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(ii) O. 18, r.15 - Nature of - Held: Provision contained in r. 15 is a special provision - It enables the successor Judge to proceed from the stage at which his predecessor left the suit - The idea behind this provision is to obviate re-recording of the evidence or re-hearing of the suit where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit and to take the suit forward from the stage the predecessor Judge left the matter - Expression "from the stage at which his predecessor left it" is wide and comprehensive enough to take in its fold all situations and stages of the suit - It cannot be narrowed down by any exception - The principle



that one who hears must decide the case, is not applicable to all situations in the hearing of the suit - Hearing of a suit does not mean oral arguments alone but it comprehends both production of evidence and arguments - Hearing of the suit begins when evidence in suit begins and is concluded by pronouncement of judgment.

(iii) O. 18 r. 2 - Statement and production of evidence - Purpose of - Held: Is to give an option to the parties to argue their case when the evidence is conducted - Parties themselves decide whether they would avail of this privilege and if they do not avail, they do so at their peril.

(iv) O. 18, rr. 2(1) and (2) - Expressions "state his case", "produce his evidence" and "address the court generally on the whole case" occurring therein - Held: Said expressions have different meanings and connotations.

(v) O. 9 r. 7 - Conclusion of hearing of suit and suit closed for judgment - Applicability of O. 9, r. 7 - Held: The provision is not applicable - O. 9 r. 7 pre-supposes the suit having been adjourned for hearing - Adjournment for the purposes of pronouncing judgment is no adjournment of the "hearing of the suit".

(vi) O. 9 r. 6 (1)(a) - After due service of summons, defendant not appearing when the suit called on for hearing - Effect of - Held: Order might be passed to hear the suit ex parte - The provision does not in any way impinge upon the power of the court to proceed for disposal of the suit in case both the parties or either of them fail to appear as provided in O. 9.

(vii) O. 18, r. 4 - Recording of evidence - Purpose and objective of - Held: Is speedy trial of the case

and to save precious time of the court - Examination-in-chief of a witness is now mandated to be made on affidavit with a copy thereof to be supplied to the opposite party - Cross-examination and re-examination of witness shall be taken either by the court or by Commissioner appointed by it - In a case in which appeal is allowed, r. 5 provides that the evidence of each witness shall be taken down in writing by or in the presence and superintendence of the Judge - There is no requirement in O. 18, r 5 that in appealable cases, the witness must enter the witness box for production of his affidavit and formally prove the affidavit - Such witness is required to enter the witness box in his cross-examination and, if necessary, re-examination.

(viii) O. 30, r. 10 - Suit against person carrying on business in the name other than his own - Held: Is an enabling provision - It provides that a person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name - As a necessary corollary, the said provision does not enable a person carrying on business in a name or style other than in his own name to sue in such name or style.

(ix) O. 20, r 1 - Matter fixed for pronouncement of judgment - Plea that plaintiff not argued the matter as required by O. 20, r. 1 - Effect of, on the decision of the suit - Held: The plaintiffs had already advanced the arguments and the judgment was reserved and kept for pronouncement - Judgment could not be pronounced on that day and the matter, thereafter, was fixed on various dates on the diverse applications made by the defendants - It cannot be said that the trial judge

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(ii) s. 482 - Quashing of criminal proceedings.

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(2) (i) s.167(2) - Held: The right u/s.167(2) to be released on bail on default if charge-sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right - The said right would be lost if charge-sheet is filed and

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(3) (i) s.195 - Complaint filed by appellant before CAW cell accusing respondent of commission of offence punishable u/s. 406 r/w s. 34 IPC and ss.3 and 4 of Dowry Prohibition Act - Complaint by respondent alleging that appellant had instituted criminal proceedings against him without any basis and falsely charged him with commission of offences knowing that there was no just or lawful ground for such proceedings or charge and thereby committed offences punishable u/ss.211 and 500 r/w ss.109, 114 and 34 IPC - Maintainability of - Held: The bail proceedings conducted by Sessions Judge in connection with the case which appellant had lodged with CAW Cell were judicial proceedings and the offence punishable u/s.211 IPC alleged to have been committed by the appellant related to the said proceedings - Such being the case the bar contained in s.195 was attracted to complaint filed by respondent - Complaint of respondent was not, thus, maintainable - Penal Code, 1860 - ss.406 r/w s.34 - Dowry Prohibition Act - ss.3 and 4.

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(ii) ss. 306, 307 and 308 - Tender of pardon to approver/accomplice - Delay in tendering pardon - Effect of - Held: Pardon can be tendered at any time after commitment of a case but before the judgment is pronounced - In the instant case, the contention regarding delay on the part of the witness is liable to be rejected - The trial Judge, who had the liberty of noting his appearance and recorded his evidence, believed his version which was rightly accepted by the High Court.

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(iii) Art. 19(1)(c) - Right to form associations or unions under - Scope of statutory intervention - Held: When the association gets registered under the Co-operative Societies Act, it is governed by the provisions of the Act and rules framed thereunder - In case the association has an option/choice to get registered under a particular statute, if there are more than one statutes operating in the field, State cannot force the society to get itself registered under a statute for which the society has not applied - Co-operative societies. (Also see under: Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act, 2006 and Administrative law)

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(8) Seventh Schedule, List II, Entry 51 - Held: Entry 51 should be read not only as authorizing the imposition of excise duty, but also as authorizing a provision which prevents evasion of excise duty - To ensure that there is no evasion of excise duty in regard to manufacture of beer, State is entitled to make a provision to prevent evasion of excise duty, though it is leviable at the stage of issue from the brewery - Liquor.

(Also see under: Uttar Pradesh Excise Act, 1910)

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(9) Double jeopardy.  
(See under: Service Law) .... 1089

(10) Right to property.  
(See under: Adverse possession; Evidence; and Property) .... 211

(11) Statutory body - Whether a 'State'.  
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#### CONSUMER PROTECTION ACT, 1986:

(1) Hire-Purchase Agreement in respect of a Maruti Omni Car - On failure of hirer to pay hire charges in terms of repayment schedule, owner-bank took possession of financed vehicle and sold it in auction - Complaint by hirer before Consumer District Forum alleging deficiency in service - Allowed by District Forum directing owner to pay a sum of Rs.1,50,000 - Held: After vehicle was seized, it was also sold and third party rights had accrued over the vehicle - Appellant-bank had complied with the directions of the District Forum notwithstanding the pendency of the case - Since appellant Bank had already accepted decision of District Forum and had paid the amounts as directed, no relief could be granted to appellant. (Also see under: Hire Purchase Agreement)

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(2)(i) Object and historical background of the enactment - Discussed.

(ii) Complaint by consignor claiming compensation - Jurisdiction of National Commission - Held: National Commission has jurisdiction to entertain and decide a complaint filed by the consignor claiming compensation for deficiency of service by the carrier, in view of the provisions of the Carriage by Air Act and the Warsaw Convention - Carriage by Air Act, 1972.

