

# JOTI JOURNAL

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#### विधिक समस्याएँ एवं समाधान

44, 90 & 120

- (1) अपराध के संज्ञान हेतु विहित परिसीमा काल के विस्तारण हेतु क्या अभियुक्त को सुना जाना आवश्यक है? यदि न्यायालय ने परिसीमा काल पर विचार किये बिना किसी अपराध का संज्ञान कर लिया है तब क्या न्यायालय ऐसे विलंब की माफी पश्चातवर्ती प्रक्रम पर कर सकता है? परक्राम्य लिखत अधिनियम, 1881 की धारा-142 (ख) के परंतुक के अधीन संज्ञान हेतु परिसीमा काल के विस्तारण हेतु क्या प्रक्रिया होगी?
- (2) क्या एक प्रतिवादी, सह-प्रतिवादी के विरुद्ध प्रतिवादी स्थित कर सकता है? सह-प्रतिवादी के विरुद्ध प्रतिवादा लाये जाने पर न्यायालय द्वारा क्या प्रक्रिया अपनायी जानी चाहिए?
- (3) घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 की धारा 29 के अधीन कौन से आदेश सत्र न्यायालय में अपील योग्य है?
- (4) क्या सत्र न्यायालय दण्ड प्रक्रिया संहिता की धारा 438 के अधीन अभियुक्त को सम्पूर्ण विचारण अवधि के लिये अग्रिम प्रतिभूति प्रदान करने के लिये सशक्त है? यदि किसी अभियुक्त को ऐसे आदेश के अधीन विचारण के समापन तक आरक्षी केन्द्र से स्वतंत्र किया गया है तो क्या उसे अभियोग पत्र की प्रस्तुति के समय विचारण न्यायालय में पुनः प्रतिभूति प्रस्तुत करनी होगी ?
- (5) क्या एक विचारणाधीन अभियुक्त, जिसका जमानत आवेदन पत्र पूर्वतन प्रक्रम पर निरस्त हुआ है, द्वारा पश्चातवर्ती प्रक्रम पर अभियोजन साक्षियों के पक्षद्रोही होने अथवा अभियोजन का समर्थन नहीं करने के आधार पर जमानत हेतु प्रस्तुत आवेदन पत्र स्वीकार योग्य है?
- (6) धारा 145 भारतीय साक्ष्य अधिनियम के अन्तर्गत किसी साक्षी की प्रतिपरीक्षा करने और साक्षी का खण्डन करने के प्रयोजन से टेप रिकार्डर एवं अन्य इलेक्ट्रानिक अभिलेख के रूप में पूर्वतन लेखबद्ध किये गये कथनों का उपयोग करने संबंधी प्रक्रिया क्या होगी?

## PART-II

### (NOTES ON IMPORTANT JUDGMENTS)

ACT/ TOPIC	NOTE NO.	PAGE NO.
<b>ACCOMMODATION CONTROL ACT, 1961 (M.P.)</b>		
<i>Tenant – Right of pre-emption</i>		
Whether tenant has any right of pre-emption to purchase the tenanted premises? Held, No – In the existing law, the tenant did not have any such right of pre-emption in the tenanted premises to purchase the same – Once a person who enters into the premises as tenant will always remain tenant and will not acquire any right of pre-emption against the landlord to purchase the same unless some express contract takes place between the parties by their acts	1*	1
<b>Sections 3(2), 12 and 20</b> – Exemption – Appellant Trust is registered at Bombay and the property of Trust is also situated in M.P. – Held, registration of Trust under the provisions of Bombay Public Trust Act, suffice the purpose and the exemption granted u/s 3(2) of M.P. Accommodation Control Act is equally applicable for the appellant Trust		
Even if a public institution that is not covered u/s 3(2) of the Act files a suit for eviction, then too, the said institution is not governed by Section 12, but is governed by Section 20 of the Act	2	1
<b>Sections 3(2) and 20</b> – It is not necessary for the Court to examine that the income of the trust is being utilized for the welfare of the trust in connection with exemption u/s 3 of the Accommodation Control Act and for this purpose, Registrar of public trust is competent authority – Provisions of Section 20 of the Act apply in this case	63	99
<b>Section 12</b> – Relationship of landlord and tenant – Rent receipt, sale deed and agreement to resell – These three documents are on record – After due appreciation of evidence, Appellate Court found it as loan transaction and relationship of landlord and tenant is not existing	270	447
<b>Section 12</b> – Suit for eviction – Partition – Appellant inducted as tenant by father of the respondent – Respondent/plaintiff filed suit for eviction on the ground of Section 12 (1)(a) & (f) with a claim that suit shop has fallen to his share in family partition – Held, it is always open to tenant to show that partition was not <i>bona fide</i> and was a sham transaction to overcome rigours of rent control laws		
Suit for eviction – Partition – There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation amongst themselves – It is the exclusive right of lessor that whether the tenanted premises shall be retained jointly by all the lessors or they would partition it amongst themselves – No objection can be raised by the tenant particularly when from the very beginning the property was jointly owned by several persons	64*	100
<b>Sections 12, 12 (1) (a) and 12 (1) (c)</b> – Challenge as to title of landlord – Defendant after admitting the relationship as tenant is estopped from challenging the title of the landlord Arrears of rent – Appellant did not deposit the rent while it was known to him that he was the tenant in the disputed accommodation – Decree on the ground of arrears of rent cannot be said to be illegal		
Decree for eviction – In the lack of proof of relationship as landlord and tenant, on the strength of the title, the decree for eviction could be passed in favour of the landlord	191	321

ACT/ TOPIC	NOTE NO.	PAGE NO.
<b>Section 12 (1) (a)</b> – Where there is no notice for arrears of rent issued to the tenant, the Court cannot pass a decree of eviction under Section 12 (1) (a) of the Accommodation Control Act – Even compliance of Section 13 (1) of the Act is not to be done – In case where the eviction prayed on any other ground also and defence is struck off, no opportunity shall be given to the tenant to adduce evidence to revert his case on the ground of eviction		
Ground of eviction under Section 12 (1) (i) – Pleading about suitability for residence in regard to the acquired accommodation is not must but in this regard proof is required – The accommodation acquired by the spouse of tenant can also be taken into consideration in proof of this ground	128	219
<b>Section 12 (1)(a)</b> – Whether question of title can be decided in a suit for ejectment and arrears of rent? Held, Yes – The question of title can be gone into for the purpose of deciding the relationship of landlord and tenant	202	340
<b>Section 12 (1) (a) (c)</b> – A counter-claim not produced with written statement may be refused to be taken on record if issues have been framed and the case is set down for trial and more so when trial has already commenced		
A suit based on contract of tenancy, the question of title cannot be gone into like a regular suit based on title and is incidentally decided	362 (ii) & (iii)	582
<b>Section 12 (1) (c)</b> – Denial of title of landlord – When does it not make out a ground of disclaimer under Section 12 (1) (c) of the M.P. Accommodation Control Act? The tenant cannot deny the title of the landlord but in case of derivative title, tenant can certainly deny the title of the purchaser if he has no knowledge about such transaction and if he has not attorned the tenancy – No order of eviction can be passed in such circumstances	129	220
<b>Section 12 (1) (c)</b> – See Order 6 Rule 17 and Order 8 Rules 1, 6A and 9 of the Civil Procedure Code, 1908	278	458
<b>Section 12 (1) (e)</b> – Whether plaintiff is entitled for decree of eviction under Section 12 (1) (e) of the Act in absence of pleading that he is not having any other alternative suitable accommodation in his possession?		
Held, Yes – If the parties to the suit are aware of the plea involved and proceeded with the Trial Court on that basis, the question of absence of the plea cannot be raised by any of the parties – In the situation no prejudice was caused to defendant and hence, appeal dismissed	348*	563
<b>Section 12 (1) (f)</b> – Ground for eviction – A landlord cannot be non-suited on the ground that he has failed to disclose a ground for eviction in notice		
Alternative accommodation – Burden of proof – Plaintiff and his father stating that they do not have any alternative accommodation – The defendant has failed to prove that the plaintiff has any alternative accommodation – Held, the burden of proof shall be on the person who asserts the positive – Courts below erred in placing the burden of proof on the plaintiff and holding that he has no suitable alternative accommodation		
Judgment in appeal – First Appellate Court being the final Court of facts, must record its finding only after deciding the issues of law and facts – The appellate Court is under an obligation to give its reason in support of its conclusion	130	222

