

4. What do you mean by State Jurisdiction'? Explain 'Universal Jurisdiction Principle' to exercise Criminal Jurisdiction under Public International Law.

Synopsis:

1. Introduction
2. Meaning of jurisdiction
3. The term Jurisdiction includes
 - i. Legislative
 - ii. Executive
 - iii. Judicial
4. Basis/ Principles of jurisdiction
 - i. Territoriality Principle
 - a. Territorial
 - b. Extra territorial
 - ii. Nationality Principle
 - iii. Passive Personality Principle
 - iv. Universality Principle
 - v. Protective Principle
5. Criminal Jurisdiction
 - i. Theory of territoriality of criminal jurisdiction.
 - ii. Theory of territoriality with certain modification
 - iii. Extra territoriality
 - iv. Criminal jurisdiction of the coastal state in the territorial sea.
6. Jurisdiction according to the universal principle (piracy)
 - i. Piracy Jure Gentium
 - ii. War crimes.
 - iii. Piracy at international law and piracy at municipal law
 - iv. Piracy and Insurgents

1. Introduction-

JURISDICTION generally describes any authority over a certain area or certain persons . In the law jurisdiction refers to particular area containing a definite legal authority.

Jurisdiction also refers to the origin of courts authority. Jurisdiction can also be used to definite the proper court in which to bring a particular case. Finally jurisdiction refers to the inherent authority of a court to hear a case and to declare a judgment.

As pointed by an author State jurisdiction is the power of a state under international law to govern persons and property by its municipal law. It includes both the power to prescribe rules (prescriptive jurisdiction) and the power to enforce them (enforce jurisdiction).

The later includes both executive and judicial powers of enforcement. Jurisdiction may be concurrent with the jurisdiction of other states or it may be exclusive. It may be civil or criminal. The rules of state jurisdiction identify the persons and the property within the permissible range of a state's law and it's procedures for enforcing that law. They are not concerned with the content of a state's law except in so far as it purports to subject a person to it or to prescribe procedure to enforce it.

State jurisdiction connotes essentially the extent of each state's right to regulate conduct on the consequences of events. A state may regulate its jurisdiction by legislation, through its court or by taking executive or administrative action. State jurisdiction concerns both international law and internal law of the state.

While the former determines the permissible limits of a states jurisdiction in the various forms it may take, the latter prescribe the extent to which, and manner in which, the state in fact asserts its jurisdiction. Each state has normally jurisdiction over all persons and things within its territory.

2. Meaning of jurisdiction

- State jurisdiction is the capacity of a State under International Law to prescribe the rules of law, enforce the prescribed rules of law and to adjudicate. State Jurisdiction, also means that a state court has the right to make a legally binding decision that affects the parties involved in the case. It is derived from State sovereignty and constitutes its vital and central feature. It is the authority of a State over persons, property and events which are primarily within its territories.

3. The term 'jurisdiction' Includes-

- i. Legislative Jurisdiction (prescribing rules)
- ii. Executive Jurisdiction (enforcing rules)
- iii. Judicial Jurisdiction (adjudicating rules)

4. Basis/ Principles of jurisdiction

- i. Territoriality Principle
- ii. Nationality Principle
- iii. Passive Personality Principle
- iv. Universality Principle
- v. Protective Principle

5. Criminal jurisdiction in international law

- i. Theory of territoriality of criminal jurisdiction.**
- ii. Theory of territoriality with certain modification**
- iii. Extra territoriality**
- iv. Criminal jurisdiction of the coastal state in the territorial sea.**

i. Theory of territoriality of criminal jurisdiction.