(iii) Deficiency in service - Delivery of consignment - Complaint filed before National Commission by consignor claiming compensation for deficiency in service on the ground that the consignments were delivered to wrong person - National Commission held that the services rendered by carrier were deficient and held it liable to pay compensation - Held: There was no legal infirmity in the National Commission exercising its jurisdiction, as the same can be considered a court within the territory of a High Contracting Party for the purpose of Rule 29 of the Second Schedule to the CA Act and the Warsaw Convention - National Commission was justified in holding that there was deficiency of service on the part of the carrier in not effecting the delivery of goods to the consignee.

(iv) National Commission whether a "court" - Held: The use of the word "Court" in Rule 29 of the Second Schedule of the Act has been borrowed from the Warsaw Convention - The word "Court" has not been used in the strict sense in the Convention as has come to be in our procedural law - The word "Court" has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act - The Act gives the District Forums, State Forums and National Commission the power to decide disputes of consumers - The jurisdiction, the power and procedure of these Forums are all clearly enumerated by the Act - Though, these Forums decide matters after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose

of a court.

*Trans Mediterranean Airways v. M/s Universal Exports & Anr.* .... 47

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(See under: Maharashtra Rent Control Act, 1999; and Textile Undertakings (Nationalisation) Act, 1995) .... 472

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CRIMINAL LAW:

(1) Murder case - *Corpus Delicti* - Recovery of - Held: Conviction for offence of murder does not necessarily depend upon *corpus delicti* being found - *Corpus delicti* in a murder case has two components-death as result and criminal agency of another as the means - Where there is a direct

proof of one, the other may be established by circumstantial evidence.

(Also see under: Penal Code, 1860)

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(2) Motive - Held: Proof of motive is not a *sine qua non* before a person can be held guilty of the commission of a crime -] Motive being a matter of the mind, is more often than not, difficult to establish through evidence.

(Also see under: Penal Code, 1860).

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#### CRIMINAL TRIAL:

(1) (i) Hostile witness - Evidence of - Appreciation of - Held: Merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable - The evidence of hostile witness can be relied upon at least up to the extent, he supported the case of prosecution -However, the court should be slow to act on the testimony of such a witness, normally, it should look for corroboration with other witnesses.

(ii) Large number of offenders - Necessity of corroboration - Held: Where a large number of offenders are involved, it is necessary for the court to seek corroboration, at least, from two or more witnesses as a measure of caution - It is the quality and not the quantity of evidence to be the rule for conviction even where the number of eye-witnesses is less than two.

(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

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(2) (i) Non-mentioning the name of accused by witness in his statement u/s.161 Cr.P.C. - Accused named for the first time in the deposition in court - Held: Accused is entitled to benefit of doubt.

(ii) Extra-ordinary case - Extra-ordinary situations demand extra-ordinary remedies - In an unprecedented case, the court has to innovate the law and may also pass unconventional order keeping in mind the extra-ordinary measures.

(Also see under: Penal Code, 1860)

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#### CUSTODIAL DEATH:

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#### CUSTOMS ACT, 1962:

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#### DELAY/LACHES:

(1) Delay in lodging FIR - Effect on prosecution case - Plea that all the family members of deceased did not make any statement to police until the eventual disclosure of the names of the two accused by deceased herself in her dying declaration - Held: It is not expected that the close family members would proceed to police station to lodge a report when the injured are in critical condition - Delay in lodging complaint could not be considered fatal to the prosecution case. (Also see under: Penal Code, 1860).

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EDUCATION/EDUCATIONAL INSTITUTIONS:		
Admission to Post-Graduate or Diploma Courses in medicine - Modification in the conditions by the State Government after declaration of result and preparation of select list - Power of - Held: Once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the said		

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courses - Benefits of admission in the reserved category is the result of the policy adopted by the State Government to provide for candidates from the reserved category - Appellants having been selected on the basis of merit, in keeping with the results of the written examination, the submission that such admissions in the reserved category will have to be made keeping in mind the necessity of upholding the standard of education in the institution, cannot be accepted.		
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(1) Burden of proof - Held: A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner - It is for him to clearly plead and establish all facts necessary to establish adverse possession - Equity. (Also see under: Adverse Possession)		
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(2) Circumstantial evidence - Held: Though conviction may be based solely on circumstantial evidence, however, the circumstances from which the conclusion of guilt is to be drawn should be fully established - The facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be		



so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been committed by the accused.

(Also see under: Penal Code, 1860)

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(3) Dying declaration.  
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(4) (i) Evidence of an accomplice not put on trial - Conviction on basis of his uncorroborated testimony - Held: Such an accomplice is a competent witness - He deposes in court after taking oath and there is no prohibition in any law not to act upon his deposition without corroboration - However, no reliance can be placed on the evidence of accomplice unless evidence is corroborated in material particulars - There has to be some independent witness tending to incriminate the accused in the crime.

(ii) Testimony of sole eye-witness - Reliability of - Held: There is no legal impediment in convicting a person on the sole testimony of a single witness - If there are doubts about testimony, court would insist on corroboration - Test is whether the evidence is cogent, credible and trustworthy or otherwise.

(Also see under: Penal Code, 1860)

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(5) Onus to prove incurable unsound mind of spouse - Lies on the party alleging it.

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(6) Secondary evidence - Trial court granting the plaintiff liberty to lead secondary evidence - Held: Trial court did not commit any error in permitting the plaintiff to lead secondary evidence when the original assignment deed was reportedly lost.  
(Also see under: Code of Civil Procedure, 1908)

*Rasiklal Manickchand Dhariwal & Anr. v. M/s. M.S.S. Food Products* .... 1141

(7) Standard of proof - Departmental proceeding vis-à-vis criminal proceedings.  
(See under: Labour laws; and Service law) .... 1089

#### EVIDENCE ACT, 1872:

(1) s.106 - Applicability of - Burden of proof under - Held: s. 106 is not intended to relieve the prosecution of its burden to prove the guilt of accused beyond reasonable doubt - It is designed to meet certain exceptional cases, in which, it would be impossible for prosecution to establish certain facts which are particularly within the knowledge of the accused.  
(Also see under: Penal Code, 1860)

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(2) s.133 r/w s.114, Illustration (b) - Evidentiary value of "approver" and its acceptability with or without corroboration - Held: Though a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an approver, yet the universal practice is not to convict upon the testimony of an accomplice unless it is corroborated in material particulars - Insistence

upon corroboration is based on the rule of caution and is not merely a rule of law - Corroboration need not be in the form of ocular testimony of witnesses and may even be in the form of circumstantial evidence.

(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

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#### EXCISE LAWS:

Liquor.

(See under: Uttar Pradesh Excise Act, 1910) .... 98

#### FOREIGN EXCHANGE MANAGEMENT ACT, 1999:

(1) s.19 - Appeal - Pre-deposit of penalty - Dispensation of - Held: The appellants failed to make out a case, which could justify an order by Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty - Appellants had the exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable, including those in respect of which orders of attachment may passed by judicial and quasi judicial forums - Besides, they deliberately concealed the facts relating to their financial condition - Therefore, Appellate Tribunal rightly refused to entertain their prayer for total exemption.