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<b>Section 12 (1) (f)</b> – Landlord – Entitlement of eviction decree against the tenant – Condonation of delay in compliance of Section 13 of the Act on the ground that tenant was suffering from diabetes was not proper – Trial Court committed error – Landlord is entitled to get decree also on the ground of Section 12 (1) (a) of the Act		
Establishment of <i>bonafide</i> requirement – Tenant having experience of business of readymade garments which she was doing from her house on the first floor – She wants eviction of tenant on the ground that the ground floor will be more convenient for such commercial activities – In the circumstances, trial Court committed error in not passing decree of eviction	131	223
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<b>Section 13(6)</b> – Delay in deposit of rent – Order for striking of defence passed – Application for review filed along with rent receipts also rejected – Held, tenant was not in arrears of rent and he had deposited all the arrears of rent in compliance of order and thereafter in accordance with provision as contained u/s 13(1) of the Act – Trial Court erred in rejecting application for review – Petition allowed	3*	2
<b>Section 18 (3)</b> – Eviction suit of the applicant was decreed by the Court on the ground enumerated under Section 12 (1) (h) of the M.P. Accommodation Control Act, 1961, subject to provision of Section 18 of the said Act – In compliance of such decree, the premises was vacated by the respondents – But newly constructed premises was not handed over to the respondent by plaintiff – Respondent filed an application under Section 18 (3) of the Act and after holding the inquiry, the executing court came to the conclusion that the respondents are entitled to get possession of the premises – Warrant of possession rightly issued	65	100
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<b>Sections 8, 11, 34 and 48</b> – In an application under Section 8 of the Arbitration and Conciliation Act, 1996, in pending suit, the Court has to decide all aspects of arbitrability of the dispute even if arbitration agreement exists between the parties – If the subject matter of the suit is capable of adjudication only by a public forum or relief claimed can only be granted by a Court or Tribunal, the Court may reject such application – Issues to be decided by Court prior to referring disputes to arbitration – Enumerated		
Not only filing of the written statement in a suit, but filing of any statement, application, affidavit by a defendant prior to the filing of the written statement will be construed as “submission of a statement on the substance of the dispute”, if by filing such statement/ application/affidavit, the defendant shows his intention to submit himself to the jurisdiction of the court and waives his right to seek reference to arbitration – But filing of a reply by a defendant, to an application for temporary injunction/attachment before judgment/ appointment of Receiver, cannot be considered as submission of a statement on the substance of the dispute, as that is done to avoid an interim order being made against him		
An agreement to sell or an agreement to mortgage does not involve any transfer of right <i>in rem</i> but creates only a personal obligation – Therefore, the claim for specific performance will be arbitrable – A suit for enforcement of a mortgage being the enforcement of a right <i>in rem</i> , will have to be decided by the Courts of law and not by Arbitral Tribunals – Even in a mortgage suit, bifurcation of arbitral/non-arbitral issues is not permissible – Such mortgage suit has to be adjudicated as a whole	192	322
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<b>Sections 31 (5) and 34 (3)</b> – The delivery of an arbitral award under Section 31 (5) is not a matter of mere formality – Copy of the award is to be received by the party – If one of the parties in arbitration is a Government or a Statutory Body or a Corporation, which has notified holidays or non-working days and the award is delivered or deposited or left in the office of a party on a non-working day, the date of such physical delivery is not the date of “receipt” of the award by that party	196 (i)*	330
<b>Sections 31 (5) and 34 (3)</b> – If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by law	197	331
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The Arbitral Tribunal cannot go behind the terms of reference but in exceptional circumstances where the party pleads that the demand of a party is beyond the terms of contract and statutory provisions, the Tribunal may examine by the terms of contract as well as the statutory provisions – In the absence of proper pleadings and objections, such a course may not be permissible	351 (i) & (ii)*	565
<b>Sections 34 and 31 (7) (a)</b> – Whether the Arbitration Tribunal can award <i>pendene lite</i> interest even if it is barred in the contract? Held, the Arbitration Tribunal has no power to award interest from the date of cause of action to the date of order ( <i>pendente lite</i> ) if it is specifically barred in the contract – In such case, only future interest can be awarded	6*	9
<b>Section 34 (2)(b)(ii), Expln.</b> – Award can be set aside if it is induced by fraud or corruption as it is against public policy		
Expression “making of award was induced or affected by fraud” cannot be narrowly construed – The fact surfaced subsequent is also relevant and considerable and can be brought on record by making application to amend the pleading	7	9
<b>Section 34 (3)</b> – The provisions of Section 14 of the Limitation Act would apply to an application under Section 34 of the Arbitration and Conciliation Act, 1996 even though the period of limitation will continue to be three months (subject to extension under the proviso to sub-section (3) of Section 34 of the Act) but in computing the limitation period of three months for the application under Section 34 (1) of the Arbitration and Conciliation Act, the time during which the applicant was prosecuting the matter <i>bonafidely</i> and with due diligence before the wrong court will have to be excluded	67*	103



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<b>CIVIL PRACTICE</b>		
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<b>CIVIL PROCEDURE CODE, 1908</b>		
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Section 9 – A Civil Court can entertain any suit of civil nature except those in which cognizance is expressly or impliedly barred – Execution of jurisdiction not to be readily inferred	325 (iv)	538
Section 9 – Jurisdiction of Civil Court as to dispute regarding dismissal from service – Employee asserted that departmental enquiry as contemplated under Standing Orders ought to have been held before issuance of the order of dismissal – Such right, if available, could have been enforced only by raising an industrial dispute and not in the civil suit –		

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<b>Section 9</b> – Jurisdiction of Civil Court – Bag containing all the share certificates of the plaintiff along with transfer deeds were misplaced and lost – Suit filed by plaintiffs to declare that defendant should not transfer the share certificates to any other person and also to issue duplicate share certificates – Held, Civil Court is not having any jurisdiction to try such type of suit	354	570
<b>Section 9</b> – Maintainability of Civil Suit – Collector while deciding objection did not adjourn the case with a direction of filing civil suit for declaration of title – Collector after inquiry declared the treasure to be ownerless property – Held, Act 1978 is a complete Code – Unless and until specific direction or observation is given by the Collector under Section 8 to approach the Civil Court for getting the title decided, Civil Court has no jurisdiction to entertain the suit	136	237
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Whether decree or order obtained by fraud operates as <i>res judicata</i> ? Held, No – Such decree or order is a nullity and non est in the eye of law – Any Court at any time and in any proceeding can consider and decide the question whether a prior adjudication is vitiated by fraud	71	112

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<b>Sections 13 and 14 – Conflict of jurisdiction of Indian Courts with jurisdiction of Foreign Courts in the matter of child custody – Relevance and degree to which binding when child is removed to India – Indian Courts have to decide the issue regarding the validity of the decree in accordance with Indian law – Comity of Courts simply demands consideration of any such order issued by foreign Courts and not necessarily their enforcement</b>	314 (ii)	522
<b>Sections 19 and 20 – If there is any deficiency in service, negligence or want of facilitation by the service providers, then cause of action arises otherwise Consumer Forums and Permanent Lok Adalats cannot award compensation merely because there was inconvenience or hardship or on the ground of sympathy</b>	286 (iii)	471
<b>Section 20 – Ouster of jurisdiction – Head Office of respondent situated at Bombay and Branch Office at Indore – Agreement entered into between parties at Bombay and contract was to be performed at Indore – Agreement containing clause that “agreement shall be subject to jurisdiction of Court at Bombay” – Ouster of jurisdiction of Court at Indore – Held, there was no ouster clause in the agreement such as words ‘alone’, ‘only’, ‘exclusive’ – Court at Indore has jurisdiction</b>	73*	116
<b>Section 20 (c) – Cause of action and territorial jurisdiction – All the essential, substantial, material and integral facts constituting a cause of action have to be ascertained first – Unless these important elements exist at a place, the accrual of the cause of action could not be inferred</b>	11	13
<b>Section 24 – An eviction suit filed by respondent Nos. 11 and 12 against petitioner on 04.02.2008 in the Court of Civil Judge Class II – Thereafter, a suit was filed by the petitioner on 05.02.2010 for specific performance of contract in the Court of Additional District Judge – There is a transfer application by petitioner to transfer the eviction suit from the Court of Civil Judge Class II to the Court of Additional District Judge – Held, suit filed by the petitioner for specific performance is pending in a Court which is a Court of appeal against the judgment which shall be passed in the civil suit filed by respondent Nos. 11 and 12 – No illegality is committed by the District Judge in dismissing the transfer petition of the petitioner</b>	355	572
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If a counsel has not acted in the interest of the party or against instructions of the party, necessary remedy is elsewhere		
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<b>Order 21 Rule 97</b> – Whether the expression 'any person' as used in Order 21 Rule 97 of CPC includes the judgment-debtor too? Held, Yes – The expression 'any person' as used in Rule 97 of Order 21 C.P.C. covers all persons who resist/obstruct delivery of possession of immovable property and such a person can also be the judgment-debtor	<b>19</b>	<b>27</b>
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<b>Order 39 Rule 1 and Order 6 Rule 2</b> – A prayer for injunction is an equitable relief – One who wants that relief, should come with clean hands It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candor in their pleadings and especially when it contains a prayer for injunction	285 (ii) & (iii)	468
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<b>Section 303</b> – Every company is required to keep at its registered office a register of its Directors, Managing Director, Manager and Secretary containing the particulars with respect to each of them as set out in clauses (a) to (e) of sub-section (1) of Section 303 of the Companies Act, 1956 – Sub-section (2) of Section 303 mandates every company to		

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<b>Article 20 (3)</b> – Protection against self-incrimination – Held, simply because a witness in a police case figures as an accused in complaint case, he is not entitled for blanket protection under Article 20 (3) of the Constitution of India as there is no formal accusation in the police case, which is must – He can seek such protection at the time of trial in the police case if answer to any question is likely to incriminate him, subject to order of the Court when it is put to him	83	129
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of merits of the accusations – However, in an appropriate case, if on the face of the documents, which are beyond suspicion or doubt, placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court		
Criminal prosecution is a serious matter; it affects the liberty of a person – No greater damage can be done to the reputation of a person than dragging him in a criminal case		
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<b>Section 398</b> – ‘Further enquiry’ – Direction to the CJM to hold a further enquiry does not necessarily oblige the Magistrate to record any further evidence in the case		
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<b>Sections 437 (5) and 439 (2)</b> – Cancellation of bail by Appellate/Revisional Court		
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<b>Section 437 (6)</b> – Bail – Seven bail applications of the applicant already rejected – Trial not concluded within sixty days – Held, applicant is not entitled for bail in view of later part of Section 437 (6) as on earlier occasions looking to the seriousness of offence and availability of sufficient <i>prima facie</i> circumstances, his bail applications were rejected – <i>Prima facie</i> circumstances available showing that by practicing fraud and fabricating documents, applicant had misappropriated huge amount of ₹25,05,793 – Benefit of provision of Section 437 (6) cannot be granted – Bail application rejected	153	262
<b>Section 437 (6)</b> – Grant of bail – Accused was under trial under Section 34 (2) of M.P. Excise Act, 1915 and in custody since 27.06.09 – The evidence commenced in the case w.e.f. 02.09.09 and the trial could not concluded within the period of 60 days from this date – The accused is entitled to be released on bail under the provision of Section 437 (6) of Cr.P.C.	380	605
<b>Section 438</b> – Anticipatory bail – Purpose of incorporating Section 438 in the CrPC was to recognize the importance of personal liberty and freedom in a free and democratic country – An individual is presumed to be innocent till he is found guilty by the Court		
Ambit, scope and object of the concept of anticipatory bail enumerated under Section 438 have been dealt with by the Constitution Bench of the Apex Court in <i>Gurbaksh Singh Sibbia and others v. State of Punjab</i> , AIR 1980 SC 1632 – The controversy is no longer <i>res integra</i>		
Anticipatory bail cannot be granted for a limited period as it is contrary to the legislative intention and spirit of Section 438 CrPC – It is also contrary to Article 21 of the Constitution – Ordinarily, benefit of granting anticipatory bail should continue till the end of the trial of that case unless bail is cancelled on fresh circumstances or on the ground of abuse of the indulgence by the accused		
No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail – Factors and parameters to be taken into consideration while dealing with anticipatory bail stated		