- There are several views prevalent in connection with criminal jurisdiction.
- According to the first view, each state can exercise criminal jurisdiction within its territory. This theory is popularly known as the theory of territoriality of criminal jurisdiction.
- This theory has been supported by Great Britain America and some other states. These states subscribe to the view that each state is entitled to exercise criminal jurisdiction only within its territory.

ii. Theory of territoriality with certain modification

- The second view is also known as the theory of territoriality with certain modification. According to them, a state may exercise criminal jurisdiction even outside its territory on the basis of thenational security and on economic grounds.

iii. Extra territoriality

- The third theory is popularly known as the theory of extra territoriality. Turkey, Italy etc. are its chief supporters. According to this theory, crime is social evil and it is in the interest of whole international community to ensure that the criminals get due punishment. In international field, there are many such matters in which the states exercise criminal jurisdiction, even outside their territory.
- The leading case on the point is S.S. LOTUS case, decided by the permanent court of international justice in 1927.

- **S.S.LOTUS CASE :**

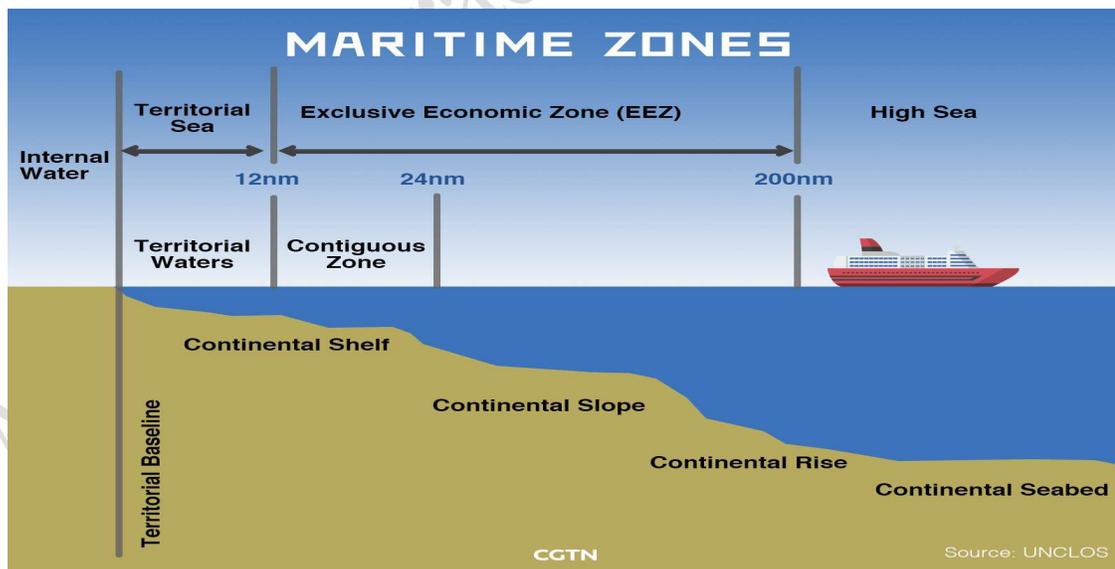
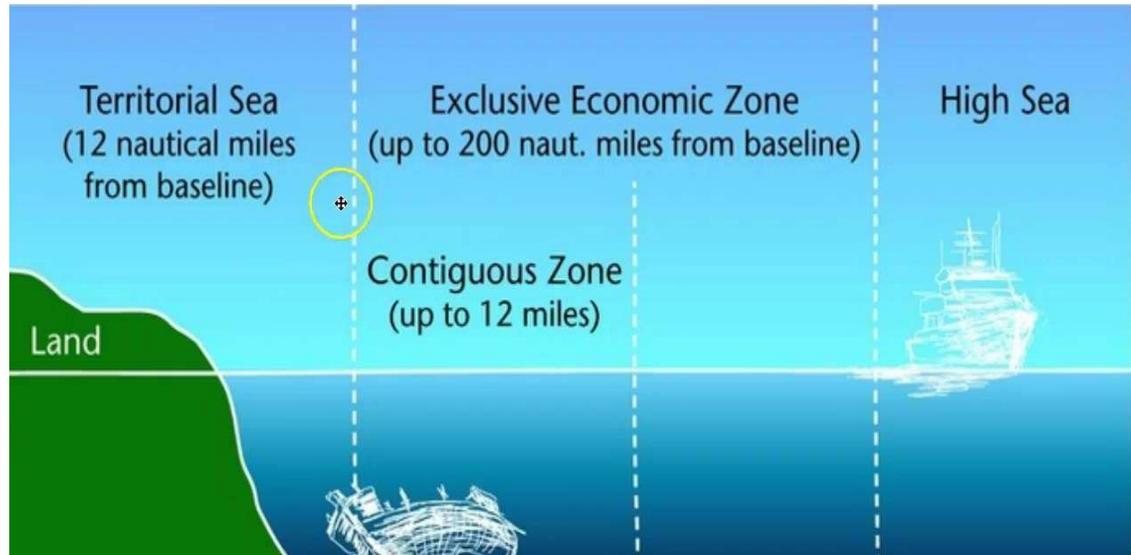
- A Turkish ship named Bouzkourt collided with a French ship S.S.LOTUS. In consequence of this collision, certain Turkish national died. After the Collision the French ship S.S.LOTUS reached the Turkish port , Constantinople.
- The Turkish Government arrested French National and officials of the ship and started criminal proceeding against them in accordance with Turkish Law.
- They were held guilty and convicted by the court.
- The French government lodged a strong protest against this .
- There upon the Government of France and Turkey argued to refer this matter to the permanent court of international justice.
- The permanent court of International Justice propounded the following principles in this connection.
- Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental . It is equally true that all or nearly all of these systems of law extend their action to offences committed outside the territory of the state which adopts them, and they do so in ways which vary from state to state.
- The territoriality by criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty.
- That there is no rule of international law in regard to collision case to the effect that criminal proceeding are exclusively within the jurisdiction of the state whose flag is flown.
- Judge Moore who gave a dissenting opinion agreed with the majority of the court.

