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(ii) r. 5(3) r/w rr. 7(7), 8(4), 15, 16, 23 - Seniority - Determination of - Held: Seniority of a member of the service in a Category or post shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to the service, category or post - If any portion of the service of such person does not count towards probation u/r. 16, his seniority shall be determined by the date of commencement of the service, which counts towards probation.

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(ii) s. 9 - Application u/s. 9 filed by appellant - Interim order made absolute - Appeal by

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the buyers to the sellers and, therefore, the award cannot be held to be unjust, unreasonable or unconscionable or contrary to the public policy of India - Sale of Goods Act, 1930 - s.26 - Contract Act, 1872 - ss.23, 73 and 74.

(ii) s.48 (2)(b) - Expression 'public policy of India' used in s.48(2)(b) - Held: Has to be given wider meaning - Arbitral award can be set aside, 'if it is patently illegal'.

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(ii) s.52(f) - Interpretation of - Held: The two parts of s.52 (f) are disjunctive, which can also be seen from the fact that there is a comma and the conjunction 'or' between the two parts of the sub-section, viz (i) does any other thing with intend to defraud and (ii) to cause wrongful gain to one person or wrongful loss to another person - If the legislature wanted both these parts to be read

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(Also see under: Rules and Regulations of Supreme Court Bar Association).

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CARRIAGE OF GOODS BY SEA ACT, 1925:

(i) ss.2 and 4; and Article I, clause (b) and Article III, r.3 - Role of carrier's agent and its liability - Contract for sale of parboiled rice between NFC and NHH - Vessel chartered by NHH for carrying rice to be shipped by NFC to NHH, from Calcutta to Penang, Malaysia - NFC filed suit against the owner of the vessel and its agent for recovery of damages on ground of wrongful delivery by the ship-owner to NHH without production of the necessary documents (bills of lading) and wrongful failure on part of the ship-owner and its agent to furnish the bills of lading within the validity period of letter of credit, thereby preventing NFC from negotiating and recovering the amount due - Suit decreed by the High Court - Held: As per the sale contract, the seller (NFC) was entitled to payment of the entire invoice value, at sight at the seller's bank, on presentation of the "on board Bills of Lading" supported by its commercial invoice - Letter of credit which was valid and in force till 15.1.1979 - NFC lost the value of goods on account of the agent not releasing the bills of lading before 15.1.1979, even though it was liable to issue the bills of lading on 17.12.1978 - Thus it became liable to pay damages to make good the loss, namely the value of the goods covered by the bills of lading - If the issue of bill of lading is denied or delayed as a consequence of which the shipper suffers loss, the owner of the vessel and its agent will jointly and severally be liable to make good the loss by way of damages - The

agent alongwith the ship-owner was jointly and severally responsible for the loss caused to NFC - Judgment and decree of High Court affirmed.

(ii) ss.2 and 4; and Article I, clause (b) and Article III, r.3 - Role of carrier's agent and its liability - Contract for sale of rice between NFC and NHH - Vessel sub-chartered by NHH for carrying rice to be shipped by NFC to NHH, from Calcutta to Penang, Malaysia - Shaw Wallace was the agent of the owner of the vessel, at Calcutta - NFC filed suit against the disponent owner of the vessel (main charterer), the owner of the vessel, Shaw Wallace and Owner's Protective Agent, for recovery of damages on ground of wrongful delivery by the disponent owner to the buyers and wrongful failure to furnish the bills of lading thereby preventing NFC from negotiating and recovering the amount due - High Court decreed the suit against the disponent owner and Shaw Wallace - Held: Having regard to the fact, that the letter of credit had expired on 15.1.1979 long prior to the tendering of mate's receipt and demand for bills of lading, the delay of nine days in issuing the bills of lading had no relevance - Evidently NFC and its agent had taken the matter in a casual manner presumably expecting a further extension of letter of credit - No finding that the mate's receipts were tendered or delivered with a demand for issue of bills of lading prior to 19.1.1979 - High Court failed to consider this important aspect and wrongly assumed that breach, default, delay could be attributed to Shaw Wallace, in issuing the bills of lading, even before the mate's receipts were tendered on 19.1.1979 - Judgment and decree of the High Court insofar as it decreed the suit against Shaw Wallace set

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(1) s.9 - Jurisdiction of civil courts.
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(2) O.10, r.1, O.14, r.1(5) and O.15, r.1 - "First hearing of the suit" - Meaning of - Held: The date of "first hearing of a suit" under CPC is ordinarily understood to be the date on which the court proposes to apply its mind to the contentions raised by the parties in their respective pleadings and also to the documents filed by them for the purpose of framing the issues which are to be decided in the suit - The words the "first day of hearing" does not mean the day for the return of the summons or the returnable date, but the day on which the court applies its mind to the case which ordinarily would be at the time when either the issues are determined or evidence is taken. (Also see under: Contempt of Court)

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(3) O. 39 rr. 1 and 2 r/w s.151.
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(4) O. 39, r. 2A and O. 21, r. 32 - Exercise of powers under O. 39, r. 2A - Scope - Decree passed in a civil suit for injunction on basis of admission/undertaking made by the defendant-appellant and the pleadings taken by him in his written statement - Alleged breach of the undertaking given to the court - Held: The proceedings under O. 39, r. 2A are available only during the pendency of the suit and not after conclusion of the trial of the suit - In the instant case, the undertaking given to the court during the pendency of the suit, on the basis of which the suit itself was disposed of, became a part of the decree and breach of such undertaking was to be dealt with in execution proceedings under O.21, r. 32 CPC and not by means of contempt proceedings - Even otherwise, it was not desirable for the High Court to initiate criminal contempt proceedings for disobedience of the order of the injunction passed by the subordinate court, for the reason that where a decree is for an injunction, and the party against whom it has been passed has wilfully disobeyed it, the same may be executed by attachment of his property or by detention in civil prison or both - The application under O. 39, r. 2A itself was not maintainable, therefore, all subsequent proceedings remained inconsequential - Contempt of Courts Act, 1971 - s.2(b) and ss.10,11 and 12 - Maxims - Maxim "sublato fundamento cadit opus".
(Also see under: Contempt of Court)

Kanwar Singh Saini v. High Court of Delhi 972

CODE OF CRIMINAL PROCEDURE, 1973:

(1) ss.235(2) and 354(3) - Opportunity of hearing to accused on the question of sentence at the post-conviction stage - Held: It gives the accused an opportunity to raise fundamental issues for adjudication and effective determination by court of its sentencing discretion in a fair and reasonable manner - The object of hearing u/s.235(2) being intrinsically and inherently connected with the sentencing procedure, the provision of s.354(3) which calls for recording of special reason for awarding death sentence must be read conjointly with s.235(2) - Special reasons can only be validly recorded if an effective opportunity of hearing contemplated u/s.235(2) of Cr.P.C. is genuinely extended and is allowed to be exercised by the accused who stands convicted and is awaiting the sentence - Sentence/Sentencing.

(Also see under: Penal Code, 1860; and Sentence/Sentencing)

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(2) (i) s.362 - Alteration/Modification of judgment - Held: There is no power of review with the criminal court after judgment has been rendered - High Court can alter or review its judgment before it is signed - When judgment/order is passed, it cannot be reviewed - Court becomes *functus officio* the moment the order disposing of a case is signed - Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error - There is also no provision for modification of the judgment.