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<b>Section 439</b> – Bail – Accused, as a dental surgeon applied stitches to an accused, who alongwith other accused, was involved in crime committed by them – But, there is no <i>prima facie</i> proof that accused involved in the crime committed by injured accused or other accused and having spent 66 days in custody and yet no trial commenced – Therefore, he is entitled for bail – Delay in trial also one of the important factors for consideration of bail	127 (ii)	217
<b>Section 441</b> – Trial Judge while declining to accept the bail bond furnished by surety referred the question of his solvency to Tahsildar – Held, the order directing inquiry into solvency of the surety by the Tehsildar does not have legal sanction – If the Judge concerned is not satisfied with the solvency of the surety, he can do an inquiry himself or cause an inquiry to be made by a Judicial Magistrate as to sufficiency or fitness of the surety	35*	55
<b>Section 451</b> – See Sections 43, 60 and 63 of the NDPS Act, 1985	382	606
<b>Sections 451 and 457</b> – Whether Magistrate is competent under Sections 451 and 457 of Cr.P.C. to grant interim custody of vehicle seized under the Wild Life (Protection) Act, 1972 or under the M.P. Excise Act, 1915? Held, Yes	383	609
<b>Section 457</b> – Interim custody of vehicle seized under Section 16(3) of the Motoryan Karadhan Adhiniyam, 1991 – Criminal Court has no power to release the vehicle on interim custody under Section 457 Cr.P.C. – Petitioner has remedy under Section 16(4) of Motoryan Karadhan Adhiniyam of 1991 to file application before the Taxation Authority	411	647
<b>Sections 468 and 473</b> – Question of delay in launching criminal prosecution – It will be taken into consideration at the stage of final decision – Gravity of offence is also a factor – So delay itself cannot be a ground for dismissing the complaint	300	498
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Appreciation of evidence – Where there are a large number of assailants – It can be difficult for a witness to identify each assailant and attribute a specific role to him – It is natural that the exact version of the incident revealing every minute details i.e. meticulous exactitude of individual acts cannot be given by an eyewitness		
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Conviction with the aid of Section 34 IPC in place of Section 149 IPC – There is no bar in law on conviction of the accused with the aid of Section 34 IPC in place of Section 149 IPC if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of Section 34 IPC in place of Section 149 IPC	37*	56
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See Section 149 of the Indian Penal Code, 1860	238*	393
Standard of proof in a criminal trial involving serious offence – The Court must bear in mind that “human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions” – The prosecution story may be true; but between ‘may be true’ and ‘must be true’ there is inevitably a long distance to travel – In a criminal trial involving a serious offence of a brutal nature, the Court should be wary of the fact that it is human instinct to react adversely to the commission of the offence and make an effort to see that such an instinctive reaction does not prejudice the accused in any way – In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the Court that its case has been proved beyond reasonable doubt	38*	57
The doctrine of ‘ <i>falsus in uno, falsus in omnibus</i> ’ has no application in India and the Court has to assess to what extent the deposition of a witness can be relied upon – The Court has to separate the falsehood from the truth and it is only in exceptional circumstances when it is not possible to separate the grain from the chaff because they are inextricably mixed up, that the whole evidence of such a witness can be discarded	98 (i)*	163

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<b>Section 25 (3)</b> – If accused/drug manufacturer wants to controvert the report of Government analyst, he should express his intention to adduce evidence to controvert the analyst's report within the statutory limitation period of 28 days – Accused/drug manufacturer did not express his above intention – Delay in filing complaint becomes immaterial	384	612
<b>EASEMENTS ACT, 1882</b>		
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Real intention of parties as decipherable from complete reading of document, if any, executed between parties and surrounding circumstances have to be seen – Petitioner was only given right to use the land to run amusement center and I.D.A. retained the possession of the land – Mere right to raise construction on payment of annual rent does not create an interest in property and amounts to merely a right to do something on the land – Deed dated 06.05.1994 was only a licence and not lease		
Promissory Estoppel – Petitioners were permitted to install rides and games under licence – No promise made to petitioner creating any legal relationship or affecting legal relationship – Even otherwise petitioners have not done anything nor have altered their position except by submitting application for renewal – As the use of land has already been changed therefore, principle of promissory estoppel would also not apply	429	675
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Section 3 – Child witness – If there is no inherent defect in testimony of child witness, merely because the witness is child, her testimony cannot be disbelieved – Evidence of daughter of appellant duly corroborated by medical evidence – No material to show that she was tutored by any person – Evidence of child witness worth reliable	228	381
Section 3 – Circumstantial evidence – If the prosecution proves complete chain of circumstances which points only towards guilt of accused, the accused would be liable to suffer the consequences of his proven guilt	298 (iii)	494
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Section 3 – If an eye witness did not receive any injury in the incident, it was his good luck – Absence of any injury on an eye witness do not render his presence doubtful		
There cannot be a rule of universal application that if eye witness to the incident is interested in prosecution case and/or deposed inimically towards the accused, there should be corroboration to his evidence – If his evidence is found credible and of such a caliber as to be regarded as wholly reliable, could be sufficient and enough to bring home the guilt of the accused		
But in criminal case, evidence of eye witnesses do not get support from collateral circumstances that have come on record and their evidence has not been corroborated by medical and ballistic evidence – So the evidence cannot be treated as cogent and reliable	386	615

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<b>Section 3 – Murder trial – Crimes of depravity – No matter, how diabolical the crime, the burden remains on the prosecution to prove the guilt of the accused – The Court has to be on its guard and to ensure that the conclusion reached by it are not influenced by emotion but are based on the evidence produced in the Court</b>		
<b>Motive – Significance of in case based on circumstantial evidence – Motive for committing the crime assumes great importance</b>		
<b>Accused's conduct in absconding – Import of – Evading arrest would certainly be an illegal act but it does not lead to the only conclusion that the accused was hiding due to a guilty conscience</b>	<b>161</b>	<b>273</b>
<b>Section 3 – Non-examination of independent witness – When two persons have been killed and one is seriously injured, no neighbour, even if he had seen the incident would like to come forward and give evidence against accused – Investigation officer also not cross-examined on this point, so accused cannot take advantage</b>		
<b>Injured witness – Must be given due weightage because his presence at the place of incident cannot be doubted – It is unlikely that he has spared the actual culprits in order to falsely implicate someone else</b>		
<b>Appreciation of evidence – Minor discrepancies on trivial matters which do not affect the core of prosecution case, may not prompt the Court to reject the evidence in its entirety</b>	<b>291 (iv), (v) &amp; (vi)</b>	<b>481</b>
<b>Section 3 – Plea of unsoundness of mind – Tenability of – Burden of proof on accused – Its degree explained</b>	<b>318 (i)</b>	<b>528</b>
<b>Section 3 – Related witness – Appreciation of such witness – Evidence cannot be disbelieved merely on the ground that witnesses are inter-related to each other or to the deceased, if the evidence otherwise found trustworthy</b>	<b>290 (ii)</b>	<b>480</b>
<b>Section 3 – Related witness – Relationship is not a ground to discard their evidence – Evidence of such witness has to be carefully scrutinized</b>	<b>320 (ii)</b>	<b>531</b>
<b>Section 3 – Relative witnesses – Relationship is not a factor to affect the credibility of a witness and the Courts have to scrutinize from evidence meticulously with little care</b>		
<b>Contradictions – How to appreciate – Contradictions which go to the root of the matter have to be taken into consideration – On the basis of minor contradictions about the use and nature of weapons and injuries, the statement of witness cannot be ignored in toto</b>	<b>308 (i) &amp; (ii)</b>	<b>508</b>
<b>Section 3 – See Sections 368 and 376 (2) (g) of the Indian Penal Code, 1860</b>	<b>371</b>	<b>592</b>
<b>Sections 3 and 8 – Appreciation of circumstantial evidence – Accused was last seen with the deceased – He had made extra judicial confession – He had motive to commit murder and also abscond – He is unable to explain how the women with whom he was living as husband and children met with the homicidal death. – The above circumstances lead to one and only conclusion that no other than accused had committed the murder of all the five persons</b>		

The chain of circumstantial evidence should be so complete that there is no escape from the conclusion that the crime was committed by the accused and none else – It has to be considered within all human probability and not in a fanciful manner **309 (i) 510 & (ii)**

**Sections 3, 8, 45 and 134 – Motive –** Not proved in case of which depending on direct evidence – It is not of any significant consequence – If it is proved, it may support the prosecution version

Every witness that the prosecution may have listed in their chargesheet need not be examined – If prosecution examined some of them at the trial and their evidence is accepted as trustworthy, the non-examination of others would become inconsequential

Discrepancy in ocular evidence and medical evidence – How to appreciate? Explained. **387(i), (ii) 617 & (iii)**

**Sections 3 and 45 – Acknowledgement in writing –** Plaintiff failed to establish original transaction of loan and further the acknowledgement of such loan before expiry of the prescribed period of limitation of three years – He was rightly non-suited

Handwriting expert – Opinion of handwriting expert is not conclusive, but may be rebutted by making out different discrepancies/shortcomings in the process pertaining to the examination of disputed document with reference to the specimen/standard handwriting and signatures

Proof – Merely because the handwriting expert has given his opinion, powers of the Courts are not curtailed, while examining documents with reference to the pleadings and other material on record – An unfounded claim of money without proving the original transaction cannot be accepted, on the basis of such a report and scanty evidence – Trial Judge has not committed any mistake or illegality in dismissing the suit

Comparison of signature/handwriting with admitted signature/ handwriting – Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts **407 642**

**Sections 3 and 45 – Appreciation of evidence –** The evidence must be viewed collectively – The statement of a witness must be read as a whole – Reliance on a mere line in the statement of the witness out of context would not serve the ends of justice and the conclusion of the court based on such appreciation of evidence could be faulted

**397 (iii) 632**

**Sections 3, 60 and 64 – Production of evidence –** Best available oral/documentary evidence is to be produced to enable Court to come to a conclusion about the existence or non-existence of disputed facts as per the provisions of Evidence Act – In this process hearsay evidence is inadmissible and has no relevance **163 277**

**Sections 3 and 134 –** In a case involving an unlawful assembly with a very large number of persons, there is no rule of law that states that there cannot be any conviction on the testimony of a sole eye-witness, unless that the Court is of the view that the testimony of such sole eye-witness is not reliable – Though, generally it is a rule of prudence followed