*Ketan V. Parekh v. Special Director, Directorate of Enforcement and Anr.* .... 1204

(2) s. 35.  
(See under: Limitation Act, 1963) .... 1024

#### GOA, DAMAN AND DIU AGRICULTURAL TENANCY ACT, 1964:

(See under: Goa Land Use (Regulation) Act, 1991) .... 735

#### GOA LAND USE (REGULATION) ACT, 1991:

(i) ss.2, 13 - Compensation - Determination of - Acquisition of agricultural land - Held: - In view of permanent restriction regarding user and the bar in regard to any non-agricultural use, the acquired land would have to be valued only as an agricultural land and could not be valued with reference to sales statistics of other nearby lands which had the potential of being used for urban development - At least 50% would have to be deducted from market value of freehold land with development potential to arrive at market value of such land which could be used only for agricultural purposes - Goa, Daman and Diu Agricultural Tenancy Act, 1964.

(ii) Object of the enactment - Discussed.  
(Also see under: Land acquisition)

*Goa Housing Board v. Rameshchandra Govind Pawaskar & Anr.* .... 735

#### HINDU MARRIAGE ACT, 1955:

(i) s.13 - Petition for divorce by husband on grounds of (i) 'cruelty' and (ii) incurable 'unsound mind' of wife - Held: Husband established and proved both the grounds - Various doctors and other witnesses examined to prove that the wife was suffering from mental disorder - All the four doctors/Psychiatrists who treated the wife and prescribed medicines also expressed the view that it was "incurable" - The acts and conduct of the wife were such as to cause pain, agony and suffering to the husband which amounted to cruelty

in matrimonial law - Further, they were living separately for the last more than nine years and there is no possibility to unite them - Divorce petition filed by husband allowed.

(ii) s.13 - Dissolution of marriage by decree of divorce on ground of 'unsound mind' - Held: The onus of proving that the other spouse is incurably of unsound mind or is suffering from mental disorder lies on the party alleging it - It must be proved by cogent and clear evidence.

(iii) s.13 - Dissolution of marriage by decree of divorce on ground of 'cruelty' - Repeated threats to commit suicide - Held: Cruelty postulates treating of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party - Giving repeated threats to commit suicide amounts to cruelty.

*Pankaj Mahajan v. Dimple @ Kajal* .... 945

#### HIRE-PURCHASE AGREEMENT:

Recovery process - Forcible possession of vehicles - Held: Even in case of mortgaged goods subject to Hire-Purchase Agreements, recovery process has to be in accordance with law - Guidelines laid down by Reserve Bank of India are significant - If any action is taken for recovery in violation of such guidelines or the principles as laid down by Supreme Court, such action cannot but be struck down.

(Also see under: Consumer Protection Act, 1986).

*Citicorp. Maruti Finance Ltd. v. S. Vijayalaxmi* .... 1050

#### INTERLOCUTORY APPLICATIONS:

Orders passed by trial court on interlocutory applications Challenged before Supreme Court - Plea that the trial court erred in not adhering to the pre-trial procedures and contentions raised by defendants not considered by High Court - Held: Not permissible - The proper course available to defendants was to bring to the notice of High Court the aspect by filing a review application - Such course was never adopted. (Also see under: Code of Civil Procedure, 1908).

*Rasiklal Manickchand Dhariwal & Anr. v. M/s. M.S.S. Food Products* .... 1141

#### INTERNATIONAL ARBITRATION ACT, 2002

(SINGAPORE):

(1) (i) International commercial arbitration - Held: Where the arbitration agreement provides that the seat of arbitration is Singapore and arbitration proceedings are to be conducted in accordance with the Singapore International Arbitration Centre Rules (SIAC Rules) then the Act 2002 of Singapore will be the law of arbitration as is provided in rule 32 of SIAC Rules - Once the arbitrator is appointed and the arbitral proceedings are commenced, the SIAC Rules become applicable shutting out the applicability of s.42 of the 1996 Act including Part I and the right of appeal u/s.37 thereof - Arbitration and Conciliation Act, 1996 - ss.2, 9, 42 - Singapore International Arbitration Centre Rules - r.32.

(ii) Proper law and Curial law - Distinction between - Discussed.

(Also see under: Arbitration)

*Yograj Infrastructure Ltd. v. SSang Yong Engineering and Construction Co. Ltd.* .... 301

(2) Interlocutory application - Clarification/ correction of clerical errors in the judgment - In para 35 of the judgment reported in **2011 SCR 14 301**, it was indicated that the SIAC Rules would be the Curial law of the arbitration proceedings - Held: It is clarified that the Curial law is the International Arbitration law of Singapore and not the SIAC Rules.

*Yograj Infrastructure Ltd. v. SSang Yong Engineering and Construction Co. Ltd.* .... 324

#### INTERNATIONAL LAW:

Warsaw Convention.  
(See under: Consumer Protection Act, 1986). .... 47

#### INTERPRETATION OF STATUTES:

(1) Compliance - Held: When any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act - Jammu and Kashmir Land Acquisition Act, 1990.

(Also see under: Jammu and Kashmir Land Acquisition Act, 1990).

*J & K Housing Board & Anr. v. Kunwar Sanjay Krishan Kaul & Ors.* .... 976

(2) Same words having different meanings in different provisions of the same enactment - Permissibility - Held: The same words used in different parts of a statute should normally bear the same meaning - But depending upon the context, the same words used in different places of a statute may also have different meaning - The use of the words 'publication of the notification' in ss.4(1) and 6 on the one hand and in s.23(1) on

the other, in the LA Act, is a classic example, where the same words have different meanings in different provisions of the same enactment - The context in which the words are used in ss.4(1) and 6, and the context in which the same words are used in s.23(1) are completely different - Land Acquisition Act, 1894 - ss.4, 6 and 23.  
(Also see under: Land Acquisition Act, 1894)

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#### JAMMU AND KASHMIR LAND ACQUISITION ACT, 1990:

(i) ss.4(1)(a), (b), (c) - Compliance of - Held: Procedure provided in sub-ss. (a), (b) and (c) are mandatory and are to be strictly complied with.  
(ii) ss.4(1), 5-A - Acquisition notification for development of housing colony - Challenged by respondents-land owners by filing writ petition before High Court - High Court allowed the writ petition with liberty to respondents to file objections within 15 days - Held: The conditions prescribed in s.4(1)(c) was not complied with - Notification was published in two daily newspapers but one of them was not a newspaper published in regional language which is the requirement of s.4(1)(c) - A corrigendum issued for enlarging the area of acquisition was also not published in any newspaper - The procedures provided in s.4(1)(a)(b) and (c) are to be strictly complied with - It is not in dispute that when the officers attempted to serve the notice by affixation or to persons in charge of the land, they were informed about the absence of the land-owners due to disturbance in the area - In spite of such

information, the authorities did not send proper notice to the respondents or comply with the provisions, particularly, s.4(1)(c) - Order of High Court quashing the acquisition proceedings from the stage of s.5A of the Act upheld - Land Acquisition.

(Also see under: Interpretation of Statutes).

