

ECONOMIC AND COMMERCIAL LAWS

CS EXECUTIVE (OLD SYLLABUS)

PART B ALL CASE STUDY ANALYSIS IN LUCID MANNER.

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CS EXECUTIVE OLD SYLLABUS.

SUBJECT : ECL

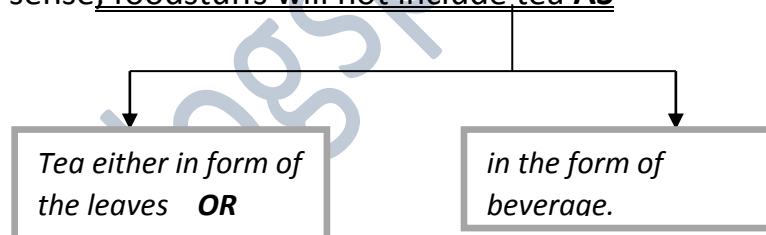
COVERGE: PART – B ALL CASE LAW ANALYSIS (IN LUCID LANGUAGE)

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LESSON 10 LAW RELATING TO ESSENTIAL COMMODITY, WEIGHT AND MEASURES.

• S.SAMUEL, AID. HARRISONS MALAYAVA V. UNION OF INDIA. AIR 2004 SC,218.

- Supreme court held that **TEA IS NOT FOODSTUFF.**
- Even in wider sense, foodstuffs will not include tea AS



- Tea leaves are not eaten. And tea is beverage produced by steeping tea leaves or buds of tea plants in the boiled water.
- Such tea is consumed hot or cold for its flavor, taste, and its quality as a stimulant.
- Tea neither NOURISHES THE BODY nor PROMOTES ITS GROWTH . and it does not have any nutritional value.
- It does not help in formation of enzymes nor does it enables anabolism.
- In common parlance, Any person who has taken tea would not say that he has taken or eaten food.
- THUS TEA IS NOT A FOOD.

MENS REA (SECTIONS 6A AND 7)

• NATHULAL V. STATE OF MADHYA PRADESH :

❖ Facts of the case :

- ✓ The appellant (*nathulal*) was a dealer in a food grains at DHAR in Madhya Pradesh.
 - ✓ He was prosecuted in the court of additional district magistrate, dhar, for having in stock 885 maunds and 21/4 seers of wheat for the purpose of sale without license.
 - ✓ Thus the appellant was charged for committing an offence under section 7 of the essential commodity act, 1955.
 - ✓ The appellant pleaded that he did not intentionally contravene the provision of the said section, and he did the storing of grains on the ground that he had applied for the license and was under the belief that it will be issued to him.
 - ✓ Moreover he made continuous efforts to get the license for two months, where the inspector gave him assurance that he need not worry and license will be sent to his residence.
 - ✓ The appellant also continued to submit the returns on the food grains stored and purchased to the respected authority.
- So when he was tried in the court of additional district magistrate, dhar, the appellant was ACQUITTED on the finding that he had not the guilty mind.
 - On appeal a division bench of MP high court at indore, SET ASIDE the order of acquittal and convicted him on the basis that in case arising under the act the idea of guilty mind was different from that arising in the case like theft, and that he contravened the provision of the act and the order made thereunder.
 - So nathulal appealed to the supreme court, the court considered both English and Indian case law authority on deciding the issue.

✚ **ISSUE :** Whether a factual non compliance of section 7 of the essential commodity act by the dealer will amount to an offence there under EVEN THERE IS NO MENS REA ON HIS PART?

✚ Whether the element of guilty mind is excluded from the ingredients of an offence on the mere fact that the object of the statute is to promote welfare activities, activities of trade or to eradicate a grave social evil?

JUDGEMENT : following the judgement of the majority, the appeal is allowed, the order of the high court convicting the appellant is SET ASIDE and “ the appellant is acquitted of the offence with which he was charged. The bail bond is discharged. If any fine has been paid, it shall be returned.

LESSON 11 LAW RELATING TO SOCIETIES

- ❖ **Section 5** of the act lays down the provisions for vesting of property of the society. It is presumed that the property, both movable and immovable, belonging to the society, vests in trustees.
- ❖ But **if it is not vested in trustees**, section 6 provides that then it shall be deemed to be vested in the governing body of such society for the time being.

- **BOARD OF TRUSTEE, AYURVEDIC AND UNANI TIBBIA COLLEGE V. STATE OF DELHI.**

- The board of trustee, ayurvedic and unani tibbia college, delhi was registered under the SOCIETIES REGISTRATION ACT, 1860.
- The board of trustee of tibbia college was DISSOLVED BY the tibbia college in 1952. And **the property which had vested in** the board of trustee, PASSED TO THE NEWLY CONSTITUTED BOARD.