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by the Courts that a conviction may not be sustained if it is not supported by two or more witnesses who give a consistent account of the incident – In a fit case the Court may believe a reliable sole eye-witness if in his testimony he makes specific reference to the identity of the individual and his specific overt acts in the incident – The rule of requirement of more than one witness applies only in a case where a witness deposes in a general and vague manner, or in the case of a riot	98 (ii)*	163
<b>Sections 6 and 8</b> – Identification of the accused – The description given by the prosecutrix about details of the accused did not match his appearance – She was already shown to the appellant at the police station – Her dock identification in the Court had become meaningless		
<i>Res gestae</i> witness – The statements said to be admitted as forming part of <i>res gestae</i> must have been contemporaneously with the act or immediately thereafter – There could not be an interval which would allow fabrication	289 (ii) & (iii)	478
<b>Sections 8 and 3</b> – Motive – Not proved in case resting only on circumstantial evidence – It is not fatal by itself – In such a case Court shall have to be more careful and cautious in appreciation of evidence to ensure that suspicion does not take the place of proof while finding the accused guilty		
Circumstantial evidence – Deceased having been last seen with the accused around the time he was killed, is a circumstance together with other circumstances proved by the prosecution are explainable only on one hypothesis that the accused killed the deceased – Conviction proper	388	621
<b>Sections 8 and 9</b> – Delay in examination of a witness – Does not as a rule of universal application renders the prosecution case suspect and rejection of witness's testimony		
Deficiencies in investigation – Blood stained T-shirt and empty cartridges were not sent for examination – Such lapse is not sufficient to reject the version of eye witnesses		
Identification parade held for one witness – Failure to offer an explanation for not holding T.I. parade for other witnesses will not <i>ipso jure</i> prove fatal to the case of the prosecution – Identification in the court – What should be the weight attached to it – Will determine in the peculiar facts and circumstances of each case		
Proof of motive – Effect in direct evidence cases – If the version given by eye witnesses is credible, absence of evidence to prove the motive is rendered inconsequential – But proof of motive lends strength to prosecution case or for the Court in its ultimate conclusion	217	359
<b>Sections 8 and 9</b> – In the absence of any independent corroboration like TIP held by the Judicial Magistrate, the evidence of eyewitnesses as to the identification of the appellant-accused for the first time before the trial Court generally cannot be accepted – In the same manner, showing photographs of the miscreants and identification for the first time in the trial Court without being corroborated by TIP held before a Magistrate or without any other material may not be helpful to the prosecution case – To put it clearly, the evidence of witness given in the Court as to the identification may be accepted only if he identified the same persons in a previously held TIP in jail	164 (i)	279

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<p><b>Section 9</b> – Identification of accused during night – No electric supply at the relevant time – But according to prosecution witnesses there were three torches which were flashed simultaneously on the suspects – In this light, identification was not doubtful</p> <p>Appreciation of evidence – Weapon had not been recovered – Doctor had deposed that injuries could be caused by strangulation by hands – Non-recovery of weapon is immaterial</p>	297 (ii) & (iv)	493
<p><b>Sections 16 and 114</b> – Bonafide purchaser for value without notice – Presumption of service of notice – If a letter properly directed containing the notice informing that the sender is the real owner of the property, was proved to have been put into the post office, it could be presumed that the letter reached its destination at the proper time in regular course of business of the post office and was received by the person to whom it was addressed</p>	68 (ii)	104
<p><b>Sections 24, 25 and 26</b> – Who is a police officer in the light of Sections 25 and 26 of the Evidence Act? An officer who investigates an offence and submits final report or charge sheet under Section 173 of CrPC, is a police officer – Officer of Central Bureau of Narcotics, who is not conferred with the power to submit final report or charge sheet under Section 173 of CrPC is not a police officer although he investigated an offence</p> <p>Whether confessions made before Officer of Central Bureau of Narcotics are admissible in evidence? Held, Yes</p>	310 (i) & (ii)	511
<p><b>Section 25</b> – Illegal possession of opium – Effect of non examination of independent witness – The prosecution has offered a plausible explanation – This reluctance on the part of the villagers is neither strange nor unbelievable – Under these circumstances non-examination of any independent witness, not significant</p> <p>Consent statement – Admissibility there of – Consent statement signed by the accused expressing his confidence to be searched in the presence of the Inspector has not been used as a confession – Therefore, the bar under Section 25 of the Evidence Act would not be applicable</p>	186 (i) & (iii)	314
<p><b>Section 27</b> – On the basis of information of the accused different things discovered on different dates from the same place – The evidence of discovery and recovery would not dispel merely that the police has already visited the same place earlier – Though Investigating Officer should have thoroughly searched premises at the earliest instance, however, if accused agreed the discovery of different things on different dates, in such a situation, discovery cannot be faulted only for that reason</p>	165	283
<p><b>Section 27</b> – Principle for basing a conviction on the basis of substantial evidence is that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible – The courts have to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof, for sometime, unconsciously it may happen to be a short step between moral certainty and legal proof</p>		

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Recovery of certain incriminating articles at the instance of the accused under Section 27 of the Evidence Act by itself cannot form the basis of conviction – The recovery of incriminating articles and its evidentiary value has to be considered in the light of other relevant circumstances as well and the chain of events suggesting the involvement of the accused	159	268
<b>Sections 32 and 3</b> – Dying declaration – Not in question and answer form and absence of certificate of fitness by doctor – That would not render the dying declaration unreliable – The certification by doctor is a rule of caution, which has been duly observed by the Tehsildar/Magistrate, who recorded the statement		
Appreciation of evidence – Medical evidence and direct evidence – Inconsistent – PW2 and PW3 have stated that the appellant had fired only once from his licensed double barrelled gun – Doctors PW5 and PW10 have stated that deceased had suffered multiple gunshot injuries – After due appreciation, in light of medical jurisprudence, no inconsistency found by Trial Court – It is proper	229 (i) & (ii)	381
<b>Section 32 (1)</b> – See Sections 154 and 161 of the Criminal Procedure Code, 1973	171*	293
<b>Section 32 (1)</b> – See Sections 161 and 162 of the Criminal Procedure Code, 1973	230*	384
<b>Sections 32 (1) and 113-A</b> – See Sections 107, 306 and 498-A of Indian Penal Code, 1860	49	73
<b>Sections 32 (1), 137 and 157</b> – When a witness making a dying declaration survives, the said dying declaration does not remain substantive evidence – However, as held in <i>Ramprasad v. State of Maharashtra, (1995) 5 SCC 30</i> when such dying declaration has been recorded by a Magistrate then it can be used as a corroboration to the oral evidence of such witness under Section 157 of the Evidence Act – Where such statement is recorded by a police officer, its use is barred under Section 162 CrPC		
Trial Courts, sometimes, are extremely casual about framing of questions for examination of accused under Section 313 CrPC – Trial Courts should be extremely careful in this behalf and the record of the case must show that meticulous care is taken to put all the incriminating circumstances to the accused	39 (ii) & (iii)*	58
<b>Sections 32 (5), 35, 50, 51, 59 to 61 and 114</b> – Presumption of marriage – The law presumes in favour of marriage and against concubinage – When a man and woman have cohabited continuously for a number of years, in such a case there will be a presumption under Section 114 of the Evidence Act, that they live as husband and wife and the children born to them will not be illegitimate – However, such presumption can be rebutted by leading unimpeachable evidence		
Determination of age – The entries made in the official record by an official or person authorised in performance of official duties may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value – If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32 (5) or Sections 50, 51, 59, 60, 61 etc.		



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of the Evidence Act by examining the person having special means of knowledge authenticity of date, time, etc. mentioned therein	<b>43*</b>	<b>63</b>
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## FAMILY AND PERSONAL LAWS

**Construction of Will** – The Court must put itself as far as possible in the position of a person making a Will in order to collect the testator's intention – In ordinary circumstances, ordinary words must bear their ordinary construction and every disposition of the testator contained in the Will should be given effect to as far as possible, consistent with the testator's desire

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<b>Section 149</b> – Common object of unlawful assembly has to be gathered from the nature of assembly, arms possessed by them and behaviour of assembly at or before occurrence – Each of accused need not commit some illegal overt act  In the present case there is overwhelming material to show that the appellants variously armed, including the firearms assembled at one place and thereafter came to the place of occurrence and started assault together and when protested by the deceased, one of the members of the unlawful assembly shot him dead and some of them caused injury by firearm, gandasa, lathi, etc. to others – All of them have come and left the place of occurrence together – From what has been found above, there is no escape from the conclusion that appellants were the members of the unlawful assembly and offences have been committed in pursuance of the common object and hence, each of them shall be liable for the offence committed by any other member of the assembly	107*	177
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<b>Sections 302 and 201</b> – Rarest of rare case – How to be determined ? Circumstances in which the offence has been committed requires to be taken into consideration – In the present case, father of the accused had married twice and had children from second wife – There were continuous quarrels with regard to division of property – The constant nagging would have to be taken as mitigating circumstance in the commission of the crime	298 (ii)	494
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<b>Sections 302 and 304 Part II</b> – Intention to cause death – How to be gathered? As nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused	50*	74
<b>Sections 302 or 304 Part I</b> – Whether murder or culpable homicide not amounting to murder? Considerations for determination reiterated	173	294
<b>Sections 302 or 304 Part II</b> – Paramount consideration for determination of murder or culpable homicide not amounting to murder – Restated	322	535
<b>Sections 302/34 or 304 Part I (Section 300 Exception 4) r/w/s 34</b> – Whether murder or culpable homicide not amounting to murder	174*	295
<b>Sections 302/120-B or 304 Part II r/w/s 34 (Section 300 Exception 2) and 100</b> – While appreciating evidence, mitigating circumstances were in favour of respondent (accused) to show that inspite of fact that they committed the offence, they did not intend to kill deceased – Respondent accused were held liable to be convicted under Section 304 Part II r/w/s 34 IPC in place of charge/conviction under Section 302 r/w/s 120-B IPC	151	258
<b>Sections 302 and 376</b> – Onus to exhibit and prove the documents on record, that might add defence, would be upon the defence and not upon the prosecution – It was also held that the false plea taken by an accused in a case of circumstantial evidence is another link in the chain		
In a case of rape and murder in a single incident, the charge of murder does not automatically fail if commission of rape is not proved		
Function of an expert – Court's approach – The Court cannot substitute its own opinion for that of an expert, more particularly in science such as DNA profiling which is a recent development – Position explained		
Rape and murder case – Choice between death sentence and life imprisonment – If Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser sentence should be awarded – Position explained	51	75
<b>Section 304-A</b> – Applicant was having degree of Ayurvedacharya and administered Benzyl Penicillin to the patient who died subsequently – Presence of Benzyl Penicillin was detected in skin and tissues of deceased as per F.S.L. report – However, the investigating officer did not send the F.S.L. report, prescription given by applicant and post mortem report to the Specialist to ascertain negligence on the part of applicant – Held, Trial Court directed to refer the medical reports of the treatment made by applicant as well as by the Govt. Doctors, postmortem report and F.S.L. report to a panel of Doctors		