*J & K Housing Board & Anr. v. Kunwar Sanjay Krishan Kaul & Ors.* .... 976

JUNIOR ACCOUNTS OFFICERS SERVICE POSTAL WING (GROUP C) RECRUITMENT RULES, 1977:  
rr.14 and 18.  
(See under: Service Law) .... 840

#### JURISDICTION:

Jurisdiction of civil court.  
(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) .... 533

#### LABOUR LAWS:

Dismissal from service - Theft committed by workman - Domestic enquiry - Workman found guilty - Labour Court upheld the punishment of dismissal - Acquittal in criminal case - On writ petition by workman, Single Judge of High Court modified the order of dismissal into an order of termination and directed the employer to pay the terminal benefits - Division Bench, on appeal by workman, quashed the award of Labour Court and held the workman entitled to reinstatement into service with all consequential benefits - Held: High Court simply decided the case taking into consideration the acquittal of delinquent employee and nothing else - There was no finding by High Court that the charges leveled in the domestic

enquiry had been the same which were in the criminal trial - Workman shall be entitled only to the relief granted by the writ court, as the employer did not challenge the said order.  
(Also see under: Service law).

*Divisional Controller, KSRTC v. M.G. Vittal Rao* .... 1089

#### LAND ACQUISITION:

(1) Acquisition of agricultural land - State and its instrumentalities resorting to massive acquisition of agricultural land in the name of public purpose, without complying with the mandate of the statute - Held: It is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses/land/industry by way of acquisition of land in the name of development of infrastructure or industrialization - Before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes - If the acquisition of private land becomes absolutely necessary, then the authorities must strictly comply with the relevant statutory provisions and the rules of natural justice.

(Also see under: Land Acquisition Act, 1894)

*Raghubir Singh Sehrawat v. State of Haryana and Ors.* .... 1113

(2) (i) Compensation - Determination of, in respect of similarly situated land in the same area - Held: Similarly situated land in the same area, having the same advantages and acquired under the same notification should be awarded the same compensation - But if an acquired land is subject to a statutory covenant that it can be used only for

agriculture and cannot be used for any other purpose, necessarily it will have to be valued as agricultural land.

(ii) Vacant land vis-à-vis land in possession of long term lessee - Compensation - Determination of.

(Also see under: Goa Land Use (Regulation) Act, 1991)

*Goa Housing Board v. Rameshchandra Govind Pawaskar & Anr.* .... 735

(3) (See under: Jammu and Kashmir Land Acquisition Act, 1990) .... 976

#### LAND ACQUISITION ACT, 1894:

(1) ss. 4(1) and 6 - Land acquisition for expansion of depot of Roadways Corporation - Held: The decision taken by the Government is not vitiated by any error of law nor is it irrational or founded on the extraneous reasons - Corporation or its successor not being a 'company' as defined in s. 3(e), Part VII of the Act is not applicable and as such procedure contemplated in Part VII having not been followed, it cannot be said that acquisition is bad in law - Appellants can be suitably compensated - Not a case fit for exercise of power under Art. 142 - Constitution of India, 1950 - Art. 142.

*Ramji Veerji Patel & Ors. v. Revenue Divisional Officer & Ors.* .... 821

(2) ss. 4(1), 6(1), 5A(2) and 9 - Acquisition of agricultural land - No opportunity of hearing given - Actual possession of land still with land-owner - Held: No evidence to show that actual possession of the land on which the crop was standing had

been taken after giving notice to the appellant nor was he present at the site when the possession of the acquired land was stated to have been delivered to the beneficiary - Exercise showing delivery of possession was farce and inconsequential - The record prepared by the revenue authorities showing delivery of possession of the acquired land to the beneficiary has no legal sanctity - Land-owner was not given opportunity of hearing as per the mandate of s.5A(2) - Thus, acquisition of his land is illegal and is quashed - State directed to pay to land-owner, cost of Rs. 2,50,000/- - Costs. (Also see under: Land acquisition)

*Raghubir Singh Sehrawat v. State of Haryana and Ors.* .... 1113

(3) (i) s.23 - Acquisition of land classified as agricultural land marsh land - Compensation as enhanced by reference court and affirmed by High Court, modified.

(ii) s.23 - Acquisition of land - Determination of compensation - Addition towards appreciation in value between the date of exemplar sale and the date of preliminary notification as regards the acquisition in question - Held: Unless the difference is more than one year, normally no addition should be made towards appreciation in value, unless there is special evidence to show some specific increase within a short period.

(iii) s.23 - Acquisition of land - Determination of compensation - Addition of percentages for advantageous frontage - Held: Advantage of a better frontage is considered to be a plus factor while assessing the value of two similar properties,

particularly in any commercial or residential area, when one has a better frontage than the other - However where the value of large tracts of undeveloped agricultural land situated on the periphery of a city in an area which is yet to be developed is being determined with reference to value of nearby small residential plot, the question of adding any percentage for the advantage of frontage to the acquired lands, does not arise.

(iv) s.23 - Acquisition of land - Determination of compensation - Deductions for development from value of small developed plots to arrive at the value of acquired lands - Factors to be taken into consideration - Explained - On facts, the reference court after considering the facts found that one-third of the value of the small developed plot should be deducted towards development/development cost, to arrive at the value of the acquired lands -High Court did not interfere with the said percentage of deduction - In the circumstances, no reason to alter the percentage of deduction of 33.33%.

(v) ss. 4 and 23 - Acquisition of land - Determination of compensation - Relevant date - Adjustment of advance payment - Held: The relevant date for determination of compensation would be the date of publication of the preliminary notification u/s.4(1) of the LA Act -However if in anticipation of acquisition the Land Acquisition Officer had made any payment to the land owner they will be entitled to credit therefor with interest at 15% per annum from the date of payment to date of publication of preliminary notification - Though solatium and additional amount will be calculated on the entire compensation amount, statutory interest payable to land-owner will be

calculated only after adjusting the advance payment with interest therein towards the compensation amount.

(vi) ss.4 and 23 - Acquisition of land - Determination of compensation - Relevant date for determining compensation - Held: One of the principles in regard to determination of market value u/s.23(1) is that the rise in market value after the publication of the notification u/s.4(1) of the Act should not be taken into account for the purpose of determination of market value - In s.23(1), the words "the date of publication of the notification u/s 4(1)" would refer to the date of publication of the notification in the gazette. (Also see under: Interpretation of Statutes)

*Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal & Anr.* ....

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#### LEGISLATION:

Need for legislation - There is an urgent need for a fresh look on the entire law of adverse possession - Recommendation to Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in law of adverse possession.

(Also see under: Adverse possession)

*State of Haryana v. Mukesh Kumar & Ors.* ....