(ii) s.482 - Inherent powers - Applications filed u/s.482 in a disposed of appeal - High Court entertained the applications, directed investigation by CBI and consequently CBI registered FIR - Held: Prohibition contained in s.362 is absolute; after the judgment is signed, even the High Court in exercise of its inherent power u/s.482 has no authority or jurisdiction to alter/review the same. (Also see under: Constitution of India, 1950; Jurisdiction; and Investigation/Inquiry).

State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc

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COMPANIES ACT, 1956:

(1) ss. 397, 398 and 402 - Company petition - Held: In order to succeed in an action u/ss.397 and 398, the complainant has to prove that the affairs of the Company were being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members - It is not on account of any act on the part of the Company that the shares transferred to CP(I)PL were not registered in the name of the applicant Group - There was, therefore, no occasion for the Company Law Board (CLB) to make any order either u/s.397 or 402 and it could not, therefore, have given directions to WBIDC and GoWB to transfer 520 million shares held by them in HPL to the applicant Group and the High Court rightly set aside the same and dismissed the company petition.

Chatterjee Petrochem (I) Pvt. Ltd. v. Haldia Petrochemical Ltd. & Ors.

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(2) (i) ss.529, 530 (as amended) and s.529A - Interpretation of - Held: By Companies (Amendment) Act, 1985, proviso was added to s.529(1), ss.529(3) and 529A were inserted, the expression "subject to the provisions of s.529A" was inserted in s.530(1) - The object of the amendments was to ensure that the legitimate dues of workers should rank pari passu with those of secured creditors - What Parliament has done by these amendments is to define the term "workmen's dues" and to place them at par with debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to s.529(1) - However, these amendments, though subsequent in point of time, cannot be interpreted in a manner which would result in diluting the mandate of s.11 of the EPF Act - Interpretation of Statutes - Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(ii) s. 529(1), proviso - Object of - Discussed. (Also see under: Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and Interpretation of Statutes).

Employees Provident Fund Commissioner v. O.L. of Esskay Pharmaceuticals Ltd 336

CONSTITUTION OF INDIA, 1950:

(1) Art.14 - Levy of water charges - Classification of consumers on basis of user - Three categories of consumers - Higher rates for industrial consumers using water as a raw material - Held: Requirement and use of water by such industrial consumers is huge and therefore they are placed as one distinct category or class of their own -

These industries stand apart from other industries and are also differently situated from residential houses - There is an intelligible differentia between these three categories so there is no discrimination.

PepsiCo India Holding Pvt. Ltd. v. State of Maharashtra & Ors. 675

(2) Art. 14(1).
(See under: Labour Laws) 1157

(3) Art. 21.
(See under: Sentence/sentencing). 92

(4) Arts. 38 and 43.
(See under: Interpretation of statutes). 336

(5) Art. 136 - Special leave petition - Dismissal of, in limine - Held: An order rejecting an SLP at the threshold without detailed reasons, would not constitute any declaration of law or a binding precedent - The doctrine of *res judicata* does not apply, if the case is entertained afresh at the behest of other parties - Precedent.
(Also see under: Res judicata).

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(6) Art. 136 - Jurisdiction under - Held: There can be no hard and fast rule in the exercise of this jurisdiction - Just because the findings which are assailed in a special leave petition are concurrent cannot debar the Supreme Court from exercising its jurisdiction if the demands of justice require its interference - In a case where the Supreme Court finds that the concurrent finding is based on

patently erroneous appreciation of basic issues involved in an adjudication, it may interfere.

Siemens Ltd. & Another v. Siemens Employees Union & Another 1157

(7) Art. 136.
(See under: Evidence Act, 1872) 282

(8) Art.136.
(See under: Delay/Laches).291

(9) Arts. 136, 142 and 145.
(See under: Rules and Regulations of Supreme Court Bar Association, and Bar Associations) 736

(10) Art. 137 - Power to review any judgment - Held: Supreme Court by virtue of Art. 137 has been invested with an express power to review any judgment in criminal law.
(Also see under: Code of Criminal Procedure, 1973; and Jurisdiction).

State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc. 540

(11) Art. 142, r/w Art. 32.
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(12) Arts.142 and 226.
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(13) Art. 161, r/w Art. 141.
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(14) Art. 226 - Judicial review - Scope of -Benefit of increase of retirement age from 58 years to 60 years - Denied to Judicial Officer - Writ petition -

Allowed by Division Bench of High Court - Held: The Division Bench of High Court considered the matter as if it was sitting in appeal over the decision of the High Court on administrative side which was not permissible - The Division Bench failed to keep in mind the distinction between judicial review and merit review and, thereby committed a serious error in examining the merits of the decision of the Full Court - There was not even an iota of allegation of *bias* or *mala fides* - The Division Bench was clearly in error in interfering with the decision of the High Court on administrative side - Judicial Service.
(Also see under: Judiciary).

High Court of Judicature, Patna v. Shiveshwar Narayan and Anr. 51

(15) Art. 226 - Writ petition relating to Caste Certificate.
(See under: Social Status Certificate) 1092

(16) (i) Art. 226 - Scope of interference with the provisional order of assessment/show cause notice - Discussed.

(ii) Art. 226 - Alternative remedy - Maintainability of writ petition - Discussed.
(Also see under: Electricity Act, 2003).

The Executive Engineer and Anr. v. M/s Sri Seetaram Rice Mill 211

CONSTITUTION (SCHEDULED TRIBES) ORDER, 1950:

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CONTEMPT OF COURT:

(i) Civil contempt - Held: A mere disobedience by a party to a civil action of a specific order made by the court in the suit is civil contempt for the reason that it is for the sole benefit of the other party to the suit.

(ii) Contempt proceedings - Nature of - Standard of proof required - Held: The contempt proceedings being quasi-criminal in nature, the standard of proof requires in the same manner as in other criminal cases - The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the Criminal Jurisprudence, including the benefit of doubt -The case should not rest only on surmises and conjectures.

(iii) Contempt proceedings - Purpose of - Held: The purpose of initiation of contempt proceedings is two-fold: to ensure the compliance of the order passed by the court; and to punish the contemnor as he has the audacity to challenge the majesty of law.

(Also see under: Code of Civil Procedure, 1908)

Kanwar Singh Saini v. High Court of Delhi 972

CONTEMPT OF COURTS ACT, 1971:

(1) s.2(b) and ss.10,11 and 12.

(See under: Code of Civil Procedure, 1908; and Contempt of Court) 972

(2) s.2(c) r/w s.12 - Criminal contempt - Agitation outside the main gate of the District Court premises for formation of a High Court Circuit Bench - Issuance of *Suo Motu* Rules of Contempt, against 16 agitators as also against senior officers

of Police and the District Magistrate - High Court found the appellants/contemnors guilty of criminal contempt and sentenced them to undergo simple imprisonment for six months - Held: The conclusion of the High Court that the appellants, more particularly, government officials were responsible for "aiding and abetting the agitators by non-action" cannot be accepted - There was no wrongful restraint on the Judges and Judicial Officers of the District Court - Inasmuch as the matter pertains to criminal contempt, the issue is to be proved beyond reasonable doubt - In the instant case, no case was made out to punish the appellants under "criminal contempt" in terms of s.2(c) r/w s. 12 of the Act - Also, all the appellants had filed separate affidavits explaining their stand and tendered unconditional apology at the earliest point of time - High Court ought to have accepted the affidavits tendering apology - Calcutta High Court Contempt of Courts Rules, 1975.

