mechanisms

- In the modern world, it is very rare private parties dealing in international trade would choose traditional dispute resolution methods such as the Courts.
- They opt to choose non judicial mechanisms such as;

a) Arbitration
b) Mediation
c) Conciliation
d) Chambers of Commerce

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a) Arbitration

- The parties will enter into an arbitration agreement prior to the dispute or even after the dispute to resolve the dispute among them. There could be an arbitration clause in the trade agreement as well.
- Where there is an arbitration clause, no party can go to courts before attempting to resolve the matter through arbitration as agreed.
- The arbitration clause remain intact even if the agreement is terminated.
- The parties will choose the arbitrators, the place of arbitration, the governing law etc. as per their agreement.
- Arbitration in Sri Lanka is governed by the Arbitration Act No. 11 of 1995.
- Arbitration will provide an award in favour of one party based on evidence. However, it can be set aside by High Court which can in turn be appealed in the Supreme Court.

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b) Mediation

- Where both parties agree, any dispute can be referred to Mediation. Here, there is no arbitrator or judge, but a neutral third party who will assist the parties to come to an amicable settlement.
- The Mediator may have some influence on suggesting the best interest of the parties.

c) Conciliation

- In conciliation, the conciliator simply assists the parties to stay on track of the dispute and let the parties by themselves to arrive at an amicable solution to the dispute.
- Sometimes, conciliation is used as a dispute settlement mechanism prior to Arbitration.

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d) Chambers of Commerce

- This is more of a complaint-based system.
- One party can inform the Chambers of Commerce that the other party has failed to comply with the rules and regulations as prescribed by the Chamber of Commerce relating to International Trade.
- They will carry out an investigation and decide to take necessary actions against such party who has breached the prescribed rules and regulations.

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Summary

1) What is International Trade?
2) What is International Trade Law?
3) Types of Contracts in International Trade Law
4) FOB – Freight on Board
5) CIF – Cost Insurance Freight
6) What are the methods of payment used in International Trade?
7) Settlement of International Trade Disputes
8) Alternate Dispute Resolution Mechanisms

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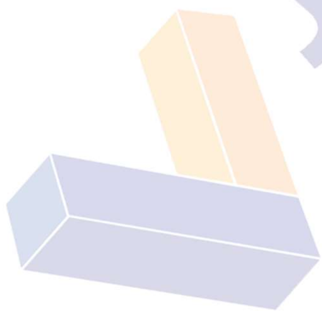

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