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of Medical College and Director, Medico-Legal Institute, Bhopal – Trial Court shall proceed after the receipt of the report as per law	<b>323*</b>	<b>536</b>
<b>Section 304-B</b> – See Section 2 of the Dowry Prohibition Act, 1961	<b>175</b>	<b>296</b>
<b>Sections 304-B and 302</b> – Dowry death – Charge of murder should be framed	<b>108*</b>	<b>178</b>
<b>Section 304-B or 306</b> – The High Court upon reconsideration of the entire evidence concluded that the deceased had not committed suicide on account of demand of dowry but due to harassment by the husband (appellant/accused) and the conviction of the appellant/accused was converted from one under Section 304-B IPC to Section 306 IPC, even though the appellant/accused was never charged under Section 306 IPC – Held, there has been no failure of justice in the conviction of the appellant under Section 306 IPC by the High Court, even though the specific charge had not been framed	<b>176*</b>	<b>299</b>
<b>Section 306</b> – Abetment of suicide – Husband/appellant harassed and insulted his wife because she could not give birth to a child – Wife committed suicide – Conviction for offence of abetment of suicide proper	<b>395</b>	<b>630</b>
<b>Sections 306 and 107</b> – Abetment of suicide – Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing – Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained – Human sensitivity of each individual differs from the other – Different people behave differently in the same situation – Hypersensitive conduct of the deceased to ordinary petulance, discord and differences which happen in day to day life is not sufficient to proceed against the alleged accused person	<b>243</b>	<b>400</b>
<b>Section 307</b> – Offence under Section 307 IPC is not compoundable – But occurrence almost 20 years old – Accused are agriculturists – They have no previous criminal record – Reconciliation has taken place between the parties – Accused have already undergone sentence of more than 2½ years – To secure ends of justice, jail sentence is reduced to period already undergone while maintaining amount of fine in above circumstances	<b>244*</b>	<b>403</b>
<b>Sections 323, 372, 373, 377, 109 and 120-B</b> – See Criminal Trial	<b>305</b>	<b>504</b>
<b>Sections 353 and 333</b> – Office duty – Victims were assaulted while undertaking return journey to the office – Held, travelling by virtue of office is not a part of duty		
Causing hurt in discharge of duty – Appellant suspected that victims were involved in negligence leading to death of his buffalo – It cannot be said that injured were assaulted in the execution of their duties as public servants	<b>396</b>	<b>630</b>
<b>Sections 363, 366, 375 and 376</b> – Offence of rape – Determination of age of prosecutrix – Held, there is no such rule much less an absolute one that two years have to be added to the age determined by the doctor		
Expressions “against her will” and “without her consent” – Connotation there of – The expression “against her will” would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition – On the other hand, the expression “without her consent” would comprehend an act of reason accompanied by deliberation		

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Evidence of prosecutrix, requirement of corroboration – Held, the testimony of prosecutrix, if found to be reliable by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary		
Absence of injuries on the person of the prosecutrix – Is not sufficient to discredit her evidence	109	179
<b>Sections 368 and 376 (2) (g)</b> – In gang rape case, it may not be necessary for the prosecution to adduce evidence of a complete act of rape by each one of the accused – The provision embodies a principle of joint liability and the essence of that liability is existence of common intention – That common intention pre-supposes prior concert – There must be meeting of minds which may be determined from the conduct of the accused revealed during the course of the incident		
The appellant had provided space and cot – There is no evidence on record that appellant had known the fact of kidnapping and committing rape by co-accused – So, no evidence of common intention is on record – Conviction of the appellant under Section 376 (2) (g) IPC is set aside and conviction under Section 368 IPC is maintained	371	592
<b>Section 376 (2) (g)</b> – Gang rape case – Doctor opined that prosecutrix was habitual to sexual intercourse – Prosecutrix medically examined after two days of incident – Medical opinion has to be taken in that background specifically when doctor had also stated that there was possibility that she was subjected to intercourse on the date of occurrence		
Discrepancies which are not significant does not render the statement of prosecutrix unreliable or untrustworthy	397 (i) & (ii)	632
<b>Section 376 (2)</b> – Prosecutrix's detailed evidence corroborated by medical evidence and T.I Parade evidence – No reason to disbelieve her evidence on record – Conviction proper	324 (i)	536
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<b>Sections 395, 396 and 397</b> – See Section 114 (a) of the Evidence Act, 1872	313	520
<b>Sections 396 and 302</b> – Can an accused be convicted under Section 302 IPC where charge against him has been framed only under Section 396 IPC? Held, Yes, provided that accused does not suffer any prejudice	398 (i)	634
<b>Sections 417, 420, 494, 495 and 498-A</b> – Second wife is “wife” within the meaning of Section 498-A and is entitled to maintain a complaint under the said provision	288 (iii)	474
<b>Sections 419, 420, 465, 468, 472 and 473</b> – See Sections 24, 24-A, 26 and 28 of the Chartered Accountants Act, 1949	69	107
<b>Sections 494 and 498-A</b> – While the trial under Sections 494 and 498-A IPC was pending, the accused (husband) purported to enter into some sort of settlement with the complainant (wife) – Hence, when the complainant was examined before the trial court, she did not press the charges – Later on, however, before the conclusion of the trial she filed a petition before the trial court stating that the accused (the husband) had breached the settlement and thrown her out from his house – In those circumstances, the trial court		

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recalled her for re-examination as a court witness under Section 311 of the Cr.P.C. – On her examination as a court witness, she fully supported the allegations made by her in the complaint – Conviction proper	<b>296*</b>	<b>492</b>
<b>Section 498-A</b> – Section 498-A IPC being a penal provision deserves strict construction, hence only the husband or his relative could be proceeded against for subjecting the wife to "cruelty" which has been specifically defined in the explanation thereto – Neither a girlfriend nor a concubine is the relative of a husband for this purpose since they are not connected by blood or marriage or adoption to the husband	<b>52*</b>	<b>78</b>
<b>INDUSTRIAL DISPUTES ACT, 1947</b>		
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<b>Sections 31 (3) and 65 (3)</b> – Payment of wages under Section 65 (3) of the M.P. Industrial Relations Act, 1960 – If the employee had been otherwise employed and receiving adequate remuneration during the pendency of appeal or subsequent periods, the Court shall not order to pay wages under Section 65 (3)	<b>87 (ii)</b>	<b>138</b>
<b>INTELLECTUAL PROPERTY</b>		
Intellectual property – Question papers, instructions regarding evaluation and solutions to question (or model answers) which are furnished to the examiners and moderators in connection with evaluation of answer scripts are literary works which are products of human intellect and therefore, subject to copyright	<b>423 (ii)</b>	<b>669</b>
Passing of in trademark – Injunction – No one can be permitted to encroach upon the reputation and goodwill of other parties – Even assuming that the trademark or name has a generic word yet if it is found by the court that such a mark has attained distinctiveness and is associated with the business of the plaintiff for the considerable time and thereafter the defendant adopts a similar word as one of his two marks to induce innocent users to use or buy the product of the defendant, which establishes dishonest intention and bad faith, the court would grant an injunction to protect the business of the plaintiff	<b>245</b>	<b>403</b>
<b>INTEREST ACT, 1978</b>		
<b>Section 3</b> – In the light of Section 3 of the Interest Act, 1978, the Court is empowered to award interest at the rate prevailing in the banking transactions – Thus, impliedly, the Court has power to vary the rate of interest agreed by the parties for the recovery of any debt or damages	<b>351 (iii)*</b>	<b>565</b>
<b>Section 3</b> – Power of Court to allow interest – The interest must be allowed in cases of claim for compensation from the date of institution of proceedings and not from any deferred date	<b>198</b>	<b>334</b>