Anup Bhushan Vohra v. The Registrar General, High Court of Judicature at Calcutta

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CONTRACT:

Cost, Insurance, Freight (CIF) contract - Obligations upon a seller - Held: In relation to goods, the seller must ship goods of contract description on board a ship bound to the contract destination - If there is a late shipment or the seller has put goods on board a ship not bound to the contract destination as stipulated, the logical inference that must necessarily follow is that the seller has not put on board goods conforming to a contract destination.

(Also see under: Arbitration and Conciliation Act, 1996)

Phulchand Exports Ltd. v. OOO Patriot 1129

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(1) ss.23, 73 and 74.

(See under: Arbitration and Conciliation Act, 1996) 1129

(2) s. 27.

(See under: Specific Relief Act, 1963)512

COSTS:

(See under: Limitation Act, 1963) 299

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Criminal liability - General exceptions - Accused taking plea of insanity - Held: A person alleged to be suffering from any mental disorder cannot be exempted from criminal liability *ipso facto* - Onus would be on the accused to prove by expert evidence that he is suffering from such a mental disorder or mental condition that he could not be expected to be aware of the consequences of his act - Once, a person is found to be suffering from such mental disorder, he would be entitled to seek resort to the general exceptions from criminal liability - Penal Code, 1860 - s.84.

(Also see under: Penal Code, 1860).

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CRIMINAL TRIAL:

(1) Exemption from criminal liability.

(See under: Criminal law; and Penal Code, 1860) 485

(2) Murder - Time of death - Determination of - Opinion of the doctor conducting post-mortem examination as to time of death - Held: In determining the issue, various factors such as age and health condition of the deceased, climatic and atmospheric conditions of the place of occurrence and the conditions under which the body is preserved, are required to be considered - The exact time of death cannot be established scientifically and precisely.

(Also see under: Penal Code, 1860).

Rakesh & Anr. v. State of Madhya Pradesh 34

DECREE:

Execution of award of Lok Adalat passed in a case u/s 138 of Negotiable Instruments Act, 1881. (See under: Legal Services Authorities Act, 1987) 447

DELAY/LACHES:

Delay of 63 days in filing appeal against the judgment and decree passed by trial court - Held: Normally, Supreme Court in exercise of its discretion under Art.136 of the Constitution may not interfere with the exercise of discretion by the High Court in such matters - However, in the instant case, out of all the three ladies who were the appellants, one was pursuing the case and she fell sick - The delay of 63 days is not a delay for a long period and there was some explanation for

the delay - Order of High Court set aside and delay in filing the appeal condoned - Constitution of India, 1950 - Art. 136.

Poonam & Ors v. Harish Kumar & Anr. 291

DOCTRINES/PRINCIPLES:

(1) Doctrine of necessity - Held: The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties - Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over.

(Also see under: Tamil Nadu Societies Registration Act, 1975)

Lalit Kumar Modi v. Board of Control for Cricket in India and Ors. 1004

(2) Doctrine of waiver.
(See under: Waiver) 540

EAST PUNJAB URBAN RENT RESTRICTION ACT, 1949:

(1) s. 13.
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(2) ss. 15(1)(b) and 13(2)(i), proviso - Eviction petition on the ground of default in payment of rent - Order by the Rent Controller determining the provisional rent u/s. 13(2)(i) proviso - Tenant not availing his remedy to challenge the same by filing an appeal u/s. 15(1)(b) within the time prescribed - Effect of - Held: When the tenant challenges the order of eviction in appeal and therein also challenges the order determining the provisional rent, it is not open to the Appellate Authority to refuse to consider the legality and

validity of the order determining the provisional rent on the ground that no appeal was filed from that order though an appeal lay therefrom - Thus, the appellate authority did not commit any error in calling upon the Rent Controller to determine the arrears of rent, interest and costs afresh as the tenant's statement of payments towards rent was not referred to and considered by the Rent Controller.

Harjit Singh Uppal v. Anup Bansal 948

EDUCATION / EDUCATIONAL INSTITUTIONS:

(1) (i) Specialized courses - Admissions - Scope for interference by courts - Held: The process of evaluation, the process of ranking and selection of candidates for admission with reference to their performance, are all technical matters in academic field and courts will not interfere in such processes - Courts will interfere only if they find (i) violation of any enactment, statutory Rules and Regulations; and/or (ii) *mala fides* or ulterior motives to assist or enable private gain to someone or cause prejudice to anyone; or where the procedure adopted is arbitrary and capricious.

(ii) Admissions to undergraduate Engineering courses - Joint Entrance Examination (IIT-JEE 2006) -Determination of cut-off marks - The first appellant appeared in IIT-JEE 2006, as a general category candidate - As he did not secure the minimum of 55 marks in Chemistry, he was not qualified, even though his aggregate in the three subjects was very high - Held: The JAB wanted to select candidates with consistent performance in all three subjects - The fact that the procedure

was complicated did not make it arbitrary or unreasonable or discriminatory - The appellants did not make out, even remotely, any *malafide* motive, in regard to the procedure for arriving at the cut-off marks - No ground for Courts to interfere with the procedure, even if it was not accurate or efficient, in the absence of *malafides* or arbitrariness or violation of law - No ground to grant any relief to the first appellant. (Also see under: Administrative Law)

Sanchit Bansal & Anr. v. The Joint Admission Board (JAB) & Ors. 1057

(2) (See under: National Council for Teacher Education Act, 1993) 203

ELECTRICITY ACT, 2003:

(i) s.126 - Applicability of - Held: Consumption of electricity in excess of sanctioned load would be unauthorized use of electricity and would attract applicability of s.126 of the Act.

(ii) s.126 - Scope of, with reference to construction of the words 'unauthorized use' and 'means' - Discussed.

(iii) s.126 and s.135 - Distinction between - Discussed.

(iv) s.126 - Assessment and computation under - Manner of - Discussed.

(v) s.127 - Appealable order - Held: In view of the language of s.127 of the Act, only a final order of assessment passed u/s.126(3) is an order appealable u/s.127 and a notice-cum-provisional assessment made u/s.126(2) is not appealable - Thus, High Court should normally decline to

interfere in a final order of assessment passed by the assessing officer in terms of s.126(3) in exercise of its jurisdiction under Art. 226 of the Constitution.

(vi) s.127 - Statutory alternative remedy available u/s.127 - Writ petition - Scope of interference with provisional order of assessment/show cause notice - Held: Keeping in view the functions and expertise of the specialized body constituted under the Act including the assessing officer, it would be proper exercise of jurisdiction, if writ court upon entertaining and deciding the writ petition on a jurisdictional issue, remand the matter to the competent authority for its adjudication on merits and in accordance with law - In the instant case, High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order - However, High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case- Constitution of India, 1950 - Art.226.