LESSON 13 INDUSTRIES DEVELOPMENT AND REGULATION

- **P.K BHATTACHARJEE V. INDIAN MACHINERY COMPANY LTD. AND OTHERS (1986).**

- **FACTS OF THE CASE :** The petitioner No 1, Indian machinery company ltd. (hereinafter referred to as the petitioner company) is engaged in the manufacturing and trading of weighing machines, printing machines, machine tools, textiles machines, etc. the petitioner No 2 to 6 are the registered members of the petitioner company holding more than 51 per cent of its equity capital.
 - In the year 1967 the company declared a lock out and reopened on 15, april 1970. By an order dated November, 25, 1972 the management and control of the petitioner company was taken over by the central government under section 18A of IDRA 1951.
 - No hearing was given before the take over. Some shareholders and directors of the company challenged the said take over by writ petition.

- P.K banerjee , J held that there had been breach of natural justice but that the order of taking over management could not be set a side.
- As per section 18A(2) of IDRA 1951 lays down that the order of taking over of the management shall have effect for a period not exceeding 5 years but central government may extend the further for such period of 2 years at a time subject to maximum of 12 years.

- **WHEN AN INDUSTRIAL UNDERTAKING IS BEING MANGED IN A MANNER DETRIMENTAL TO THE SCHEDULED INDUSTRY OR TO PUBLIC INTEREST, MERELY BECAUSE CONTROL AND MANAGEMENT HAD BEEN TEMPORARILY TAKEN OVER UNDER SECTION 18A OF THE ACT, IT CAN NOT BE SAID THAT THE UNDERTAKING WAS AN AUTHORITY WITHIN THE MEANING OF ARTICLE 12 OF CONSTITUTION.**

NOTE : THE CENTRAL GOVERNMENT IS EMPOWERED UNDER SECTION 18F TO CANCEL ANY ORDER MADE UNDER SECTION 18A EITHER ON AN APPLICATION MADE BY THE OWNER OF THE UNDERTAKING OR OTHERWISE.

IF IT IS SATISFIED THAT THE PURPOSE OF THE ORDER UNDER SECTION 18A HAS BEEN FULFILLED OR ANY OTHER REASON IT IS NOT NECESSARY THAT SUCH ORDER SHOULD REMAIN IN FORCE.

ON CACELLATION OD SUCH ORDER, THE MANAGEMENT OR CONTROL OF THE UNDERTAKING SHALL VEST IN THE OWNER OF UNDERTAKING.

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LESSON 14 LAW RELATING POLLUTION CONTROL AND ENVIRONMENT

- **M.C MEHTA AND ANOTHER V. UNION OF INDIA AND OTHERS (1987) :**

+ **FACTS OF THE CASE :** A writ petition was filed by M.C Mehta, a social activist lawyer, he sought closure for SHRIRAM INDUSTRIES AS it was engaged in manufacturing of hazardous substances and located in a densely populated area of kirti nagar. On 4 and 6 december 1985, there was leakage of OLEUM GAS from one of its units which caused the death of an advocate and affected the health of several others.

- ✓ The incident took place on 4th December 1985. Just after 1 year from the BHOPAL GAS DISASTER a large number of person- both amongst the women and public were affected.
- ✓ M.C MEHTA filed a PIL under ARTICLE 21 AND 32 of constitution and sought closure and relocation of shriram caustic chlorine and sulphuric acid plant which was located in a THICKY POPULATED AREA OF DELHI.
- ✓ ONE MORE POINT THAT WE SHOULD NOT FORGET THAT , THIS INCIDENT TOOK PLACE ONLY A FEW MONTHS BEFORE ENVIRONMENT PROTECTION ACT CAME INTO FORCE.

+ **ISSUES :**

- ❖ What is the scope of article 32 of constitution ?
- ❖ The rule of last absolute liability or RYLANDS VS FETCHER rule to be followed.
- ❖ Issue of compensation to be awarded ?

+ **DECISION :**

1. **SCOPE OF ARTICLE 32.**

- ✓ The power under article 32 is not confined to preventive measures when fundamental rights are threatened to be violated but it also extends to REMEDIAL MEASURES when the rights are already violated.
- ✓ The court however held that it has power to grant remedial relief in appropriate cases where violation of fundamental rights is gross and affected persons on a large scale or where affected persons are poor and backward.

2. WHICH RULE TO BE FOLLOWED ABSOLUTE LIAB. OR RYLANDS V FLETCHER CASE ?

- ✓ This rule laid down if person who brings on to his land and collects and keep there anything likely to do harm and such thing escape and does damage to another he is liable to compensate for the damage caused.
- ✓ The liability is thus STRICT AND IT IS NO DEFENCE that the thing escaped without the person's willful act, default or neglect.
- ✓ The court held that the rule in rylands v. Fletcher will all of its exceptions is not applicable for the industries engaged in hazardous activities.
- ✓ The court introduced new NO FAULT LIABILITY STANDARD (ABSOLUTE LIAB.) an industry engaged in hazardous activities which poses a potential danger to health and safety of the persons working and residing near owes an absolute and non- delegable duty to the community to ensure that no harm results to anyone.
- ✓ Such industry must conduct its activities with highest standards of safety and if any harm results, the industry must be absolutely liable to compensate for such harm.
- ✓ POINT TO BE NOTED : IT SHOULD BE NO ANSWER TO INDUSTRY TO SAY THAT IT HAS TAKEN ALL REASONABLE CARE AND THAT HARM OCCURRED WITHOUT NEGLIGENCE ON ITS PART.