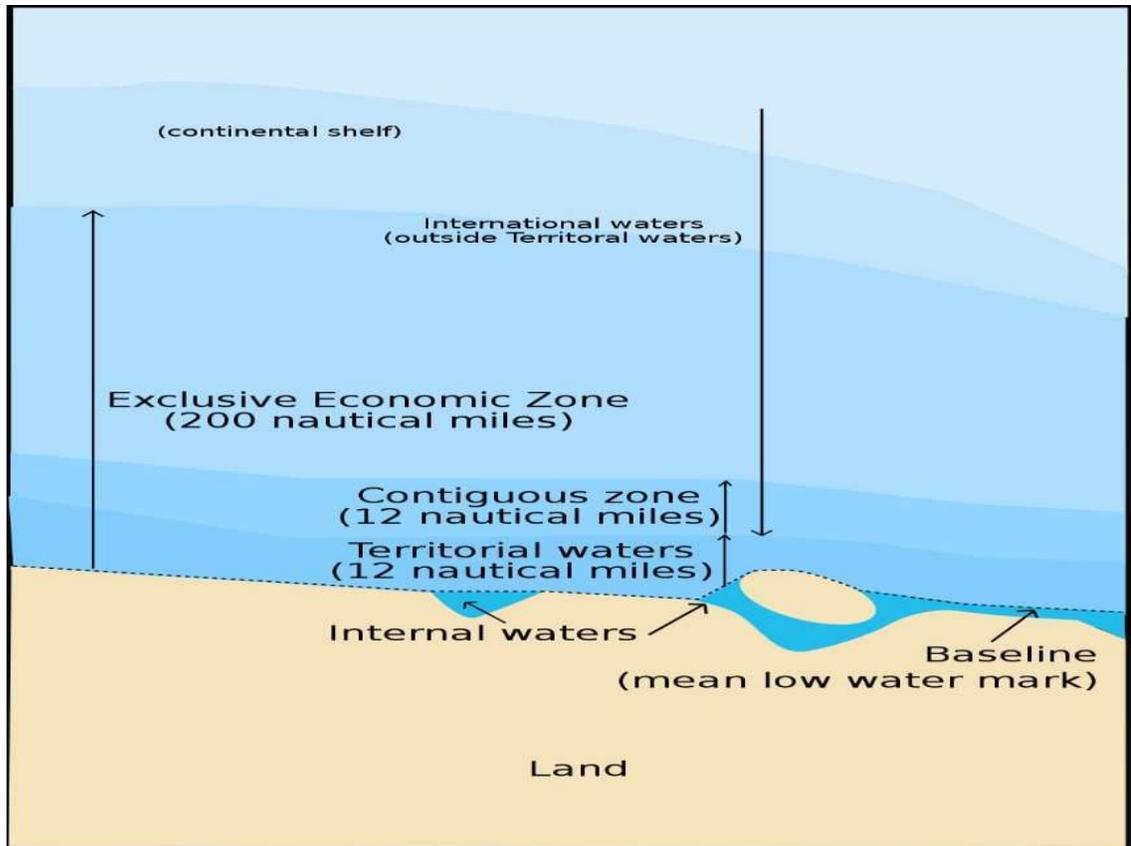
- It appears to be now universally admitted that where a crime is committed in the territorial jurisdiction of one state as the direct result of the act of a person at the time corporeally present in another state, international law by reason of principle constructive presence of offender at the place where his act took effect, does not forbid the prosecution of the offender by the former state, should he come within its territorial jurisdiction.
- The court therefore, ruled that by prosecuting French national and the officers on the board of the ship, the Turkish government did not act contrary to the rules of international law.
- Thus, the theory of territoriality for application of criminal law is not an absolute principle of international law and this by no means coincides with territorial sovereignty.
- This decision has become obsolete as regards collision cases because Art. 11 of the Geneva convention on the High Seas 1958 provides, — In the event of collision or any other incident of navigation of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the the master of or any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such persons except before the Judicial or administrative authorities either of the flag state or of the state of which such person is a national .