(vii) Salient features of the Act - Discussed.

(viii) Legislative history and object of enactment - Discussed.

(Also see under: Constitution of India, 1950; and Interpretation of Statutes).

The Executive Engineer and Anr. v. M/s Sri Seetaram Rice Mill 211

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952:

(i) s.11(2) - Priority of payment of contributions over other debts - Non-obstante clauses contained in s.11(2) of the EPF Act and s.529A of the Companies Act - Interpretation of - Held: By virtue of non-obstante clause contained in s.11(2) of the EPF Act, any amount due from an employer is deemed to be first charge on the assets of the establishment and is payable in priority to all other debts including the debts due to a bank, which falls in the category of the secured creditors - It cannot be said that the non-obstante clause contained in subsequent legislation i.e. s.529A(1) of the Companies Act prevails over the similar clause contained in s.11(2) of the EPF Act - The effect of s.529A is only to expand the scope of the dues of workmen and place them at par with the debts due to secured creditors and there is no reason to interpret this amendment as giving priority to the debts due to secured creditor over the dues of provident fund payable by an employer - Companies Act, 1956 - s.529A.

(ii) Object of the enactment - Discussed. (Also see under: Companies Act, 1956; and Interpretation of Statutes).

Employees Provident Fund Commissioner v. O.L. of Esskay Pharmaceuticals Ltd. 336

EQUITY:
(See under: Service Law) 615

EVIDENCE:

(i) Inconsistency between medical evidence and ocular evidence - Effect of - Held: The ocular

evidence would have primacy unless it is established that oral evidence is totally irreconcilable with the medical evidence.

(ii) Testimony of related witness - Held: Evidence of related witness can be relied upon provided it is trustworthy - However, such evidence required to be carefully scrutinized and appreciated before reaching to a conclusion on the conviction of the accused in a given case.

(iii) Contradictions between narrations of witnesses - Effect of - Held: Even if there are minor discrepancies between the narrations of witnesses when they speak on details, unless such contradictions are of material dimensions, the same should not be used to discard the evidence in its entirety - Trivial discrepancy ought not to obliterate the otherwise acceptable evidence. (Also see under: Penal Code, 1860).

Rakesh & Anr. v. State of Madhya Pradesh

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EVIDENCE ACT, 1872:

(1) ss.74, 76, 77 and 78 - Compromise decree - Admissibility of - Held: Compromise decree is a public document in terms of s.74 - Certified copy of public document prepared u/s.76 is admissible in evidence u/s.77 - In the instant case, a decree was passed and drafted in the light of the compromise entered into between the parties and a certified copy of such document was produced before the court, therefore, there was presumption as to genuineness of such certified copy u/s.78 - The compromise had merged into the decree and had become part and parcel of it - Judgment and

decree passed by lower appellate court as affirmed by High Court was based upon proper appreciation of the terms of compromise - Interference by Supreme Court not called for - Constitution of India, 1950 - Art. 136.

Jaswant Singh v. Gurdev Singh & Ors. 282

(2) s.114(b) and s.118.

(See under: Penal Code, 1860) 1030

HIGH COURT:

(See under: Jurisdiction)540

INDUSTRIAL DISPUTES ACT, 1947:

s.2(ra) and V schedule.

(See under: Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971) 1157

INSURANCE:

Third party insurance.

(See under: Motor Vehicles Act, 1988) 618

INTERIM ORDER:

Relief - Held: Interim relief, which has tendency to allow the final relief claimed in the proceedings, should not be granted lightly.

(Also see under: Rules and Regulations of Supreme Court Bar Association)

Supreme Court Bar Association and others v. B.D. Kaushik 736

INTERPRETATION OF STATUTES:

(1) Conjunction 'or' - Interpretation.

(See under: Army Act, 1950) 793

(2) (i) Contextual interpretation - Held: It is rule of

interpretation that every part of the statute must be interpreted keeping in view the context in which it appears and the purpose of legislation - Another rule is that if two special enactments contain provisions which give overriding effect to the provisions contained therein, then the Court is required to consider the purpose and the policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions.

(ii) Social welfare legislation - Interpretation of - Held: A legislation made for the benefit of workers must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Arts. 38 and 43 of the Constitution - Constitution of India, 1950 - Arts. 38 and 43 - Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(iii) Non-obstante clause - Interpretation of. (Also see under: Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and Companies Act, 1956).

Employees Provident Fund Commissioner v. O.L. of Esskay Pharmaceuticals Ltd 336

(3) (i) Purposive interpretation - Held: The statute should be read as a whole - Its different provisions may have to be construed together to make consistent construction of the whole statute relating to the subject matter - A construction which will improve the workability of the statute, to be more effective and purposive, should be preferred to any other interpretation which may lead to undesirable results.

(ii) Expressions 'means', 'means and includes' and 'does not include' - Interpretation of - Held: When the Legislature has used a particular expression out of these three, it must be given its plain meaning while even keeping in mind that the use of other two expressions has not been favoured by the Legislature.

(iii) Fiscal and penal laws - Interpretation of.

(iv) Object and reason of enactment - Relevance of.

(v) Discussions of Standing Committee - Relevance of.

(Also see under: Electricity Act, 2003).

The Executive Engineer and Anr. v. M/s Sri Seetaram Rice Mill 211

INVESTIGATION/INQUIRY:

(1) CBI enquiry - Held: A constitutional court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary to do so in order to do complete justice and make the investigation credible - However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard - CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities.

(Also see under: Code of Criminal Procedure, 1973; Constitution of India,

1950; and Jurisdiction).

State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc. 540

(2) Investigation - Role of Investigating Officer - Held: Investigating Officer is supposed to investigate an offence avoiding any kind of mischief or harassment to either of the party - He has to be fair and conscious so as to rule out any possibility of bias or impartial conduct so that any kind of suspicion to his conduct may be dispelled and ethical conduct is absolutely essential for investigative professionalism - Investigation into a criminal offence must be free from all objectionable features or infirmities which may legitimately lead to a grievance to either of the parties that the investigation was unfair or had been carried out with an ulterior motive which had an adverse impact on the case of either of the parties.

Mohd. Imran Khan v. State (Govt. of NCT of Delhi) 1030

JUDGMENTS/ORDERS:

(1) Consistency in judicial pronouncements. (See under: Land Acquisition Act, 1894) 414

(2) Directions or orders issued by Supreme Court - Held: Must be abided by within the four corners of the legal framework and statutory provisions - State Government is not allowed to transgress the express legal provisions and procedure thereunder in the garb or guise of implementing the Court's guidelines or directions.

Devender Kumar Tyagi and Ors. v. State of U.P. and Ors. 641

(3) Review/alteration of judgment - Permissibility
- Held: There is no power with the criminal court to review after judgment is rendered.

*State of Punjab v. Davinder Pal Singh
Bhullar & Ors. etc* 540

JUDICIAL BIAS:

Disability to act as an adjudicator - Held: Suspicion or *bias* disables an official from acting as an adjudicator - Mere ground of appearance of *bias* and not actual *bias* is enough to vitiate judgment/order - Judgment which is result of *bias* or want of impartiality is a nullity.