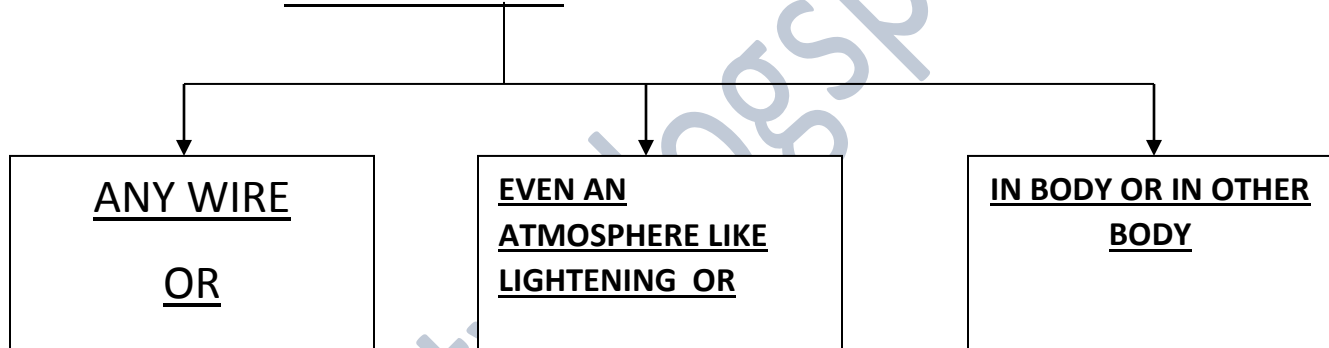
3. ISSUE OF COMPENSATION :

- ✓ It was held that the measure of compensation must be correlated to the magnitude and capacity of industry so that the compensation will have a deterrent effect. The large and more prosperous by the industry, the greater will be the amount of compensation payable by it

- UP ELECTRICITY BOARD AND ANOTHER VS. DISTRICT MAGISTRATE, DEHRADUN AND OTHERS.

- ✓ Allahabad high court observed that electricity is hazardous substance covered by definition under section 2(d) of the act.
- ✓ Electricity is the flow of free electron in particular direction at the particular moment.

- ✓ The flow can be



- ✚ The main hazards with electricity are :

- Contact with live parts causing shock and burns.
 - Faults which could cause fires;
 - Fire or explosion where electricity could be the source of ignition in a potentially flammable or explosive atmosphere.
- ✓ Thus electricity is substance having PHYSICO CHEMICAL PROCESS and also hazardous. Accordingly it is hazardous substance covered by the definition under the act.

- **AIR POLLUTION CONTROL AREA : POWER OF STATE.**
- **STATE PREVENTION AND CONTROL OF POLLUTION BOARD (ORISSA) VS. ORIENT PAPER MILLS AND ANOTHER :**

- ✓ Supreme court observed that even if the state government has not framed rules prescribing the manner in which the area is to be declared as air pollution control area, The state government is EMPOWERED to declare any area within the state as an air pollution control area by notification in the official gazette.
- ✓ It may, however be after consultation with board and In the manner as maybe prescribed.

Note : ALSO READ SECTION 31A POWER TO GIVE DIRECTIONS.

CONTROL OF NOISE POLLUTION :



- **BIJAYANADA PATRA AND OTHERS VS. DISTRICT MAGISTRATE, CUTTACK AND OTHERS (2002)**
 - ✓ Orissa high court observed that noise pollution simply implies UNWANTED SOUND in the atmosphere. It is unwanted because it lacks the agreeable musical quality.
 - ✓ Noise not only cause irritation or annoyance but it does also constrict the arteries and increase the flow of adrenaline and forces the heart to work faster.
 - ✓ Many experts are of opinion that excessive noise can also lead to neurosis and nervous breakdown.

Note : An area comprising 100 meters around hospitals, educational institutions, and courts has been declared as the SILENCE ZONE/AREA.

A loud speaker or public address system shall not be used at night (between 10pm to 6am) except in closed premises for communication.

LESSON 15 LAW RELATING TO REGISTRATION OF DOCUMENT

- **KALYAN SUNDARAM V. KARUPPA MOPANAR :**

- ✓ Delay in registration of gift does not postpone its operation. Section 123, transfer of property act, 1882 merely requires that donors should have signed the deed of gift.
- ✓ Hence a gift deed can be registered even if the donor does not agree to its registration .

- **RAM SINGH V. JASMER SINGH:**

- ✓ A document **OTHER THAN WILL** must be presented within 4 months of its execution.
- ✓ In case of urgent necessity, etc. the period is 8 months, but higher fees has to be paid (section 23 – 26).these limits are mandatory.

PREPARED BY: JAY DAVE.

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THANK YOU SO MUCH.

HAPPY LEARNING.