v. Criminal jurisdiction of the coastal state in the territorial sea.

- The sovereignty of a coastal state also extends to its territorial sea.
- This is however, subject to the condition that ships of all states enjoy the right of innocent passage through the territorial sea.
- So far merchant ships are concerned, Art19 (1) of the Geneva convention on the territorial sea and contiguous zone 1958 provides

that the criminal jurisdiction of the coastal state should not be exercised on board a foreign ship passing through the territorial waters to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during the passage., save only the following cases.





- If the consequences of the extend to the coastal state.
- If the crime is of a kind to disturb the peace of the state of good order of the territorial sea.
- If the assistance of the local authorities has been requested by the captain or by the consul of the country whose flagship flies.
- It is necessary for suppression of illicit traffic of narcotic drugs.
- Art. 19 (2) provides that the above provisions do not affect right of the coastal state to take any steps authorised by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving the internal waters.

6. Jurisdiction according to the universal principle (piracy)

Whenever an offence is contrary to the interests of the international community as a whole, it is treated as offence against all States, and any State is entitled to exercise jurisdiction over such act according to the Universal Principle of Jurisdiction. There are two such offences recognized by international law. They are:

- i. Piracy Jure Gentium**
- ii. Piracy at international law and piracy at municipal law**
- iii. Piracy and Insurgents**
- iv. War crimes.**

i. Piracy Jure Gentium

- According to Starke, "In its jurisdictional aspects, the offence of Piracy Jure Gentium is quite unique." On the ground that a pirate is an enemy of mankind, all States have the right to capture, try and punish a pirate.
- According to the International Law Commission, piracy consists of an illegal act of violence, detention, or any act of depredation, committed for private ends, by those aboard a private ship or private aircraft, and directed, either on the high seas against a ship or persons or property thereon or in territory or waters of the nature of terra nullius against a ship or person or property thereon.
- According to this definition, it may be noted that the offence of piracy has the following ingredients:
 - (a) It is an illegal act of violence, detention, or any act of depredation.
 - (b) It is committed for private ends.
 - (c) It is committed by those aboard a private ship or private aircraft.
 - (d) It is committed either on the high seas or in territory or waters which

are not under the jurisdiction of any State (Terra nullius).