(Also see under: Code of Criminal Procedure, 1973; Constitution of India, 1950; and Waiver).

*State of Punjab v. Davinder Pal Singh
Bhullar & Ors. etc* 540

JUDICIAL DISCIPLINE:

(See under: Jurisdiction). 540

JUDICIARY:

(1) Judicial Service - Benefit of increase in retirement age of Judicial Officer from 58 years to 60 years - Grant of - Considerations of continued usefulness in service - Held: A Judicial Officer may have a service record not tainted by many adverse remarks; he may have got promotion from time to time but still he may be found to be lacking in potential for continued useful service - In assessing potential for continued useful service, the entire record of service, character rolls, quality of judgments are of

considerable importance - At the same time, overall reputation of a Judge in the entire period of service, his judicial conduct, objective and impartial performance throughout his career are the relevant factors which also have to be kept in mind.

(Also see under: Constitution of India, 1950).

*High Court of Judicature, Patna v.
Shiveshwar Narayan and Anr.* 51

(2) Judicial Service - Judicial officer not promoted in the substantive vacancy to Uttar Pradesh Higher Judicial Service - Reverted as Civil Judge (Senior Division) - On basis of remarks given by the District Judge in the ACR of the officer that he was most irresponsible and indisciplined officer - Held: The remarks having been expunged/substituted, the officer could not be considered an irresponsible or indisciplined officer on the basis of remarks recorded by the District Judge - By the non-consideration of the effect of expunction of adverse entries in ACR, the officers's case for promotion in the substantive vacancy in UPHJS under the 1975 Rules by the selection committee and by the full court got seriously and vitally affected - The matter for appellant's promotion in the substantive vacancy in UPHJS thus needed re-consideration in accordance with law - Uttar Pradesh Higher Judicial Service Rules, 1975 - r. 22.

Pratap Singh v. State of U.P. & Anr. 827

JURISDICTION:

(1) Conferment of jurisdiction - Held: Is a legislative function and it can neither be conferred with the

consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the root of the cause - Such an issue can be raised at any belated stage of the proceedings including in appeal or execution - Court cannot derive jurisdiction apart from the statute.

Kanwar Singh Saini v. High Court of Delhi 972

(2) High Court - Held: A Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court only if the case is allotted to him or them by the Chief Justice - Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court - A Judge cannot choose which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice - Judicial discipline - High Court.

(Also see under: Code of Criminal Procedure, 1973; Constitution of India, 1950; Jurisdiction; and Investigation/inquiry).

State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc 540

(3) Jurisdiction of Civil Court.
(See under: Social Status Certificate) 1092

LABOUR LAWS:

(1) Promotion of workman to executive cadre - Effect of - Held: Once an employee is placed in the Executive cadre, he ceases to be a workman and also ceases to be governed by Settlements

arrived at between the Management and the workmen through the Trade Union concerned - Such Settlements by operation of law, cease to have any binding force on the employee so promoted by the Management - Service Law.

AIR India Cabin Crew Assn. & Ors. v. Union of India & Ors. 843

(2) (i) Unfair Labour Practice - Changed economic scenario - Effect of - Held: In the changed economic scenario, the concept of unfair labour practice is also required to be understood in the changed context - Today every State, which has to don the mantle of a welfare state, must keep in mind the twin objectives of industrial peace and economic justice and the courts and statutory bodies while deciding what unfair labour practice is must also be cognizant of these objects.

(ii) Unfair Labour Practice - Concept of - Held: Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness - If unfair labour practice is established the same would bring about a violation of guarantee under Art.14 of the Constitution - Therefore, anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same - Constitution of India, 1950 - Art.14.

(Also see under: Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971)

Siemens Ltd. & Another v. Siemens Employees Union & Anr. 1157

LAND ACQUISITION ACT, 1894:

(1) (i) ss.4 and 6, proviso - Period of limitation for declaration u/s 6 - Held: Publication of Notification in two Hindi newspapers having circulation in the locality amounts to ample compliance with the requirement of the publication u/s.4(1) - In view of that, the subsequent publication of English translation of the said Notification in two newspapers would be unnecessary and would not extend the period of limitation envisaged in the proviso to s.6(1) Notification u/s.4(1) was made on 4.7.2006 - The declaration u/s.6 was issued on 18.12.2007, which was clearly beyond the period of limitation of one year as mandated by the proviso to s.6(1) of the LA Act.

(ii) ss.5-A, 17(1) and 17(4) - Construction of Leather City Project - Invoking of urgency provision u/s 17(1) - Elimination of enquiry u/s.5-A - Held: Acquisition of land for public purpose by itself shall not justify the exercise of power of eliminating enquiry u/s.5-A in terms of s.17(1) and s.17(4) - Court should take judicial notice of the fact that certain schemes or projects, such as the construction of Leather City Project for public purpose, which contemplate the development of residential, commercial, industrial or institutional areas, by their intrinsic nature and character require investment of time of a few years in their planning, execution and implementation - The government functionary had proceeded at very slow pace at two levels, that is, prior to the issuance of the Notification u/s.4 and post the issuance of the Notification u/s.4, for acquisition of the land for construction of Leather City Project,

which undoubtedly is a public purpose - Thus, the respondents were not justified in invoking the urgency provisions u/s.17 thereby, depriving the landowners of their valuable right to raise objections and opportunity of hearing before the authorities in order to persuade them that their property may not be acquired - Therefore, the land acquisition for said public purpose does not justify the elimination of enquiry u/s.5-A.

(iii) s. 27.

(Also see under: National Capital Region Planning Board Act, 1985)

Devender Kumar Tyagi and Ors. v. State of U.P. and Ors.

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(2) (i) ss. 18 and 23 - Land acquisition - Award - Reference u/s.18 - Right of landowner to amend the amount claimed in the reference application and seek higher compensation - Limitation period for such amendment - Held: The period of limitation in s.18 has nothing to do with specifying the amount of compensation claimed - If the reference is in regard to objection to the amount of compensation, the reference court can permit amendment of the claim relating to compensation - Even as per the Bombay Court Fees Act, if the claim is amended later, additional court fee may have to be paid - Bombay Court Fees Act, 1959 - Schedule I, Entry 15.

(ii) ss. 18 and 23 - Reference u/s.18 - Landowner seeking increase in compensation for the trees or structures also, before the reference court - Held: Reference court will have complete jurisdiction to decide the compensation for the

land, buildings and trees and other appurtenances - It will also have the power to entertain any application for increasing the compensation under whatever head - The fact that the landowner had sought increase only in regard to the land in the application for reference, will not come in the way of the landowner seeking increase even in regard to trees or structures, before the reference court.

(iii) s.23 - Compensation for trees or well separately - Held: If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately - But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees - Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise - In the instant case, value of the trees could be added to the value of the land.

(iv) s.18(3) - Role of Land Acquisition Collector - Held: Land Acquisition Collector is not a court - When he determines the compensation, he does not adjudicate, but merely makes an offer for the acquired land, on behalf of the government - If the land owner makes a request within the prescribed period, for reference u/s.18, the Land Acquisition Collector is bound to refer the matter to civil court for determination of the compensation - Neither the act of making an award nor the act of referring

the matter to a civil court are judicial functions, but are administrative functions - Sub-s. (3) of s.18 of the Act (added in Maharashtra) providing that the Land Acquisition Collector shall be deemed to be a court subordinate to the High Court, is only for the limited purpose of enabling a revision u/s.115 of CPC to be filed against the order of the Collector u/s.18, and not for any other purpose.