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#### LIFE INSURANCE CORPORATION ACT, 1956:

s. 21 - Corporation to be guided by directions of Central Government - Guidelines dated 30.5.2002 laid down by the Central Government that the provisions of the Public Premises Act, 1971 should be used primarily to evict totally unauthorised

occupants and to secure periodic revision of rent in terms of the provisions of the Rent Control Act in each State, or to move under genuine grounds under the Rent Control Act for resuming possession - Held: The guidelines are not directions u/s. 21 - Purpose of these guidelines is to prevent arbitrary use of powers under the Public Premises Act - Relevance of the guidelines would depend upon the nature of guidelines and the source of power to issue such guidelines - Source of the right to apply for determination of standard rent is the Rent Control Act, and not the guidelines - Also, by subsequent clarificatory order, the Central Government made it clear that the guidelines dated 30.5.2002 would not apply to affluent tenants - Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(Also see under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971)

*Banatwala & Company v. L.I.C. of India & Anr.* .... 533

#### LIMITATION ACT, 1963:

s.14 - Delay in filing appeal - Condonation of - Imposition of penalty on appellants for contravening provisions of FEMA - Plea that the entire period during which writ petition remained pending before Delhi High Court should be excluded - Held: Not tenable - Existence of good faith is a *sine qua non* for invoking s.14 - Appellants filed writ petition before wrong forum and came to the forum having jurisdiction to entertain the appeal after delay of 1056 days and sought condonation of delay - Delay was rightly held not condonable since there was no averment

in the applications seeking condonation that they had been prosecuting remedy before a wrong forum, i.e. the Delhi High Court with due diligence and in good faith - Besides, the prayer made in the applications was for condonation of 1056 days delay and not for exclusion of the time spent in prosecuting the writ petitions before the wrong forum Delhi High Court - This showed that the appellants were seeking to invoke s.5 which cannot be pressed into service in view of the language of s.35 of the FEMA - There was total absence of good faith, which is *sine qua non* for invoking s.14- Foreign Exchange Management Act, 1999 - Delay - Condonation of. (Also see under: Foreign Exchange Management Act, 1999)

*Ketan V. Parekh v. Special Director, Directorate of Enforcement and Anr.* .... 1204

#### LIQUOR:

Beer - Process of Brewing - Discussed. (Also see under: Uttar Pradesh Excise Act, 1910) .... 98

#### MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999:

s. 21. (See under: Bail) .... 617

#### MAHARASHTRA RENT CONTROL ACT, 1999:

(1) ss. 2(14), 8 and 29 - Provisions for fixation of standard rent and maintenance of essential services under the Act - Applicability of, to public premises owned by public corporations/undertakings - Held: The subjects of fixation of standard rent and restoration of essential services by the landlord are covered under the Rent Control



Act and not under the Public Premises Act - Application of the tenants for the said matters when necessary, are maintainable under the Rent Control Act - Eviction and recovery of arrears of rent are alone covered under the Public Premises Act - Thus, the provisions of the Maharashtra Rent Control Act with respect to fixation of standard rent for premises, and requiring the landlord not to cut off or withhold essential supply or service, and to restore the same when necessary, are not in conflict with or repugnant to any of the provisions of the Public Premises Act - Provisions of Rent Control Act govern the relationship between the public undertakings and their occupants to the extent it covers the other aspects of the relationship between the landlord and tenants, not covered under the Public Premises Act - Public Premises (Eviction of Unauthorised Occupants) Act, 1971 - ss. 2(e), 5, 7 and 15.

(Also see under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Constitution of India, 1950; Life Insurance Corporation Act, 1956; and Rent control and eviction)

*Banatwala & Company v. L.I.C. of India & Anr.* .... 533

(2) s.3(1)(a) and (b) - Exemption from application of the Act - Claim for - Tenability - Status of appellant - (National Textile Corporation) - Held: The Central Government and the appellant are separate legal entities and not synonymous - Appellant is being controlled by the provisions of the 1995 Act and not by the Central Government - Appellant is a Government Company and neither government nor government department - Nor can it claim the status of an 'agent' of the Central

Government as the rights vested in the appellant stood crystallised after being transferred by the Central Government - Hence not entitled for exemption u/s.3(1)(a) or 3(1)(b) of the Act - Textile Undertakings (Nationalisation) Act, 1995 - Contract Act, 1872 - ss.182 and 230.

(Also see under: Textile Undertakings (Nationalisation) Act, 1995; and Pleadings)

*National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors.* .... 472

#### MINES AND MINERALS:

Mining lease - Overlapping of the area covered by the two leases - Held: When large areas are granted for mining purposes, some confusion as to the boundaries of such areas especially if they are adjacent to each other is not abnormal - In such cases, a fresh demarcation is to be conducted and boundaries are to be fixed - Directions issued for proper identification and demarcation of the areas.

*Ashok Kumar Lingala v. State of Karnataka & Ors.* .... 800

#### MOTOR VEHICLES ACT, 1988:

(i) ss. 149(2) and 170 - Claim petition - Position in cases where the claimants implead the insurer as a respondent - Held: Where the insurer is a party-respondent, either on account of being impleaded as a party by the tribunal u/s. 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it would be entitled to contest the matter by raising all grounds, without being restricted to the grounds available u/s. 149(2) of the Act.

(ii) s. 149(2) - Claim petition - Position in cases where the insurer is only a noticee u/s. 149(2) and has not been impleaded as a party to the claim proceedings - Held: An insurer, without seeking to avoid or exclude its liability under the policy, on grounds other than those mentioned in s. 149(2)(a) and (b), can contest the claim, in regard to the quantum - s. 149(2) does not require the insurer to concede wrong claims or false claims or not to challenge erroneous determination of compensation - If the owner of the vehicle(insured) fails to file an appeal when an erroneous award is made, he fails to contest the same and consequently, the insurer should be able to file an appeal, by applying the principle underlying s. 170 - Matter referred to larger bench.

(iii) ss. 173, 168 and 149 - Joint appeal by the owner of the vehicle (insured) and insurer - Maintainability of - Held: Maintainable - When the insurer becomes a co-appellant, the insured does not cease to be a person aggrieved - When a counsel holds vakalatnama for an insurer and the insured in a joint appeal, the court cannot say his arguments and submissions are only on behalf of the insurer and not on behalf of the insured.

(iv) Claim petition - For compensation in regard to a motor accident - Nature of - Held: An award by the tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute.

*United Insurance Co. Ltd. v. Shila Datta & Ors.* ....

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## NATURAL JUSTICE:

(1) Principles of natural justice - Extent and application of -Requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi-judicial or judicial authority, when such an order entails adverse civil consequences - Held: There can be exceptions to the said doctrine - Its extent and its application cannot be put in a strait-jacket formula - Whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected. (Also see under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992)

*Ashwin S. Mehta & Anr. v. Union of India & Ors.* .... 1000

(2) (See under: Administrative Law) .... 840

## NEGOTIABLE INSTRUMENTS ACT, 1881:

(i) s.138 - Sentencing under - Respondent found guilty u/s.138 - Magistrate sentenced her to pay a fine of Rs.2000 and in default to undergo imprisonment and also directed her to pay Rs.20,000 as compensation to the complainant and in default to undergo simple imprisonment for three months - Held: Magistrate having levied fine of Rs.2,000/-, it was impermissible to levy any compensation having regard to s.357(3), Cr.P.C. - Code of Criminal Procedure, 1973 - s.357(3).

(ii) s.138 - Methods to improve the disposal of

cases u/s.138 of the Act - Suggested.

(iii) s.138 - Purpose of enactment - Held: Cases arising u/s.138 are really civil cases masquerading as criminal cases - The avowed object of Chapter 17 of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument" - It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realization of the cheque amount) thereby obviating the need for the creditor to move two different forums for relief.

(iv) s.143(1) - Imposition of fine - Held: In view of conferment of such special power and jurisdiction upon the First Class Magistrate, the ceiling as to the amount of fine stipulated in s.29(2) of the Code is removed - Consequently, in regard to any prosecution for offences punishable u/s.138 of the Act, a First Class Magistrate may impose a fine exceeding Rs.5000/-, the ceiling being twice the amount of the cheque.

