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(2) s.100 - Second appeal - Substantial question of law - Suits for declaration and permanent injunction - Decreed by High Court reversing the finding of first appellate court - Held: Evidence on record has established that defendants were in lawful possession of suit land by virtue of sale deeds and plaintiff had not been able to establish that he was owner thereof and, consequently, entitled to declaration of his title, recovery of possession and

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injunction - Therefore, first appellate court had decided the core issue against plaintiff and no substantial question of law arose for decision in case by High Court u/s 100 - Judgment and decree of High Court set aside.

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(3) O.22, r.4(4) - Suit for declaration, partition and injunction - Death of a non-contesting defendant - Failure of plaintiffs-respondents to bring on record LR's of such defendant - Held: Did not result in abatement of suit - Requirement of substitution of LR's of such non-contesting defendant could be legitimately dispensed with by virtue of power of exemption available under O.22, r.4(4).

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CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.31.

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(2) s. 167 (2) - Statutory bail - Charge-sheet filed within stipulated period, but cognizance not taken as sanction for prosecution had not been obtained - Held: Grant of sanction is nowhere contemplated u/s 167 - Once a charge-sheet is filed within stipulated time, question of grant of default bail or

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statutory bail does not arise - Filing of charge-sheet is sufficient compliance with provisions of s.167(2)(a)(ii) in the instant case - Merely because sanction had not been obtained to prosecute accused and to proceed to the stage of s.309 Cr.P.C., it cannot be said that accused is entitled to grant of statutory bail, as envisaged in s.167.

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(3) s.378(3) - Appeal against acquittal - High Court declining to grant leave - Held: Order of High Court is irrefragably cryptic and clearly shows non-application of mind - Despite clear law laid down by Supreme Court, High Courts, while declining to grant leave against judgments of acquittal, do not indicate reasons for formation of such an opinion - Judgments of Supreme Court, being binding on all courts, are required to be followed in letter and spirit - That is the constitutional mandate and that is the judicial discipline - Order passed by High Court set aside and matter remitted to it to pass a cogent and reasoned order relating to grant or refusal of leave - Constitution of India, 1950 - Art. 141 - Judicial discipline.

*State of Madhya Pradesh v. Giriraj Dubey* ..... 1097

(4) s.439(1) read with Art.136 of the Constitution - Bail - Hooch tragedy - A large number of persons died and other suffered serious physical injuries by consuming country made liquor containing ethyl and methyl alcohol - Held: Materials placed on record prima facie establish that appellant was not a mere supplier of spurious alcohol but he was

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involved in criminal conspiracy of manufacturing spurious liquor along with main accused and selling the same at various places through his men - Besides, appellant is a habitual offender and is facing several similar cases - There is every likelihood that if he is released on bail, he would threaten witnesses and again indulge in sale of spurious liquor - Therefore, appellant is not at all entitled to bail at this stage - Record reveals that respondent in other appeal is a prime conspirator and had indulged in illegally supplying ethyl and methyl alcohol to main accused for manufacturing country made liquor - Further, respondent is a habitual offender - There are several cases pending against him - He has also abused the bail granted to him in a different case - Court is satisfied that respondent does not deserve to continue to remain on bail - Accordingly, judgment and order passed by High Court granting him bail set aside - Constitution of India, 1950 - Art. 136.

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(5) First Schedule as amended in State of Madhya Pradesh.

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CODE OF CRIMINAL PROCEDURE (MADHYA PRADESH AMENDMENT) ACT 2007:  
First Schedule to Code of Criminal Procedure, 1973 - Amendment - Offences punishable u/ss 467, 468 and 471 made triable by Court of Session in State of Madhya Pradesh - Offence committed prior

to amendment but charge-sheet filed after amendment came into force - Held: Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against appellant was duty bound to commit the case to Court of Session - Apart from the fact that as on the date the amendment came into force no case had been instituted against appellant nor Magistrate had taken cognizance, any amendment shifting the forum of trial had to be on principle retrospective in nature in the absence of any indication in Amendment Act to the contrary - Appellant could not claim a vested right of forum for his trial for no such right is recognised - Judgment of Full Bench of Madhya Pradesh High Court overruled - Prospective overruling of judgment - Retrospective operation of amendment shifting the forum - Code of Criminal Procedure, 1973 - First Schedule as amended in State of Madhya Pradesh.