(v) s.18 - Acquisition of land - Court fee while seeking reference to civil court - In Maharashtra and Gujarat, land losers required to pay half of the *ad valorem* court fee - State Governments asked to consider giving appropriate relief to the land losers by providing for a nominal fixed court fee, on the application for reference, instead of *ad valorem* court fee - Court Fees - Bombay Court Fees Act, 1959 - Schedule I Entry 15.

Shri Ambya Kalya Mhatre (d) Through legal heirs & Ors. v. State of Maharashtra

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(3) s.23 - Market value - Assessment of, on basis of the exemplar sale transaction - Deductions - Acquisition of un-irrigated, undeveloped agricultural land - Held: It is essential to earmark appropriate deductions, out of the market value of an exemplar land - Methodology explained - High Court limited deductions under the head of "development" to 55 percent, which does not call for interference - Deduction of 10 per cent under the head of 'de-escalation' is appropriate specially when the period in question exceeded 1 year 7 months and 17 days - Deduction of 5 per cent towards waiting period is upheld - Cumulatively these deductions would amount to 70 percent which is within the parameters laid down by

Supreme Court - High Court rightly awarded final compensation relying on its own judgment in an earlier case which pertained to acquisition of land out of the same notification under which appellants' land was acquired - Consistency in the judicial determination is of utmost importance - City Improvement Trust Board Act, 1976 - s. 15(1).

Chandrashekar (D) By Lrs. & Ors. v. Land Acquisition Officer & Anr. 414

(4) Acquisition of land - Determination of market value for dwelling houses for the employees of NFL - Held: Division Bench of the High Court took into consideration the fact that the land in KS's case was located in the heart of the town, whereas the land acquired in the instant case was slightly away and was located adjacent to the existing colony of the NFL - No merit in the submission that a cut of 60% should have been applied to the rate as determined in KS's case considering the larger size and lower quality of the land acquired in the present case - The cut applied by the Division Bench of the High Court in the impugned judgment so as to reduce the value from Rs.176/- per sq. yard to Rs.120/- per sq. yard was just and reasonable.

National Fertilizers Ltd. v. Jagga Singh (Deceased) through L.Rs.& Anr. 809

LEGAL SERVICES AUTHORITIES ACT, 1987:

s.21 - Interpretation of - Award of settlement passed by Lok Adalat in a criminal case u/s.138 of the Negotiable Instruments Act referred to it by criminal court - Execution as a decree of a civil court - Held: In view of the unambiguous language

of s.21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that court - Even if a matter is referred by a criminal court u/s.138 of the Negotiable Instruments Act, by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court - Negotiable Instruments Act, 1881- s.138.

K.N. Govindan Kutty Menon v. C.D. Shaji 447

LIABILITY:

Vicarious liability.
(See under: Motor Vehicles Act, 1988) 618

LIMITATION ACT, 1908:

Article 120.
(See under: Limitation Act, 1963) 299

LIMITATION ACT, 1963:

(i) Article 58 - Suit for declaration of title and injunction - Period of limitation - Held: Period prescribed under art. 58 begins to run when the right to sue first accrues - If a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues - Successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued - In the instant case, the cause of action will be deemed to have accrued to the appellants in December, 1990 and the suit filed in 2000 was clearly barred by time -- The plaintiffs who not only made encroachment on the public land, but also abused the process of the court are

saddled with cost quantified at Rs.5 lacs - Delhi Municipal Corporation Act, 1957 - s.507 - Delhi Development Act, 1957 - s.22(1).

(ii) Article 58 - Differences between Art. 58 of the 1963 Limitation Act and art.120 of the 1908 Limitation Act - Discussed - Limitation Act, 1908 - Art. 120.

Khatri Hotels Private Limited & Anr. v. Union of India & Anr. 299

LOK ADALATS:

Execution of award passed by Lok Adalat in a case u/s 138 of Negotiable Instruments Act, 1881. (See under: Legal Services Authorities Act, 1987) 447

MADHYA PRADESH EDUCATIONAL SERVICE (COLLEGIATE BRANCH) RECRUITMENT RULES, 1967:

r.13(5). (See under: Service Law) 469

MAHARASHTRA RECOGNITION OF TRADE UNIONS AND PREVENTION OF UNFAIR LABOUR PRACTICES ACT, 1971:

(i) ss.26, 27, 28 r/w s.30(2) and Schedule IV, item No. 9 - Unfair Labour Practice - Appellant-company's notification dated 3rd May, 2007 for workmen employed in its factory, to be selected as 'Officer Trainee' and after successful completion of two years, the trainees were to be designated as 'Junior Executive Officers' - Legality of - Held: In the instant case no malafide was alleged against the appellant-company - No allegation of victimization was made by the

respondent-union in its complaint - It cannot be said that by introducing the scheme of promotion, to which the workers overwhelmingly responded on their own, the management indulged in unfair labour practice -However, it is made clear that in implementing the scheme the management of appellant-company would not bring about any retrenchment of the workmen nor any workmen be rendered surplus in any way.

(ii) s.26 and 27 and Schedule II, III and IV - Unfair Labour Practice - Difference between provisions relating to unfair labour practices in the Maharashtra Act and those in Industrial Disputes Act - Held: Industrial Disputes Act prohibits an employer or workmen or a trade union from committing any unfair labour practice while the Maharashtra Act prohibits an employer or union or an employee from engaging in any unfair labour practice - The prohibition under the Industrial Disputes Act is aimed at preventing the commission of an unfair labour practice while the Maharashtra Act mandates that the parties concerned cannot be engaged in any unfair labour practice - The word 'engage' is more comprehensive in nature as compared to the word 'commit' - Industrial Disputes Act, 1947 - s.2(ra) and Vth schedule.

Siemens Ltd. & Another v. Siemens Employees Union & Another 1157

MAHARASHTRA SCHEDULED TRIBES (REGULATION OF ISSUANCE AND VERIFICATION OF) CERTIFICATE RULES, 2003: r.11 - Caste Claim - Genuineness of -

Determination - Caste certificate issued to appellant by Sub-Divisional Magistrate certifying that he belonged to 'Halbi' Scheduled Tribe - Cancelled by Caste Scrutiny Committee - Held: The documentary evidence produced by appellant in support of his claim was lightly brushed aside by the Caste Scrutiny Committee - From the documents produced by the appellant, it appears that his near paternal relatives had been regarded as belonging to the 'Halbi' Scheduled Tribe - Claim of appellant deserves to be re-examined and, therefore, is remitted back to Caste Scrutiny Committee for consideration afresh - Constitution (Scheduled Tribes) Order, 1950.