(Also see under: Code of Criminal Procedure, 1973)

*R. Vijayan v. Baby and Anr.* .... 712

PENAL CODE, 1860:

(1) (i) s.302 r/w s.34 - Murder - 13 accused - Prayer of A-12 for grant of 'pardon' and to treat him as an 'approver' allowed by trial court - Disclosure made by him - Examined as PW-6 - Trial court convicted two accused u/s.302 but acquitted the remaining ten accused - High Court set aside acquittal of four accused and convicted them u/ss. 302/34 and also affirmed conviction of

the other two accused u/s.302 - Held: Justified - The statement of approver (PW-6) was confidence inspiring and there was nothing wrong in accepting his entire statement - The ocular evidence of the approver (PW-6) stood corroborated by the medical evidence - There was common intention among the accused persons including the six persons identified by the eye-witnesses - High Court was right in applying s.34 and basing conviction of six accused persons.

(ii) s.34 - Applicability of - Held: The existence of common intention amongst the participants in the crime is the essential element for application of s.34 and it is not necessary that the acts of several persons charged with the commission of an offence jointly must be the same or identically similar - In the instant case, from the materials placed by the prosecution, particularly, from the eye-witnesses, the common intention can be inferred among the accused persons including the six persons identified by the eye-witnesses - It is clear that the 13 assailants had planned and remained present on the shore of the river to eliminate the deceased - In view of these materials, High Court was right in applying s.34 IPC to base conviction of six accused persons.

(iii) ss.34 and 149 - Distinction between common intention and common object - Discussed.

(Also see under: Code of Criminal Procedure, 1973; and Evidence Act, 1872)

*Mrinal Das & Ors. v. State of Tripura* .... 411

(2) (i) ss. 302/34, 364/34 and 201/4 - Conviction and sentence - Abduction and murder of human right activist by police officials - Conviction of DSP

and ASI u/ss. 302/34 and sentence of life imprisonment imposed - Conviction of four appellants u/ss. 120-B and 364/34 and sentence of RI for five years and seven years respectively - High Court acquitted ASI, however, enhanced the sentence of four appellants from 7 years rigorous imprisonment to life imprisonment - Held: There is trustworthy evidence in respect of abduction of the activist as well as his illegal detention - Courts below rightly drew the presumption that the appellants were responsible for the abduction, illegal detention and murder - Order of the High Court upheld.

(ii) s.302/34 - One accused convicted u/s.302/34, other accused persons stood acquitted - Effect of - Held: It is impossible to hold that accused shared the common intention with other co-accused who is acquitted unless it is shown that some other unknown persons were also involved in the offence - Accused can be charged for having shared the common intention with another or others unknown, either by direct evidence or by legitimate inference.

(Also see under: Code of Criminal Procedure, 1973; Constitution of India, 1950; Criminal law; Criminal trial; Evidence; and Evidence Act.)

*Prithipal Singh Etc. v. State of Punjab & Anr. Etc.* ....

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(3) (i) ss.302 and 323 r/w s.27 of Arms Act - Conviction of two accused for causing death of two persons by gun shot injuries - Held: Prosecution established that it was only on account of the rejection of marriage proposal that the accused, as an act of retaliation and vengeance, jointly committed the offence - Dying declaration

of the victim and the statements of her relations, who had appeared as prosecution witnesses, duly established the commission of the offence, as well as, the common motive for the two accused to have joined hands in committing the crime - Conviction upheld.

(ii) ss.302 and 323 r/w s.27 of Arms Act - Conviction of two accused for causing death of two persons - Plea of A-2 that no role attributed to him - Held: Evidence on record showed that the two accused had come together on a scooter to commit the offence - A-1 fired first two shots at the victim from his double barrel gun - Thereafter A-2 provided two live cartridges to A-1 - After commission of the crime, both accused jointly made escape on a scooter - Therefore, it cannot be held that A-2 was merely a bystander and was incidentally present at the place of occurrence - He was rightly convicted.

(Also see under: Delay/laches; and Criminal law)

*Deepak Verma v. State of Himachal Pradesh* ....

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(4) ss. 302 and 376 - Rape and murder of a minor girl - Circumstantial evidence - Conviction - Held: Dead body of deceased was found inside the house of accused - There were blood stains on the bed-sheet and on the floor underneath the cot - Evidence of the doctor who conducted the post-mortem, that there had been sexual assault on the victim and she died of strangulation - Conviction affirmed - However, the case does not fall within the "rarest of rare cases" - Punishment of death sentence awarded by High Court set aside and the sentence of life imprisonment as

awarded by trial court restored.  
(Also see under: Evidence; and Sentence/  
sentencing).

*Haresh Mohandas Rajput v. State of Maharashtra* .... 921

(5) ss.405, 406, 420 r/w s.34.  
(See under: Code of Criminal Procedure,  
1973). .... 154

(6) ss. 406 r/w s. 34  
(See under: Code of Criminal Procedure,  
1973) .... 1033

#### PLEADINGS:

(i) Purpose and necessity of - Held: Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial - A decision of a case cannot be based on grounds outside the pleadings of the parties - A party has to take proper pleadings and prove the same by adducing sufficient evidence - In view of the provisions of O. 8, r. 2, CPC, the appellant was under an obligation to take a specific plea to show that the eviction suit filed against it was not maintainable which it failed to do - The appellant ought to have taken a plea in the written statement that it was merely an 'agent' of the Central Government, thus the suit against it was not maintainable - The appellant did not take such plea before either of the courts below - More so, whether A is an agent of B is a question of fact and has to be properly pleaded and proved by adducing evidence - The appellant miserably failed to take the required pleadings for the purpose - Code of Civil Procedure, 1908 - O. 8, r. 2.

(ii) New plea - Held: A new plea cannot be taken

in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings.

(Also See under: Maharashtra Rent Control Act, 1999; and Textile Undertakings (Nationalisation) Act, 1995).

*National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors.* .... 472

#### PROPERTY:

(i) Right to property - Held: Is not only constitutional or statutory right but also a human right - Therefore, even claim of adverse possession has to be read in that context - Constitution of India, 1950.

(ii) Protection of property rights - Discussed.  
(Also see under: Adverse possession)

*State of Haryana v. Mukesh Kumar & Ors.* .... 211

#### PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971:

(i) ss. 2(e), 5, 7, 15 - Eviction of unauthorised occupants from Public Premises and recovery of arrears of rent from them - Initiation of proceedings under the Act - Held: Proceedings initiated by the landlord would be fully competent under the Act - Occupants would not be entitled to seek any remedy under the Bombay Rent Act or the subsequent Maharashtra Rent Control Act since the jurisdiction of the civil court has been ousted u/s. 15 - Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 - Maharashtra Rent Control Act, 1999.

(ii) ss. 10 and 15 - Jurisdiction of civil courts for the remedies of fixation of rent or maintenance of essential services - Held: Is not ousted - Actions covered under the Act are concerning eviction of unauthorised occupants and recovery of arrears of rent - The Act does not speak anything about the fixation of standard rent or maintenance of essential services and no remedy is provided thereunder - The fact that the proceeding for one purpose is provided under one statute cannot lead to an automatic conclusion that the remedy for a different purpose provided under another competent statute becomes unavailable. (Also see under: Maharashtra Rent Control Act, 1999; Life Insurance Corporation Act, 1956; and Constitution of India, 1950).