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<b>Section 7</b> – See Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007	399	635
<b>Section 12</b> – Bail to juvenile – A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in the section itself are made out – Case is not covered in anyone of the three exceptions carved out under Section 12, of the Act – The juvenile is entitled for bail	400	636
<b>Section 12</b> – Bail to juvenile – Bail application of juvenile cannot be rejected on the ground of seriousness of crime unless there is ground of believing that he will come into association with known criminals if bail is granted	401	637
<b>Section 12</b> – Offence under Section 307 IPC and Section 25/27 of the Arms Act – Looking to the facts and circumstances of the case and report of the Probationary Officer, applicant found entitled to extend the benefit of mandatory provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000	402	638
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<b>Rule 12</b> – Age of juvenile – How to be determined? According to Rule 12 (3) (a), matriculation or equivalent certificate has been given first preference and in the absence of it, the date of birth certificate from the school (other than play school) first attended and in its absence, the birth certificate given by a Corporation or a Municipal Authority or a Panchayat and only in the absence of all the above, medical opinion will be sought from a duly constituted Board	399	635
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<b>LAND ACQUISITION ACT, 1894</b>		
<b>Sections 3 (b), 18 and 50</b> – “Person interested” – Where land is acquired at the instance and cost of the DDA (local authority), it would be termed as “person interested” within the meaning of Section 3 (b) and therefore, entitled to participate in proceedings held before Land Acquisition Collector and also entitled to notice and opportunity to adduce the evidence before Reference Court		
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<b>Section 18</b> – See Section 13 of the Court Fees Act, 1870	358	573
<b>Sections 21 (1-A), 23 (2) and 34</b> – Executing court cannot examine reasons so as to go behind decree, but if in award passed, Reference Court makes a specific reference to payment of interest but without any such reference to payment of interest on solatium and merely payment of interest on compensation is granted, then it would be open to the executing court to declare that compensation awarded includes solatium, and consequently, interest on amount could be directed to be deposited in execution		
Where interest on solatium is claimed in old pending execution, the executing Court will be entitled to permit its recovery from the date of judgment	53	78
<b>Section 23</b> – Determination of market value of an acquired land – Consideration of auction sale transaction – Element of competition in auction sale makes them unsafe guide for determining the market value, but, where an open auction sale is the only comparable sale transaction available, the Court may have to, with caution, rely upon the price disclosed by such auction sale by providing an appropriate deduction to off-set the competitive-hike in value	111	181
<b>Section 23</b> – The relevant date of determination of market value – The State Government had abandoned the earlier notification by issuing the subsequent notification – The market value of the acquired land should be fixed with reference to the date of publication of the second preliminary notification	112*	182
<b>Sections 23, 18 and 54</b> – It is not an absolute rule that when the acquired land is a large track of land, sale instances relating to smaller pieces of land cannot be considered	403	639
<b>Sections 23, 31, 32 and 33</b> – Developmental cost – Where land was situated in the vicinity of the residential colonies developed by the Board, other educational institutions, hospitals etc. and is one of the junctions of two important roads, 1/3rd deduction towards development cost is proper		
Escalation in price – When acquired land was semi-urban and huge potential for being developed as housing sites, then 10% per annum escalation in the price is proper	404*	639
<b>Section 23 (1-A)</b> – Additional amount of compensation – Whether additional amount under Section 23 (1-A) is payable on the solatium under Section 23 (2)? Held, No – It is available only on the market value determined under the first factor of Section 23 (1) and cannot be calculated on the solatium payable under Section 23 (2) of the Act	178*	300
<b>Section 23 (1-A) (as inserted by Amendment Act, 1984)</b> – Additional amount of compensation – Entitlement of – The acquisition proceedings terminated before 30.04.1982, the date from which Section 23 (1-A) was made applicable to the pending and subsequent proceedings – Therefore, in terms of the law laid down by the Constitution Bench in <i>K.S. Paripoornan v. State of Kerala and others</i> , AIR 1995 SC 1012, the benefit of Section 23 (1-A) could not be given	179	301



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<b>Sections 28-A and 18</b> – Re determination of amount of compensation on the basis of award of the Reference Court, is based on the ground of equality enshrined in the Preamble of the Constitution and Articles 38, 39 and 46 thereof – Section 28-A is aimed at removing inequality in the payment of compensation in lieu of acquisition of land under the same notification – Of course, this opportunity can be availed of by filing application within the prescribed period – Purpose of Section 28-A restated	54	81
<b>LAND REVENUE CODE, 1959 (M.P.)</b>		
<b>Sections 110 and 117</b> – Adverse possession – Proof of entries in the remark column of Khasra – If such entries of possession are made without any order of competent authority, no inference could be drawn in favour of party for holding that he is in possession of such land and has perfected his title by adverse possession	328	541
<b>Sections 131 (1) &amp; (2), 242 and 257</b> – If a Tehsildar decides dispute under Section 131 of MPLRC, any party of that proceeding can go to Civil Court and establish their easementary rights – No bar under any clause of Section 257 MPLRC is attracted		
<i>Wajib-ul-arz</i> is the record of custom in a village under which the Sub-Divisional Officer shall record:		
(a) the right to irrigation or right of way or other easement		
(b) the right to fishing in any land or water not belonging to controlled or managed by the State Government or a local authority		
Any dispute regarding that entry may be challenged in Civil Court	325 (i), (ii) & (iii)	538
<b>Section 185</b> – Suit for recovery of possession by occupancy tenant – A person who enters into peaceful possession of land claiming it as his own although he might not have any title to the land, can sue another person who has forcibly ousted him of possession	405	640
<b>Section 248</b> – The provision of Section 248 MPLRC is attracted even if the land is situated in Municipal area		
In a suit for declaration and injunction, if the title of plaintiff is challenged, he is not only bound to prove his title, but also prove the title of his seller	406 (i) & (ii)	641
<b>LAW OF TORTS</b>		
Liability of Municipal Corporation for negligence – Where Municipal Corporation failed to discharge its statutory duty in maintaining the road in safe condition and due to use of the same, plaintiff had suffered the accident – Municipal Corporation is responsible to pay compensation for the damage suffered by the plaintiff	55	83
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<b>LEGAL SERVICES AUTHORITIES ACT, 1987</b>		
<b>Section 19</b> – Can a Lok Adalat adjudicate the disputes between the parties on merits where conciliation has failed? Held, No – Lok Adalat is not a regular Court authorised to adjudicate the disputes between the parties on merits	326	540

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<b>Sections 19 and 22 (b)</b> – The Legal Services Authorities Act refers to two types of Lok Adalats – The first is that Lok Adalat constituted under Section 19 of the Act which has no authority, functions or powers and which discharges purely conciliatory functions – The second is the Permanent Lok Adalat established under Section 22 (b) (1) of the Legal Services Authorities Act to exercise jurisdiction in respect of public utility services having both conciliatory and adjudicatory functions		
State Legal Services Authorities and the High Courts to ensure that Lok Adalats constituted under Section 19 of the Legal Services Authorities Act, 1987 on a regular or permanent basis should be referred to as “Continuous Lok Adalats” and not as “Permanent Lok Adalats”	286 (i) & (ii)	471
<b>LIMITATION ACT, 1963</b>		
<b>Section 5</b> – Condonation of delay – Concept of “liberal approach” cannot be employed to jettison the substantial law of limitation	180	303
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<b>Section 12</b> – Section 12 of the Limitation Act, 1963 provides for exclusion of time in legal proceedings – Sub-section (1) and Section 9 of the General Clauses Act, 1897 are applicable to Section 34 (3) of the Arbitration and Conciliation Act, 1996	196 (ii)*	330
<b>Section 14</b> – See Section 34 (3) of the Arbitration and Conciliation Act, 1996	67*	103
<b>Section 18</b> – See Sections 3 and 45 of the Evidence Act, 1872	407	642
<b>Section 22</b> – Cause of action against encroachment – An act of encroachment made to a public street is a continuous source of wrong and injury – Thus, cause of action is created as long as such wrong continues	113 (i)	183
<b>Section 65</b> – Joint family – Presumption – No presumption of jointness of family available – In Mohammedan family, various members of family live in commensality, they do not form a joint family – Property purchased by one family member living jointly is not presumed to be joint family property unless it is shown that it was purchased from the joint fund of family		
Benami transaction – When the transaction is by registered document, the presumption is in respect of the genuineness of the document – Burden to prove that transaction is benami is on the person who raises such an objection		
Hiba – Oral hiba alleged to have been done in 1975 – No evidence that any action was taken for mutation of the names of beneficiaries or fact of execution of oral hiba was brought on record in any official document – On the contrary, the owner even after alleged oral hiba had sent communication to I.D.A. as owner of property – Plea of oral hiba rightly rejected		
Adverse possession – After the death of owner, his legal representatives had become owner of plot – Even if appellant continued in possession, then their possession was on behalf of all joint owners – No evidence of ouster of other joint owners – Plea of adverse possession not established	266*	437

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<b>Article 65</b> – Adverse possession – Possession of the land had been delivered to applicant for cultivation and only for a limited period of 15 years by the State Government as a grant – Such type of transfer do not involve absolute ownership of land – In above factual position, period of limitation for adverse possession in such suit would be 30 years and not 12 years	408	644
<b>Article 65</b> – Adverse possession, principle of – The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner – Where a person without having a right to enter into possession of the property of somebody else, does so and continues in possession setting up title in himself and adversely to the title of the owner for a period of 12 years, he acquires title, extinguishing the title of real owner	327	541
<b>Article 65</b> – See Sections 110 and 117 of the Land Revenue Code, 1959 (M.P.)	328	541
<b>Article 65</b> – Adverse possession – Unless the requisite ingredients of adverse possession as per requirement of law are proved, merely on account of long possession of the property under some misconception, the person could not have been declared to be the Bhumiswami of disputed land holding that he has perfected the title of the property by adverse possession	246	408
<b>Articles 65 and 113</b> – Order 6 Rule 17 of CPC – Suit filed for declaration, perpetual and mandatory injunction against petitioner/defendent – Commissioner inspected the spot and found the construction – Plaintiff filed an application for amendment in relief clause of plaint after 9 years of commissioner's report – Petitioner/defendant raised an objection that amendment was barred by limitation – Article 113 of Limitation Act is not applicable – Suit was based on title – Article 65 of the Limitation Act is applicable under which limitation is 12 years – Amendment could be allowed as <i>prima facie</i> it is not time barred	16 (ii)	19
<b>Article 99</b> – Bar of limitation to set aside sale for arrears of revenue – When a sale proceeding initiated by the State Authorities has been held to be a nullity, bar under Article 99 of the Limitation Act would not be applicable	409	645
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Section 41 – Succession – Heirs succeed to the estate of deceased as tenants-in-common in specific shares – Without any effective partition, heirs have no right to execute the sale deed – Temporary Injunction rightly issued against purchaser – However, it was wrongly issued against sellers as they are recorded as bhumiswamis having joint possession with plaintiff	410	646
<b>MOTORYAN KARADHAN ADHINIYAM, 1991 (M.P.)</b>		
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Sections 2 (30), 50 and 168 – Liability of transferor-owner of the vehicle – Neither the transferor nor the transferee took any step to change the name of the owner in the certificate of registration of the vehicle – Transferor must be deemed to continue as the owner of the vehicle for the purpose of the Motor Vehicles Act – Thus, transferor whose name continues in the records of the Registering Authority as the owner of the vehicle is equally liable for payment of compensation amount	114	184
Section 110-A – “Accident arising out of use of motor vehicle” – Whether the fire and explosion in the ill-fated petrol tanker which occurred nearly 4½ hours after the collusion involving the petrol tanker and the other truck can be said to have resulted from the accident arising out of the use of motor vehicle? Held, Yes	115*	187
Sections 140 and 166 – Claim petition – Effect of – Delay in lodging FIR of the incident – Evidence produced on behalf of the claimant inspire confidence and it does not smack of a concocted case which has been filed with an intention to get compensation – Delay in lodging FIR of the incident cannot be a ground to doubt the claimant’s case	182	308
Sections 146, 147 and 149 – Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner – Section 146 of the M.V. Act does not provide that any person who uses the vehicle independently, a separate insurance policy should be taken – The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice i.e. the benefit of the third parties If a vehicle is given on hire by the owner of the vehicle to SRTC, together with its existing and running insurance policy with certain terms and conditions, the Insurance Company cannot escape its liability to pay amount of compensation to third party	412	648
Sections 149 and 166 – Extent of owner’s liability where vehicle was driven negligently by a minor without licence	331*	544
Section 166 – Choice of multiplier – Age of deceased or age of dependents whichever is higher is determinative factor in regard to choice of multiplier	332	545
Section 166 – Claims Tribunals are acting with a legislation which is meant for social welfare – Therefore, when a representation made by a Counsel that a claim of ₹ 15 lac. by way of consent is reduced to ₹ 6 lac, it is the duty of the Tribunal to ask for affidavit of claimant or to take statement of claimant – MACT cannot accept oral statement of Counsel	281	463