Anand v. Committee for Scrutiny and Verification of Tribe Claims and Ors. 386

MAXIMS:

(1) *'Dura lex sed lex.*
(See under: Service Law) 615

(2) Maxim, "*sublato fundamento cadit opus*".
(See under: Code of Civil Procedure, 1908) 972

MOTOR VEHICLES ACT, 1988:

ss. 146 and 149 r/w ss.2(30) and 103(1-A) - Insurance policy - Third party risk - Insured vehicle of a private owner plying under an agreement with State Road Transport Corporation - Accident - Liability to pay compensation to victims - Held: Is of the Insurance Company - The liability to pay compensation is based on a statutory provision - Compulsory Insurance of the vehicle is meant for the benefit of the 'Third Parties' - The purpose of compulsory insurance in the Act has been enacted

with an object to advance social justice - The vehicle was given on hire by its owner - It would be deemed that the vehicle was transferred with its insurance policy - Thus, the Insurance Company cannot escape its liability to pay the compensation - Insurance - Vicarious liability - Social justice.

Uttar Pradesh State Road Transport Corporation v. Kulsum & Ors. 618

NATIONAL CAPITAL REGION PLANNING BOARD ACT, 1985:

(i) Object of the Act - Discussed.

(ii) s.19 - Absence of grant of approval of Sub-Regional plan by NCRPB - Held: Would vitiate the acquisition proceedings - In the instant case, the respondents had authorized the NCRPB to prepare Sub-regional plan of construction of the Leather City Project at Hapur in the district of Ghaziabad - Subsequently, the NCRPB issued a draft Sub-regional plan, wherein the Leather City Project was not mentioned - The respondents had made several requests to NCRPB to include Leather City Project but no reply granting approval has come in terms of s.19(2) of the NCRPB Act - Therefore, the acquisition of land in the absence of express approval in terms of s.19 and operation of s.27 of the LA Act renders the entire acquisition proceedings illegal and hence vitiated - Land Acquisition Act, 1894 - s.27.
(Also see under: Land Acquisition Act, 1894)

Devender Kumar Tyagi and Ors. v. State of U.P. and Ors. 641

NATIONAL COUNCIL FOR TEACHER EDUCATION
ACT, 1993:

Teachers Training Examination - Held: NCTE Act had no application for any period prior to academic sessions 1995-1996 - The appellants who undertook teachers training course in the College which had a valid recognition of the State Government during the academic sessions 1985-1987 to 1993-1995 were entitled to take the examinations conducted by the Board - Board directed to conduct the examination for the appellants as early as possible - Education/Educational Institutions.

Pushpa Kumari & Ors. v. The State of Bihar & Ors. 203

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138.
(See under: Legal Services Authorities Act, 1987). 447

NEW OKHLA INDUSTRIAL DEVELOPMENT AREA
(PREPARATION AND FINALIZATION OF PLAN)
REGULATIONS, 1991:

(See under: Town Planning) 877

PENAL CODE, 1860:

(1) ss.84, 302, 295 and 449 - Murder - Plea of insanity - Maintainability of - Respondent caused death of the victim by hurling a stone on his head - Conviction by trial court - Acquittal by High Court primarily on the ground that at the time of incident, accused was a person of unsound mind within meaning of s.84 - Held: Oral and documentary evidence clearly showed that respondent was suffering from epileptic attacks just prior to the

incident - After his arrest, he was treated for insanity, while in jail - There was evidence to show continuous mental sickness of the respondent - High Court on the basis of documentary and oral evidence had taken a view which was a possible view and could not be termed as perverse or being supported by no evidence.

(Also see under: Criminal Law; and Appeal).

State of Rajasthan v. Shera Ram @ Vishnu Dutta 485

(2) ss. 193, 420, 120-B - Criminal complaint by respondent against appellants for allegedly making false statements in judicial proceedings before the Rent Controller - Application containing the said allegation also filed before Rent Controller in Rent Application filed by appellant No.1 - Rent Controller disposed of the application holding that the complaint filed u/ss. 193, 420, 425 was yet to be decided and there was, therefore, no question of initiation of any action against the appellant on the basis of the said complaint - Issuance of summons against appellants by Judicial Magistrate to face trial u/ss. 193/120-B - Held: Rent Controller, being a creature of statute, could exercise only such powers as had been vested in him by the statute - Though the Rent Controller discharges quasi-judicial functions, he is not a court, as understood in the conventional sense and he cannot, therefore, make a complaint u/s. 340 Cr.P.C. - Thus, a complaint could be made by a private party in the proceedings - There is no reason to quash the proceedings in which the appellants were summoned - East Punjab Urban

Rent Restriction Act, 1949 - s. 13.

Iqbal Singh Narang & Ors. v. Veeran Narang 463

(3) s.302 - Murder - Conviction - Held: Prompt and early reporting of the occurrence by the witness (nephew of deceased) with all its vivid details gave assurance regarding truth of its version - The other circumstances particularly, the statements of the Investigating Officer and another witness, the arrest of the accused, and recovery of weapons on their disclosure statements proved the prosecution case - Conviction upheld.

(Also see under: Criminal Trial; and Evidence).

Rakesh & Anr. v. State of Madhya Pradesh 34

(4) s.302 - Murder - Death penalty - Concept of 'rarest of rare' case - Mitigating circumstances - Murder of two children, aged 4½ years, and 8 months - Conviction u/s.302 and sentence of death awarded by trial court upheld by High Court - Held: State failed to show that the appellant was a continuing threat to society or that he was beyond reform and rehabilitation - This was certainly a mitigating circumstance which the High Court failed to take into consideration - For a person convicted of murder, life imprisonment is the rule and death sentence, an exception, and the mitigating circumstances must be given due consideration - Except in 'rarest of rare cases' and for 'special reasons' death sentence cannot be imposed as an alternative option to imposition of life sentence - The death sentence substituted by imprisonment for life - Code of Criminal Procedure, 1973 -

s.354(3).

(Also see under: Code of Criminal Procedure, 1973; and Sentence/Sentencing).

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(5) (i) s.376 - Rape - Age of prosecutrix -Margin of error in age ascertained by radiological examination - Held: The medical report and the deposition of the Radiologist cannot predict the exact date of birth, rather it gives an idea with a long margin of 1 to 2 years on either side.

(ii) s.376 - Rape - Testimony of prosecutrix - Appreciation of - Held: The statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration - The court may convict the accused on the sole testimony of the prosecutrix - On facts, the trial court found no reason to disbelieve the prosecutrix - The evidence of rape stood fully corroborated by the medical evidence - Conviction of accused-appellants upheld - Evidence Act, 1872 - s.114(b) and s.118.

(iii) s.376 r/w s.34 - Conviction under, for rape of minor - Issue of sentencing - Trial Court had sentenced the accused-appellants to RI for 7 years - Held: High Court after taking into consideration all the circumstances, reduced the sentence from 7 years to 5 years which was less than the minimum prescribed sentence for the offence - Not a fit case to reduce the sentence further - Sentence/Sentencing.

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(6) s. 376(2)(g), proviso and s. 342 - Rape and wrongful confinement -Imposition of 10 years rigorous imprisonment with fine - Upheld by High Court - Held: Accused have already undergone about 3 ½ years imprisonment - Section 376 is a non-compoundable offence - However, considering the fact that the incident is 14 years old and that the parties have themselves entered into a compromise, while upholding the conviction of the accused-appellants, the sentence is reduced to the period of already undergone in view of the proviso to s. 376(2)(g) - However, fine enhanced to Rs. 50,000/- - Sentence/Sentencing.