*Banatwala & Company v. L.I.C. of India & Anr.* .... 533

#### REFERENCE TO LARGER BENCH:

Appeal by insurer - Maintainability - Question referred to larger Bench.  
(See under: Motor Vehicles Act, 1988) .... 763

#### RENT CONTROL AND EVICTION:

(1) (i) Exemption from operation of Rent Act - Legislative expectations from public bodies as landlords - Held: Exercise of discretion of public authorities must be tested on the assumption that they would act for public benefit and would not act as private landlords - However, these principles not relevant while considering a dispute between a statutory body as landlord and an affluent tenant in regard to a commercial or non-residential premises.

(ii) Relationship between landlord and tenant in

general - Changes brought about by the Rent Control Acts - Explained and discussed. (Also see under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971; Maharashtra Rent Control Act, 1999; and Constitution of India, 1950).

*Banatwala & Company v. L.I.C. of India & Anr.* .... 533

(2) (See under: Maharashtra Rent Control Act, 1999; and Textile Undertakings (Nationalisation) Act, 1995) .... 472

#### RIGHT TO INFORMATION ACT, 2005:

(i) s.8(1)(d) - Examination of candidates for enrolment as Chartered Accountants - Claim as intellectual property by Institute of Chartered Accountants of India (ICAI) of its instructions and solutions to questions given to examiners and moderators and exemption thereof u/s s.8(1)(d) of the Act - Held: ICAI voluntarily publishes the "suggested answers" in regard to the question papers in the form of a book for sale every year, after the examination - Therefore s.8(1)(d) of the Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answerscripts is completed, as at that stage they will not harm the competitive position of any third party.

(ii) s.9 - Examination of candidates for enrolment as Chartered Accountants - Claim of copy right by ICAI with regard to instructions and solutions to questions issued by it to examiners and moderators and thus seeking protection u/s 9 -

Held: ICAI being a statutory body created by the Chartered Accountants Act, 1948 is 'State' - Providing access to information in respect of which ICAI holds a copyright, does not involve infringement of a copyright subsisting in a person other than the State - Therefore ICAI is not entitled to claim protection against disclosure u/s.9 of the Act - Besides, the words 'infringement of copyright' have a specific connotation - A combined reading of ss. 51 and 52(1)(a) of Copyright Act shows that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright.

(iii) s. 8(1)(e) - Examination of candidates for enrolment as Chartered Accountants - Examination held by appellant ICAI - Held: The instructions and solutions to questions communicated by the examining body to the examiners, head-examiners and moderators, are information available to such persons in their fiduciary relationship and, therefore, exempted from disclosure u/s.8(1)(d) of the Act.

(iv) s.4(1)(b) and (c) - Information to which RTI Act applies - Explained - In dealing with information not falling u/s.4(1)(b) and (c), the competent authorities under the Act will not read the exemptions in s.8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

(v) ss. 3, 4, 8, 9, 10 and 11 - Object of the Act - Held: Is to harmonize the conflicting public interests, that is, ensuring transparency to bring

in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand - While ss. 3 and 4 seek to achieve the first objective, ss. 8, 9, 10 and 11 seek to achieve the second objective.

(vi) s.8 - Categories of information which are exempted from disclosure u/s.8 - explained - In the instant case the Chief Information Commissioner rightly held that the information sought under queries (3) and (5) were exempted u/s.8(1)(e) and that there was no larger public interest requiring denial of the statutory exemption regarding such information.

(vii) Examination of candidates for enrolment as Chartered Accountants held by ICAI - Information sought under the Act - Held: As the information sought under parts (i), (iii) and (v) of the query are not maintained and is not available in the form of data with ICAI in its records, it is not bound to furnish the same - Chartered Accountants Regulations, 1988 - Regulation 39(2).

(viii) Examination of candidates for enrolment as Chartered Accountants held by ICAI - Information sought under the Act - Held: On facts, it cannot be said that the applicant had indulged in improper use of the Act - His application was intended to bring about transparency and accountability in the functioning of ICAI - However, how far he was entitled to the information was a different issue.

(ix) New regime of disclosure of maximum information - Duty of competent authorities under the RTI Act to maintain a proper balance - Held: Examining bodies like ICAI should tune themselves to the new regime - Accountability and prevention of corruption is possible only through transparency - As the examining bodies and their examination processes have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the Act - Additional workload is not a defence.

*Institute of Chartered Accountants of India v. Shaunak H.Satya & Ors.* .... 328

#### SENTENCE/ SENTENCING:

Death sentence - 'Rarest of the rare case' - Explained - For awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances - As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand. (Also see under: Penal Code, 1860).

*Haresh Mohandas Rajput v. State of Maharashtra* .... 921

#### SERVICE LAW:

(1) Disciplinary proceedings - Departmental Inquiry against a Junior Clerk in the Subordinate Court - Chief Judge on consideration of the report submitted by the Inquiry Officer, dismissed the delinquent from service - Held: The Inquiry Officer did not base his findings on the evidence recorded ex-parte but referred to that only for purposes of appreciation of the evidence of the witnesses examined by the department in *de novo inquiry*

wherein the appellant fully participated - The findings were based on evidence recorded subsequently in presence of the delinquent and, as such, did not suffer from any legal infirmity - Delinquent's right of departmental appeal was not taken away and he could have challenged that order in the departmental appeal to the higher authority - He did not avail of that opportunity and instead challenged the order in a writ petition before the High Court - His right of appeal not affected by the order passed by the Chief Judge - Central Civil Services (Classification, Control and Appeal) Rules, 1965 - r. 14.

*S. Loganathan v. Union of India and Ors.* .... 1081

(2) Promotion - Examination for promotion to the post of Junior Accounts Officer- Candidates stated to have resorted to mass-copying - Held: High Court ought not to have interfered with the decision taken by the employers requiring the candidates to reappear in the subsequent examination, in order to qualify for regular promotion - The procedure adopted by the employers cannot be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision - Junior Accounts Officers Service Postal Wing (Group C) Recruitment Rules, 1977 - rr.14 and 18. (Also see under: Administrative Law)

*Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited and Ors. v. Surendra Nath Pandey and Ors.* .... 840

#### (3) TERMINATION/DISMISSAL:

(i) Dismissal from service - Workman found guilty



of theft and awarded punishment of dismissal - Acquittal in criminal case - Plea of reinstatement - Held: The question of considering reinstatement after the decision of acquittal or discharge by a competent criminal court would arise only if dismissal from service was based on conviction by criminal court in view of the provisions of Art. 311(2)(b) of the Constitution or analogous provisions in the statutory rules - In a case where enquiry has been held independently of the criminal proceedings, acquittal in the criminal case is of no help - Constitution of India, 1950 - Art. 311(2)(b).

(ii) Misconduct - Theft - Loss of confidence - Plea of reinstatement - Held: Once the employer has lost confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed - In case of theft, loss of confidence of employer in employee is important and not the quantum of theft.