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(See under: Motor Vehicles Act, 1988) ..... 966

#### CONSTITUTION OF INDIA, 1950:

(1) Art. 136.  
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(2) Art. 141.  
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(3) Art. 226 - Writ jurisdiction - In the matter of

recovery of dues to Bank under Recovery of Debts Act - Original application filed by Bank before Debt Recovery Tribunal - Defendants filing applications before Tribunal for direction to the Bank to produce certain documents - Application dismissed - Writ Petition - Held: When specific remedy is available u/s. 20, interference in exercise of jurisdiction is not justified - Powers under Art. 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to party or where such proceedings are arbitrary, unreasonable and unfair - Intervention of the writ court has delayed the proceedings for four years defeating the very purpose and object of the Act - Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - s. 20 - Administration of Justice.

*T. P. Vishnu Kumar v. Canara Bank P. N. Road, Tiruppur & Ors.* ..... 977

(4) Arts. 226 and 227.  
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#### DOCTRINES / PRINCIPLES:

Doctrine of equality.  
(See under: Service Law) ..... 1029

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**EVIDENCE:**

Retracted statements - Evidentiary value of - Held: Adjudicating Authority and Appellate Tribunal have both correctly appreciated the legal position and applied the same to hold that the statements were voluntary and, therefore, binding upon appellants. (Also see under: Foreign Exchange Regulation Act, 1973)

*M/s Telestar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* ..... 1005

**EVIDENCE ACT, 1872:**

s.139 - Cross-examination of person called to produce a document - Held: The documents relied upon by Adjudicating Authority produced by two officials of Indian High Commission in London, were permitted to be inspected - Therefore, refusal of Adjudicating Authority to permit cross examination of witnesses producing the documents cannot even on principles of Evidence Act be found fault with.

(Also see under: Foreign Exchange Regulation Act, 1973)

*M/s Telestar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* ..... 1005

**EXCISE:**

Settlement of liquor shops.

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**EXCISE DUTY:**

Small scale exemption - Use of brand name

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"cookie man" on sale of cookies in plastic pouches/containers - Entitlement of assessee to benefit of small scale exemption in respect of cookies sold loosely from counter of retail outlet - Held: Not entitled - It is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods under SSI notification - A scrutiny of surrounding circumstances is not only permissible, but necessary to decipher the same - Cookies were sold from a dedicated outlet of "Cookie Man" where no other products but those of assessee were sold - Invoices carried the name of the company - Cookies sold even without inscription of the brand name, indicated a clear connection with brand name, in the course of assessee's business of manufacture and sale of cookies under brand name "Cookie Man" - They continued to be branded cookies of "Cookie Man" and assessee could not claim exemption under SSI Notification - S.S.I. Notification No. 1/93-C.E., dated 28th February, 1993, as amended.

*Commissioner of Central Excise, Chennai-II Commissionerate, Chennai v. M/s. Australian Foods India (P) Ltd., Chennai* ..... 932

**FIR:**

Lodgment of two FIRs - In respect of same incident - Held - Not permissible - However, concept of sameness does not encompass filing of counter FIR - Prohibition is for further complaint by same complainant and others against the same accused - In the instant case, allegations in second FIR are distinct and separate and the same may be

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regarded as counter complaint - Principle of sameness does not get attracted - Therefore, second FIR not liable to be quashed on account of existence of first FIR - Constitution of India, 1950 - Arts. 226 and 227.