(e) It is directed against a ship or persons or property on such waters or the high seas.

- The Privy Council has held in the case of PIRACY JURE GENTIUM (1934) that actual robbery is not an essential element of the crime of piracy, and an unsuccessful attempt to commit a robbery on the high seas can also be considered to be piracy.

ii. Piracy at international law and piracy at municipal law

- The definition of the crime of piracy given above is the definition of the crime according to international law. But two or more States may, by treaty, agree to add other acts to the category of violence at sea, and may agree that they may exercise exceptional jurisdiction over such acts.
- For example, two countries may agree that slave-trading be also considered as an act of piracy. In such circumstances, the parties to the treaty alone have jurisdiction over nationals of the parties to the treaty.

iii. Piracy and Insurgents

- Piracy can be committed only by a private ship. Warships and other public ships sailing under the order of recognized Governments, or recognized belligerent powers cannot be held guilty of piracy, because in such circumstances, the Government authorizing the sailing can be held responsible for the acts of the public ships.
- When insurgents carry on acts of hostility at sea, it presents a problem. Should such insurgents, if not recognized, be treated as pirates by other States? Or should they be treated in a different way? The British practice has been not to treat these unrecognized insurgents as pirates, unless acts of violence are committed by them against the lives and property of British subjects.

- However, in the case of THE AMBROSE LIGHT (1885),
- an American Federal Court held that an armed vessel, commissioned by Columbian insurgents, was properly seized as a pirate, because the insurgents were not recognized as belligerents. In this case, the test laid down was that an insurgent vessel will not be considered as a private one, provided it is acting under the orders of responsible Government.
- The underlying principle of the test is as follows: If the insurgents are acting under the orders of such Government, the affected State might seek redress against it according to the principles of international law. In the absence of such a responsible Government, the insurgents must be treated as pirates and subjected to jurisdiction under the universal principle.

iv. War Crimes

- UNIVERSAL JURISDICTION In addition to the principles of piracy jure gentium, there is another principle which extends the doctrine of universal jurisdiction, that would be in the case of war crimes. The principle of universality of punishment or war crimes was affirmed by the Geneva Convention of 1949.
- EICHMANN CASE (1962): In this case, the facts were as follows: Adolf Eichmann was a German officer during the Nazi regime in Germany. He was responsible for the wholesale massacre of the Jews in Germany. After the Second World War, he ran away from Germany and started living in Argentina. He was forcibly brought from Argentina to Israel and put up for trial in Israel under the Nazi Collaborators (Punishment) Law, enacted in Israel after the state of Israel came into existence. He was charged for the wholesale massacre of the Jews in Germany.
- Various objections were raised on behalf of Eichmann against his trial before a Court in Israel. It was pointed out that the Israel Law, by inflicting punishment for acts done outside the boundaries of the state and

before its establishment, against persons who were not Israeli citizens, and by a person who acted in the course of duty on behalf of a foreign country, conflicted with International Law, and exceeded the powers of the Israeli Legislature. It was also contended that the prosecution of the accused in Israel upon his abduction from a foreign country conflicted with International Law and exceeded the jurisdiction of the court. It was also contended that there must be a connection between the state and the person who committed the crime, and in the absence of an acknowledged linking point, it was ultra virus on the part of the state to inflict punishment for foreign offences.

- The Supreme Court of Israel, sitting as a Court of Appeal, relied in part upon the principle of universal jurisdiction in upholding the conviction by a Court in Israel of Eichmann, a war criminal, for war crimes and crimes against humanity, thereby overruling objections that Eichmann's actions occurred in Europe during the Second World War before the State of Israel was actually founded and that his offences were committed against people who were not citizens of that State.