(iii) Departmental proceedings vis-à-vis criminal proceedings - Standard of proof - Held: While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt - As the standard of proof in both the proceedings is quite different, and termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of

departmental proceedings - Nor can such an action of the department be termed as double jeopardy - Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry - Evidence.  
(Also see under: Labour Laws).

*Divisional Controller, KSRTC v. M.G. Vittal Rao* ....

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(4) (i) Upgradation - Applicability of reservation provisions - Biennial Cadre Review (BCR) Scheme - Nature of - Held: As upgradation involves neither appointment nor promotion, it will not attract reservation - The BCR scheme was a scheme for upgradation simpliciter without involving any creation of additional posts or any process of selection for extending the benefit - Such a scheme of upgradation did not invite the rules of reservation - Constitution of India, 1950 - Arts. 16(4) and 16(4A).

(ii) Promotion and upgradation - Distinguished - Principles relating to applicability of rules of reservation - Discussed.

*Bharat Sanchar Nigam Ltd. v. R. Santhakumari Velusamy & Ors.* ....

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SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992:

(i) ss. 11, 3(3) and (4) - Attachment of properties of Notified persons - Sale of shares - Appellants, their family members and the corporate entities purchased more than 90 lakh shares in 'A'

Company - Attachment of the majority of the holding - Order of the Special Court permitting the Custodian to sell 54,88,850 shares of 'A' Company at Rs. 90/- per share - Held: Special Court failed to make a serious effort to realise the highest possible price for the said shares - Special Court overlooked the norms laid down by it; ignored the directions of Supreme Court and glossed over the procedural irregularities committed by the Custodian - However, sale of 54,88,850 shares was approved and all procedural modalities are stated to have been carried out and 36.90 lakh shares of 'A' Company are claimed to have been extinguished, the relief sought for by the appellants to rescind the entire sale of 54,88,850 shares would be impracticable and fraught with grave difficulties - Matter remitted to Special Court for taking necessary steps to recover the 4.95% shares from 'A' Company or its management, and put them to fresh sale strictly in terms of the norms.

(ii) s. 10 - Sale of shares of Notified persons - Discretion exercised by Special Court under - Held: On facts, Special Court exercised its discretion in complete disregard to its own scheme and 'terms and conditions' approved by it for sale of shares and in violation of the principles of natural justice, thus, the facts of the case calls for interference.

(iii) Object and purpose of the Act - Held: Is not only to punish the persons involved in the act of criminal misconduct by defrauding the banks and financial institutions but also to see that the properties, belonging to the persons notified by the Custodian were appropriated and disposed

of for discharge of liabilities to the banks and financial institutions - Thus, a notified party has an intrinsic interest in the realisations, on the disposal of any attached property because it would have a direct bearing on the discharge of his liabilities in terms of s. 11 - Custodian has to deal with the attached properties only in such manner as the Special Court may direct - Custodian is required to assist in the attachment of the notified person's property and to manage the same thereafter - Special Court shall be guided by the principles of natural justice - Doctrines/principles - Principles of natural justice.

(Also see under: Natural justice).

*Ashwin S. Mehta & Anr. v. Union of India & Ors.*

.... 1000

TELECOM REGULATORY AUTHORITY OF INDIA  
ACT, 1997:

(i) s.14(a)(i) - Jurisdiction of Tribunal - Held: Tribunal has no jurisdiction to decide upon the validity of the terms and conditions incorporated in the license of a service provider, but it will have jurisdiction to decide "any" dispute between the licensor and the licensee on interpretation of the terms and conditions of the license - The incorporation of the definition of **Adjusted Gross Revenue** in the license agreement was part of the terms regarding payment which had been decided upon by the Central Government as a consideration for parting with its rights of exclusive privilege in respect of telecommunication activities, and having accepted the license and availed the exclusive privilege of the Central Government to carry on telecommunication activities, the licensees could not have

approached the Tribunal for an alteration of the definition of Adjusted Gross Revenue in the license agreement - The decision of the Central Government on the point was final under the first proviso and the fifth proviso to s.11(1) of the Act - Telegraph Act, 1885.

(ii) 11(1)(a) - Recommendations of TRAI - Held: TRAI has been conferred with the statutory power to make recommendations on the terms and conditions of the license to a service provider and the Central Government is bound to seek the recommendations of TRAI on such terms and conditions at different stages, but the recommendations of TRAI are not binding on the Central Government and the final decision on the terms and conditions of a license to a service provider rested with the Central Government.

(iii) s.11(1)(b), (c), (d) - Recommendations of TRAI - Held: The functions of TRAI under clause (b) of sub-s. (1) of s.11 of TRAI Act are not recommendatory.

(iv) s.11(1)(a) and s.11(1)(b) - Distinction between - Discussed.

(v) s.14(a)(i) - Stage when dispute can be raised regarding the computation of **Adjusted Gross Revenue** made by the licensor - Held: The dispute can be raised by the licensee, after the license agreement has been entered into and the appropriate stage when the dispute can be raised is when a particular demand is raised on the licensee by the licensor - When such a dispute is raised against a particular demand, the Tribunal will have to go into the facts and materials on the basis of which the demand is raised and decide whether the demand is in accordance with the

license agreement and in particular the definition of Adjusted Gross Revenue in the license agreement and can also interpret the terms and conditions of the license agreement.

(Also see under: Appeal; and Telegraph Act)

*Union of India and Anr. v. Association of Unified Telecom Service Providers of India and Ors.* .... 657

#### TELEGRAPH ACT:

s.4(1), proviso - Held: A license granted in favour of any person under proviso to sub-s.(1) of s.4 of the Act is in the nature of a contract between the Central Government and the licensee - Consequently, the terms and conditions of the license are part of a contract between the licensor and the licensee - Telecom Regulatory Authority of India Act, 1997.

(Also see under: Telecom Regulatory Authority of India Act, 1997)

*Union of India and Anr. v. Association of Unified Telecom Service Providers of India and Ors.* .... 657

#### TEXTILE UNDERTAKINGS (NATIONALISATION) ACT, 1995:

ss.3(1) and (2) - Right, title and interest of textile undertaking vested in Central Government and thereafter in appellant-National Textile Corporation by statutory transfer - Meaning of the expression 'vesting' - Held: 'Vesting' means having obtained an absolute and indefeasible right - It refers to and is used for transfer or conveyance - 'Vesting' may mean vesting in title, vesting in possession or vesting in a limited sense, as indicated in the context in which it is used in a particular provision

of the Act.

(Also See under: Maharashtra Rent Control Act, 1999; and Pleadings)

*National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad & Ors.* .... 472

#### UTTAR PRADESH BREWERY RULES 1961:

r.53.

(See under: Uttar Pradesh Excise Act, 1910). .... 98

#### UTTAR PRADESH EXCISE ACT, 1910:

(i) s.29(e)(i) - Beer - Excisability of - Stage when the beer manufactured is exigible to duty - Held: When the fermentation process of wort is completed, it becomes an alcoholic liquor for human consumption and there is no legal impediment for subjecting beer to excise duty at that stage - State has legislative competence to levy excise duty on beer either after the completion of the process of fermentation and filtration, or after fermentation - Excise laws - Liquor.

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