*Surender Kaushik and Others v. State of Uttar Pradesh and Others* ..... 1053

**FOREIGN EXCHANGE REGULATION ACT, 1973:**

ss. 8 and 14 - Dealing in foreign exchange without previous permission of Reserve Bank - An Indian company dealing with a foreign company based in U.K. and money transactions made through another company based outside India and alleged to be a paper company - Held: There is no reason to interfere with concurrent findings of fact that company concerned was a paper company controlled by appellants from India - There is sufficient evidence on record for Adjudicating Authority and Appellate Tribunal to hold that appellants were guilty of violating the provisions of FERA that called for imposition of suitable penalty against them - Appellate Tribunal has already given relief by reducing the penalty by 50% - No further leniency warranted.

*M/s Telearstar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* ..... 1005

**GUARDIANS AND WARDS ACT, 1890:**

ss.. 7 and 26 - Applications by appellant, a female American citizen, for an order appointing her as guardian of a minor female orphan and for permission to take the child out of country for purpose of adoption - Held: Claim of appellant will

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have to be necessarily considered on the basis of law as in force on date, namely, provisions of JJ Act and Rules framed thereunder and Guidelines of 2011 which have been conferred a statutory sanction - Appellant appointed as legal guardian of the child and granted permission to take the child to USA - CARA will issue necessary conformity certificate as contemplated under clause 34(4) of Guidelines of 2011 - Juvenile Justice (Care and Protection of Children) Act, 2000 - s. 41 - Juvenile Justice (Care and Protection of Children) Rules, 2007, r. 33 - Guidelines for Adoption from India, 2006 - Guidelines Governing the Adoption of Children, 2011 - Adoption - Inter country adoption.

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**GUIDELINES FOR ADOPTION FROM INDIA, 2006:**

(See under: Guardians and Wards Act, 1890) ..... 951

**GUIDELINES GOVERNING THE ADOPTION OF CHILDREN, 2011:**

(See under: Guardians and Wards Act, 1890) ..... 951

**JAMMU AND KASHMIR STATE EVACUEES' (ADMINISTRATION OF PROPERTY) ACT, 2006:**

s. 6 - Notification published declaring lands under possession of appellants to be vested in Custodian of Evacuee Property - Whether vitiated - Held: Yes, since appellants had been denied an opportunity of explaining that they were not mere occupants of property in question, but tenants thereof, in which case, neither r.9 nor r.13-C of the 2008 Rules had

any application - Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 - rr.9 and 13C.

(ii) s. 16 - Protection under - When available - Held: It is available only in respect of evacuee property after a determination to such effect is made - A unilateral declaration is clearly opposed to principles of natural justice and administrative fair play and cannot be supported.

(iii) s. 6 - Notification declaring the land to be evacuee property - Occupants claiming to be tenants-at-will of the land since before the Act came to be enacted, filed writ petition praying inter alia that the said notification be quashed - Out of court settlement entered into between parties and filed before High Court - Occupants of lands in question had surrendered part of land in favour of Custodian of Evacuee property and remaining part in their possession to be settled with them - Pursuant to Settlement, State authorities raised constructions on the surrendered lands - But later took the stand that Settlement stood vitiated on account of non-compliance with r.13C - Held: Settlement was lawful and within the scope of r. 3 of O.23 CPC - The special facts of the case set the Agreement / Settlement apart from the cases of grant of lease of vacant lands in terms of r.13C - Since lands were not vacant, the very first criterion of r.13C, was not satisfied and lease of lands was to be granted as part of settlement packet - r.13C had no application to Settlement arrived at between parties and the same was not, therefore, vitiated

and could not be withdrawn unilaterally - Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 - r.13C - Code of Civil Procedure, 1908 - O.23, r.3.