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(2) *Ratio decidendi* - Held: A decision is an authority for what it decides and not what can logically be deduced therefrom - Further, the ratio of a case must be understood having regard to the fact situation obtaining therein.

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(3) (See under: Appeal)540

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habeas corpus is barred by principles of *res judicata* - The doctrine of *res judicata* may not apply in case a writ petition under Art. 32 of the Constitution is filed before Supreme Court after disposal of a *habeas corpus* writ petition under Art. 226 of the Constitution by the High Court - However, it is not possible to re-approach the High Court for the same relief by filing a fresh writ petition - In case, a petition by issuing writ of *habeas corpus* is dismissed by the High Court and Special Leave Petition against the same is also dismissed, a petition under Art. 32 of the Constitution, seeking the same relief would not be maintainable - There may be certain exceptions to the rule - A subsequent petition of *habeas corpus* on fresh grounds which were not taken in the earlier petition for the same relief may be permissible.

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

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- Held: The concept of voting introduced by amendment of r. 18 cannot be regarded as illegal or unconstitutional - The right to vote or contest election is not an absolute right - It is neither a Fundamental Right nor a common law right, but is purely a statutory right governed by statute/ rules/ regulations and can always be restricted or abridged, if statute/ rules or regulations prescribe so - The amended r. 18 did not take away right to vote completely but put restrictions to promote and protect the privileges, interest and prestige of the SCBA - Rule 18 was also amended to promote and maintain high standards of profession amongst Members of the Bar - Civil Judge should not have granted the injunction as claimed by the plaintiffs/respondents for mere asking - Guidelines/ directions given by Supreme Court for effective implementation of the amended rule - Societies Registration Act, 1860 - s.12 - Constitution of India, 1950 - Arts. 136,142 and 145 - Code of Civil Procedure, 1908 - O. 39, rr. 1 and 2.
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(ii) Changes in sentencing structure - Evolving standards of decency - Concept of dignity of the individual - Paradigm shift in jurisprudence with gradual transition of legal regime from 'rule of law' to 'due process of law' - Constitution of India, 1950 - Art. 21.

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(3) Sentence - Remission.
(See under: Remission of Sentence) 1048

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(1) Conditions of service - Alteration of - Permissibility - Air India Cabin crew Flight Pursers and Air Hostesses - Held: Management of Air India was always entitled to alter its policies with regard to their workmen, subject to the consensus arrived at between the parties in supersession of all previous agreements - It is, in fact, the prerogative of the Management to place an employee in a position where he would be able to contribute the most to the Company - Therefore, Air India was at liberty to adopt the revised promotion policy which was intended to benefit all the employees - Air Corporation (Transfer of Undertakings and Repeal) Act, 1994 - Labour Law.

AIR India Cabin Crew Assn. & Ors. v. Union of India & Ors. 843

(2) Contract employment - Engagement of Subject Matter Experts (SMEs) in State of Bihar on contract basis for two years - Maximum age limit ranging from 37 to 42 years for different categories - Advertisement challenged as inconsistent with State Government Resolution dated 18.7.2007 which provided 65 years as maximum age limit for contract employment - Held: In the instant case, engagement of SMEs was for a period of two years and it was not against any sanctioned posts and, as such, Resolution dated 18.7.2007 was not applicable - As a necessary corollary, the maximum age limit of 65 years provided in the Resolution is not available for employment exceeding one year in temporary schemes.

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(3) Pay scale - Senior scale/selection grade - Grant of -Assistant Professors appointed through different means, modes and sources including emergency appointees in terms of r.13(5) of Recruitment Rules - Claiming benefit of the services rendered prior to their regularization, for grant of senior/selection grade pay scales - Held: Matter remanded to High Court for consideration afresh by its Principal Bench - Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 - r.13(5).

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(I) Employees appointed on *ad hoc* basis in 1988 - Their services regularised in 2004 - Claim for benefit of service from 1988 to 2004 for the purpose of seniority - Held: Admittedly, the employees were appointed after selection under the Regularization Rules in the year 2004 - Therefore, they can get seniority only from the year 2004 and not from 1988 - The rule is clear - When there is a conflict between law and equity, it is the law which has to prevail in accordance with the maxim, 'dura lex sed lex', which means, 'the law is hard but is the law' - Equity can only supplement the law, but it cannot supplant or override it - Uttaranchal Regularization of *Ad hoc* Appointments (Posts under the Purview of Public Service Commission) Rules, 2002 - r. 7 - Equity - Maxim, '*dura lex sed lex*'.

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(II) Seniority for the Posts of computer operators - Requisite qualification - Held: One should have the qualifications on the date when the applications are invited - Any such relaxation to permit unqualified candidates cannot be to the prejudice of the qualified candidates - On facts, first respondent had the necessary qualification when

he appeared for the examination, and on his appointment by direct recruitment, his probation started immediately u/r.10(1) - Appellants did not have the necessary qualification when they appeared for examination - Their appointments were purely temporary and on ad hoc basis, and they were liable to be reverted for not acquiring the necessary qualification - Their probation will start only when they get the qualification - Order of High Court accepting the legitimate seniority of first respondent above the appellants is correct - Andhra Pradesh High Court Service Rules, 1975 - rr. 7(7), 8(4), 15, 16, 23.

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up the vacuum till legislature chose to make an appropriate law - Constitution of India, 1950 - Art. 142, r/w Art. 32.

(ii) Scheduled Caste certificate - Verification of - Directions 11 and 12 in *Madhuri Patil*, excluding the jurisdiction of the civil court - Held: There is nothing irregular or improper in Supreme Court directing that orders of the scrutiny committee should be challenged only in a proceeding under Art. 226 of the Constitution and not by way of any suit or other proceedings - Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which Supreme Court wanted to eradicate - No reason why the procedure laid down in *Madhuri Patil* should not continue in the absence of any legislation governing the matter - Code of Civil Procedure, 1908 - s.9 - Jurisdiction of civil courts - Constitution of India, 1950 - Article 226 - Writ petition relating to caste certificates.

(iii) Scheduled Caste certificate - Verification of - Direction 13 in *Madhuri Patil* barring intra-court appeals against decisions of Single Judges in writ petitions - Held: The power under Art. 142 is not intended to be exercised, when such exercise will directly conflict with the express provisions of a statute - The second sentence of clause 13 providing that where the writ petition is disposed of by a Single Judge, no further appeal would lie (even when there is a vested right to file such intra-court appeal) and will only be subject to a special leave under Art.136, is not legally proper and therefore, to that extent, is held to be not a good law - The second sentence of direction No.13 stands overruled - As a consequence, wherever

the writ petitions against the orders of the scrutiny committee are heard by a Single Judge and the state law or Letters Patent permits an intra-court appeal, the same will be available - Constitution of India, 1950 - Arts.142 and 226 - 'Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhinyam, 2005 [as enacted by State of Madhya Pradesh] - Appeal - Right of appeal.

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(ii) Disciplinary action by society - Allegation of institutional *bias* - Held: Merely because all the members of a society participated in the discussion concerning the allegations, the Society

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