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<b>Section 166</b> – Claim case – Proof – A witness who did not file a complaint of motor accident cannot be disbelieved on this ground		
In claim case, unlike criminal case, strict principle of proof not attracted		
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<b>Section 166</b> – Compensation – Claimant younger brother of deceased and dependent upon him – Deceased unmarried – Annual income of deceased ₹21,600 – Half deducted towards expenses of deceased – Deceased aged about 30 years therefore, multiplier of 17 would apply – Claimant also entitled to ₹15,000 towards funeral expenses, loss of expectancies and loss of estate – Compensation enhanced to ₹1,98,600	413	649
<b>Section 166</b> – In injury claims, while determining compensation on the basis of reduction of earning capacity, impact on long life expectancy is also to be considered – Long expectation of life is connected with earning capacity – If earning capacity is reduced, that impacts life expectancy as well	248	410
<b>Sections 166, 163-A and Sch. II</b> – General principle relating to compensation in injury cases – Reiterated		
Permanent disability – Compensation – Assessment of loss of future earnings on account of permanent disability – Disability of limb (or any part of body) is not equal to disability of whole body – Assessment of permanent functional disability must assess percentage of loss of his earning capacity – In such case, no need to deduct any amount towards personal and living expenses		
If claim is under Sch-II of Section 163-A of M.V. Act, then compensation is to be determined on principles laid down in Note (5) of Sch.II		
To ensure availability of Expert/Medical evidence some important measures suggested including that oral evidence may be dispensed with where the certificates are not contested by the other party	117	188
<b>Sections 166 and 168 (1)</b> – Determination of compensation in case of permanent disability – Principles reiterated – Apart from the head of loss of earning, compensation under separate head of pain, suffering and loss of enjoyment of life has to be awarded	333*	546
<b>Sections 166 and 168</b> – Determination of compensation – Loss of earnings – Payment of daily allowance apart from salary, if proved by evidence, such allowance will be part of income		
Deceased aged 20 years and his mother aged 40 years was the only dependant – Proper multiplier would be 15	116	187

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<b>Sections 166 and 168</b> – Motor accident – Determination of compensation – Selection of suitable multiplier – Age of deceased was 33 years and legal representative, mother's age is 67 years – In view of the ratio laid down in <i>Sarla Verma v. DTC</i> , (2009) 6 SCC 121, the multiplier has to be determined with reference to the age of the deceased – Accordingly, suitable multiplier is 16	183	310
<b>Section 168</b> – Assessment of compensation – Considerations of future prospects – Where there is clear and incontrovertible evidence on record that deceased was entitled and in fact bound to get a rise in income in the future, the case would come within the "exceptional circumstance" and not within the purview of the rule of thumb laid down in the case of <i>Sarla Varma (Smt.) &amp; others v. Delhi Transport Corporation &amp; another</i> , AIR 2009 SC 3104 – Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects	184	311
<b>Section 168</b> – Compensation – Future loss assessment – Claimant working as a silk winder – He sustained serious head injury in accident leading to weakness of his right hand and leg – Weakening of his right hand would adversely affect his ability to perform his work as a silk winder and any other manual work – This is also certified by the doctor – High Court assessed the disability of claimant to earn in future at 25% – But Supreme Court assessed at 30% – Compensation enhanced accordingly	249	412
<b>Section 168</b> – Compensation – How to assess loss of future income? Disability assessed by doctor of upper limb (68%) ought to be considered and not disability assessed of whole body (22-23%) because claimant was working as a coolie – Suffering permanent gross deformity of his left forearm, wrist and hand and shortening of left upper limb by 1 cm – Deformity grossly affecting his ability to perform his work as a coolie or do any other manual work and this has also been certified by doctor	250	413
<b>MUNICIPALITIES ACT, 1961 (M.P.)</b>		
<b>Section 20</b> – Forum – And in any other case		
Words "an in any other case" are significant and important – Election in question was held in Karera where the permanent post of ADJ exists – Election petition filed before District Judge, Shivpuri – Held, it is not always necessary that Civil District and Revenue District must be common – Where election is held within Revenue District in which the Court of District Judge is situated, the election petition is to be necessarily presented to the District Judge alone – If the Court of District Judge is not situated in Revenue District in which election is held, the election petition may be presented to the Additional District Judge having permanent seat		
Assignment of election petition to ADJ – District Judge has power to assign election petition to ADJ by virtue of Section 7 of the M.P. Civil Courts Act, 1958	185*	313
<b>MUSLIM LAW</b>		
See Section 65 of the Limitation Act, 1963	266*	437
<b>N.D.P.S. ACT, 1985</b>		
<b>Sections 2 (xv)(a)(b), 8, 18(b) and Schedule Entries 77, 92 and 93</b> – Notification dated 18.11.2009 regarding amendment in the NDPS Act provides for a procedure which may enhance the sentence – Cannot be applied retrospectively	251	413

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<b>Sections 8, 18, 35 and 54</b> – Conscious possession of contraband articles (opium) by the motorcycle driver in respect of physical possession of his pillion driver, establishment of – Having seen the police both tried to run around and flee away – Presumption of conscious possession rightly inferred	252*	416
<b>Sections 18, 25 and 50</b> – Compliance of Section 50 – Provisions can be invoked only in case whether the drug or narcotic substance is recovered as a consequence of the body search of the accused – In case the recovery of the narcotic substance is made from a container being carried by the individual, the provisions of Section 50 would not be attracted	186 (ii)	314
<b>Sections 20, 35, 54 and 56</b> – At the time of search and seizure, sample taken with the aid of weighing scale and weight brought from grocery shop and the same was weighed in laboratory with precision scale – 15 gms. more weight was found – Such difference in the given circumstances is not significant and does not impeach the credibility of prosecution case Conscious possession of contraband – Accused persons were travelling in private car from which <i>charas</i> was recovered – They knew each other – Therefore, it was established that they were in conscious possession thereof according to the presumption of Sections 35 and 54 of the Act until such presumption is rebutted	57	86
<b>Sections 43, 60 and 63</b> – Interim custody of vehicle seized under Section 43 of the N.D.P.S. Act – Owner of vehicle was not the accused – Interim custody of the vehicle cannot be denied on the ground that the vehicle is liable to be confiscated under Section 60 of the N.D.P.S. Act	382	606
<b>Sections 50 and 21</b> – Personal search of accused – There should be strict compliance of Section 50 of the NDPS Act – Accused cannot be held guilty for illegal possession of contraband	414	650
<b>Section 50</b> – Search and seizure – Under sub-section (1) of Section 50 of the NDPS Act, it is mandatory on the part of the empowered officer to apprise the 'person' intended to be searched of his right to be searched before the Gazetted Officer or a Magistrate Mere enquiry by empowered officer as to whether the suspect would like to be searched in the presence of a Magistrate or a Gazetted Officer cannot be said to be due compliance with the mandate of the Section Although by insertion of sub-sections (5) and (6) of Section 50 the rigour of strict procedural requirement is sought to be diluted under the circumstances mentioned therein but these sub-sections does not obliterate the mandate of sub-section (1) of Section 50 to inform the person to be searched of his right to be taken before a Gazetted Officer or a Magistrate Though Section 50 gives an option to the empowered officer to take suspect either before the nearest Gazetted Officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate, who enjoys more confidence of the common man compared to any other officer – It would not only add legitimacy to search proceedings, it may verify and strengthen the prosecution as well	118	194
<b>Sections 51, 52 and 52-A</b> – Seizure witnesses, significance of – The seizure witnesses turning hostile may not be very significant by itself, as it is not an uncommon phenomenon in criminal trials, particularly in cases relating to NDPS		

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Production of seized contraband before the trial Court – Necessity thereof – To connect the FSL report with the substance that was seized from the possession of the appellant or the other accused, it is necessary for the prosecution to produce the seized substance marked as material objects before the Court during trial	253	417
<b>Section 67</b> – Confession recorded by Central Bureau of Narcotics Officer under Section 67 of NDPS Act – First time retracted in examination of accused under Section 313 CrPC is immaterial – Confession is voluntary and could form the basis of conviction		
What is conscious possession? Once article is found in possession of accused, it could be presumed that he was in conscious possession – The servant of a hotel cannot be said to be in possession of contraband belonging to the master unless it is proved that it was left in his custody over which he had absolute control	310 (iii) & (iv)	511
<b>NATURAL JUSTICE</b>		
Dismissal of case – Effect of interim orders and duty of the Court – No litigant can derive any benefit from the mere pendency of a case in a Court of Law as the interim order always merges into the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically – It is the duty of the Court to pass an order to neutralize or undo the effect of any undeserved or unfair advantage gained by a party.		
'Legal malice', meaning of – "Malice in law" means something done without lawful excuse – Passing an order for an unauthorized purpose constitutes malice in law	4 (ii) & (iii)	3
See Practice and Procedure	59	88
<b>NEGOTIABLE INSTRUMENTS ACT, 1881</b>		
<b>Sections 4, 32 and 118 (A)</b> – Promissory note is a negotiable instrument – Its execution admitted – But presumption of consideration has been rebutted by oral evidence of mediators and handwriting expert – Promissory note also tampered – Defendants cannot be held liable	254	419
<b>Sections 7, 138 and 142</b> – Maintainability of complaint when the payee is proprietary concern – Law explained	255	420
<b>Sections 20 and 138</b> – Accused has admitted his signature on the disputed cheque – Presumption arises – Cheque had been issued by the Signatory/Accused – No need for sending cheque for examination to hand-writing expert	58	87
<b>Section 138</b> – Advantage of concurrent sentences – Cannot be extended to the applicant in all cases of Section 138 of the Negotiable Instruments Act, 1881	379	604
<b>Section 138</b> – Jurisdiction – Cheque handed over to complainant at Gwalior – Gwalior Court has jurisdiction	91	147
<b>Section 138</b> – Liability of legal heirs – Complaint against petitioner regarding cheque not issued by the petitioner herself – Held, petitioner can not be held criminally liable in regard to a cheque issued by her mother during her life time	415	652
<b>Section 138</b> – Propriety of sentence – Offence u/s 138 of NI Act is almost in the nature of civil wrong which was given criminal overtones – In a given case, gravity of complaint		