*Ghulam Nabi Dar & Ors. v. State of J&K & Ors.* ..... 881

JAMMU AND KASHMIR STATE EVACUEES' (ADMINISTRATION OF PROPERTY) RULES, 2008:  
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JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:  
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JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007:  
r. 33.  
(See under: Guardians and Wards Act, 1890) ..... 951

## LAND ACQUISITION ACT, 1894:

ss.4 and 6 - Successive Notifications u/s.4/ declarations u/s.6 - Effect - Held: The effect would be that earlier notification/declaration stands obliterated/ superseded and in such a fact-situation, it would not be permissible for either of the parties to make any reference to said notifications/ declarations which stood superseded - However, no proceedings were taken in pursuance of subsequent notification / declaration issued in 1983 and after commencement of Amendment Act 1987, said notification / declaration stood elapsed - Thus, there can be no sanctity to any of the acquisition proceedings initiated by respondents so far as the suit land is concerned, though appellants stood dispossessed from the land in pursuance of Notification u/s.4 dated 5.3.1963 - Appellants had been dispossessed without resorting to any valid law providing for acquisition of land, thus, entitled for restoration of possession of land in dispute - However, considering the fact that possession of land was taken over about half a century ago and a full-fledged residential colony has been constructed thereon, it would be difficult for respondents to restore the possession - Respondents are, therefore, directed to make the award treating s.4 notification as, on date, i.e. 12.2.2013 - Appellants shall be entitled to all statutory remedies and benefits.

*Bhimandas Ambwani (D) Thr. Lrs. v. Delhi Power Company Limited*

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## MOTOR VEHICLES ACT, 1988:

Motor accident - Compensation for permanent disability, loss of amenities etc. - Held: Appellant at the age of eight years suffered an accident resulting into a severe injury in his right leg and creating a deformity and disability for the rest of his life - Age of appellant is, therefore, a very relevant factor while determining compensation - Accordingly, compensation enhanced to Rs. 4 lakhs with 6% interest on enhanced amount from date of petition till realization - Delay/laches.

*Kum. Michael v. Regional Manager Oriental Insurance Co. Ltd. & Anr.*

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## PENAL CODE, 1860:

(1) s. 302 - Murder - Circumstantial evidence - Courts below on the basis of motive and circumstances of the case convicted the accused - Held: Motive not proved - But absence of motive would not affect prosecution case where chain of other circumstances establish beyond reasonable doubt that accused committed the offence - Circumstances of the instant case prove prosecution case beyond reasonable doubt - As per medical evidence, majority of injuries were stated to have been caused by the weapon of crime and were sufficient in ordinary course to cause death - General good behaviour of accused has no nexus with offence alleged - Conviction upheld.

*Vivek Kalra v. State of Rajasthan*

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(2) ss. 302 and 201 - Triple murder - Circumstantial evidence - Conviction and sentence of death awarded by trial court confirmed by High Court -

Held: Chain of circumstances proved by prosecution establishes beyond reasonable doubt that it was the appellant who had eliminated three persons - Therefore, conviction of appellant u/s 302 for each of the three offences of murder is upheld - However, as regards sentence, motive for crime was not established - Further, though deceased persons appear to have been brutally killed, what exactly happened leading to their murder by appellant is not known - There is no evidence to establish the gravest case of extreme culpability of appellant and there is also no evidence to establish his circumstances - Therefore, imprisonment for life for each of the three offences of murder and the sentences to run consecutively would meet the ends of justice - Code of Criminal Procedure, 1973 - s.31 - Sentence/Sentencing - Criminal law - Motive.

*Sanaullah Khan v. State of Bihar* ..... 1079

#### PROSPECTIVE OVERRULING:

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#### RETROSPECTIVE OPERATION:

(See under: Code of Criminal Procedure,  
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#### SENTENCE / SENTENCING:

(See under: Penal Code, 1860) ..... 1079

#### SERVICE LAW:

Disciplinary proceedings - Equality in punishment  
- Held: Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences - Therefore, punishment of dismissal from service imposed on appellant is set aside and it is ordered that he be reinstated in service forthwith from the date on which the co-delinquent was re-instated, and with the same consequent benefits - Doctrine of equality.

*Rajendra Yadav v. State of M.P. & Others* ..... 1029