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cannot be equated with the offence under IPC – Instead of jail sentence, imposition of fine payable as compensation may be sufficient to meet the ends of justice – In civil case fine is adequate sentence instead of jail sentence	<b>329</b>	<b>542</b>
<b>Section 138</b> – Whether in case of acquittal by JMFC from offence punishable under Section 138 of Negotiable Instruments Act, 1881, “complainant” can prefer appeal before Sessions Court as per Section 372 CrPC? Held, No – The only remedy available to the complainant of complaint case is to prefer appeal against the judgment of acquittal before the High Court under Section 378 (4) CrPC	<b>187</b>	<b>315</b>
<b>Section 138</b> – Whether more than three dishonoured cheques can be tried in a single trial if demand has been made by common notice? Held, Yes, the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques	<b>188</b>	<b>316</b>
<b>Sections 138 and 139</b> – Where two Companies have common Directors and understanding which had been arrived at among complainant and common Directors that goods supplied to one Company, payment would be made by sister concern – In above facts cheque issued by one Company can be presumed for discharge in whole or in part of any debt or other liability by other Company	<b>416</b>	<b>653</b>
<b>Sections 138 and 141</b> – Dishonour of cheque – The accused was involved in the alleged offence on the basis of being one of the partners of the firm – A specific notice had been issued to all the partners including the present petitioner, but he had not even sent a reply stating that he was only a sleeping partner – He shall be liable to be proceeded against and punished under Section 141 of the Act	<b>417</b>	<b>655</b>
<b>Sections 138, 142 and 145</b> – See Section 200 of the Criminal Procedure Code, 1973	<b>330</b>	<b>543</b>
<b>Section 141</b> – Director, whose resignation has been accepted by the company and that has been duly notified to the Registrar of Companies, cannot be made accountable and fastened with liability for anything done by the company after the acceptance of his resignation	<b>144 (ii)*</b>	<b>248</b>
<b>Sections 142 (b) and 138</b> – Cognizance of offence under Section 138 of N. I. Act, limitation for – Approach of Court – While dealing with the application seeking condonation of delay it is always desirable to take liberal approach and not a rigid or too technical view and the Court has to keep in mind that discretion has to be exercised to advance substantial justice	<b>418*</b>	<b>657</b>
<b>OATHS ACT, 1873</b>		
<b>Section 5</b> – See Section 118 of the Evidence Act, 1872	<b>224</b>	<b>372</b>
<b>OFFICIAL LANGUAGE ACT, 1957 (M.P.)</b>		
<b>Section 3</b> – See Section 265 of the Criminal Procedure Act, 1973	<b>33</b>	<b>52</b>
<b>PARTNERSHIP ACT, 1932</b>		
<b>Sections 19, 20 and 22</b> – Authority of partner as agent of firm to transfer immoveable property – In absence of any usage and custom of trade, such authority must be given expressly to transferring partner		

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An act of a partner binds a firm, which is done to carry on, in the usual way, the business of the kind carried on by the firm		
Relief of specific performance, nature of – Such relief is discretionary and court is not bound to grant the same merely because it is lawful to do so – Discretion of the court must be sound and reasonable	256	421
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<b>PRACTICE AND PROCEDURE</b>		
Recording of reasons – Requirement of – The safeguards against an, arbitrary exercise of powers – The application of mind in turn is best demonstrated by disclosure of the mind and disclosure of mind is best demonstrated by recording reasons in support of the order or conclusion – Legal position reiterated	59	88
<b>POWERS OF ATTORNEY ACT, 1882</b>		
<b>Section 1-A</b> – A plaintiff cannot examine in a place his power of attorney who does not have personal knowledge either to the transaction or of his readiness and willingness to perform his part of contract and subject himself to cross-examination on that issue – Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set-up by him is not correct – The legal position as to who should give evidence in regard to matters involving personal knowledge summarized	62 (ii)	94
<b>PREVENTION OF CORRUPTION ACT, 1947</b>		
<b>Section 5 (2)</b> – See Sections 120-B, 467, 471 and 420 of the Indian Penal Code, 1860	237	392
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Previous sanction for prosecution – How to be dealt with and necessity thereof	334	546
<b>PREVENTION OF CORRUPTION ACT, 1988</b>		
<b>Sections 5(1), 19 and 13(1)(d)</b> – See Sections 156(3), 202 and 154 of the Criminal Procedure Code, 1973	292	485
<b>Sections 7 and 13</b> – Demand of illegal gratification is <i>sine qua non</i> to constitute the offence under the Prevention of Corruption Act – Further, mere recovery of currency notes itself does not constitute the offence under the Act, unless it is proved beyond all reasonable doubts that the accused voluntarily accepted the money knowing it to be bribe – For arriving at the conclusion as to whether all the ingredients of an offence viz. demand, acceptance and recovery of the amount of illegal gratification have been satisfied or not, the court must take into consideration the facts and circumstances brought on record in their entirety	119 (ii)*	200

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<b>Section 19</b> – Can a Special Judge refuse to accept closure report under Section 169 CrPC? Held, Yes		
Whether an observation is a direction issued to Sanctioning Authority to grant sanction? Held, No – Therefore, matter may be taken up for seeking necessary sanction to prosecute the accused persons	419	657
<b>Section 19</b> – Previous sanction for prosecution – When not necessary? The relevant date is the date on which the cognizance is taken – If on that date the appellant is not a public servant, there will be no question of any sanction – If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been abused, there will be no question of sanction		
Whether MLAs and MPs are public servants? Held, Yes	335	547
<b>Section 19</b> – Previous sanction for prosecution – Who is competent authority? Authority, which would have been competent to remove the public servant from his office at the time when the alleged offence has been committed, is the competent authority	336	548
<b>Section 19</b> – Sanction of prosecution, validity of – Where the order of sanction is speaking, the facts that investigating agency had forwarded draft sanction order to sanctioning authority, the authority was not able to recollect at the time of evidence on which date documents related to investigation was produced before him and how much time was taken in studying the documents and non affording opportunity of hearing to the accused before granting sanction do not invalidate the sanction	257	423
<b>Section 19</b> – Sanction order for prosecution – Validity thereof – The sanctioning authority has duly recorded its satisfaction having examined the statements of witnesses as also the material on record – Appellant/accused should be prosecuted for the offence – Sanctioning order is in accordance with law	120	201
<b>Section 19</b> – Scope for review of order granting or refusing sanction to prosecution – The power to review is not unbridled or unrestricted – It is not permissible for the sanctioning authority to review or reconsider the matter on the same materials – However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course	121*	202
<b>Section 19 (1) (c)</b> – Preliminary enquiry by the responsible police officer into the allegations of dishonesty against the public servant is the law of the land declared by the Supreme Court		
Defect or irregularity in investigation or mere error, omission or irregularity in sanction is not fatal nor vitiate the result unless it has resulted in failure of justice or has been occasioned thereby	213 (i) & (ii)	353
<b>Section 19 (3) &amp; (4)</b> – See Section 197 of the Criminal Procedure Code, 1973	27	41

## PREVENTION OF FOOD ADULTERATION ACT, 1954

**Sections 2 (ix) (k) and 17 (2)** – Offence by company – Prosecution of Secretary and Directors of Company – Complaint should contain the averments that how the Secretary and Directors are responsible for the day to day management of the company – A mere

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bald statement that a person was a Director or Secretary of the company is not sufficient to make him liable	420	658
<b>PREVENTION OF FOOD ADULTERATION RULES, 1955</b>		
<b>Rule 32 (e), (f) and (l)</b> – See Sections 2 (ix) (k) and 17 (2) of the Prevention of Food Adulteration Act, 1954	420	658
<b>PROTECTION OF HUMAN RIGHTS ACT, 1993</b>		
<b>Sections 2 (d) and 12</b> – Findings of Human Rights Commission, effect of – Findings of Human Rights Commission have an overriding effect on the Departmental Enquiry because Protection of Human Rights Act is a Special Act		
If Human Rights Commission finds any breach of human right done by Government servant and directs the employer to take action, it will not be within the power of authorities to dilute the findings of the Commission in a domestic enquiry	258	426
<b>Section 21 (as amended in 2006)</b> – Eligibility for appointment as a Member – Seven years experience as District Judge, reckoning of – Experience as Additional District Judge cannot be counted looking to the UP Higher Judicial Services Rules, 1975 as under these Rules post of District Judge and Additional District Judge in the State of Uttar Pradesh are neither interchangeable nor inter-transferable, more so, no single cadre comprising posts of District and Sessions Judges and Additional District and Sessions Judges either	337	549
<b>PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005</b>		
<b>Sections 2 (f), 2 (s), 3.(a) and 3 (iv) (a)</b> – As against this Section 2 (f) of PWDVA, 2005 embraces a wider concept by affording protection not only to legally wedded wife but also to a woman who is having domestic relationship which may not strictly be marriage but is “in the nature of marriage.”		
‘Live-in-relationship’ – ‘Wife’, meaning of		
‘Relationship in the nature of marriage’ – Essential conditions constituting such relationship – The parties should also have a ‘shared household’ as defined in Section 2(s) of the Act – Merely spending weekends or one night together does not constitute ‘domestic relationship’ under Section 2 (f) of the Act – Further held, not all live-in relationships form a relationship ‘in the nature of marriage’ because several parameters have to be satisfied in order to constitute relationship in the nature of marriage – Lastly, held, a relationship with ‘keep’ whom a man uses for sexual purposes and/or as a servant, does not constitute relationship in the nature of marriage	60 (ii) & (iii)	90
<b>Sections 2(s), 12 (1), 17 and 19 (1)</b> – ‘Shared household’, what it is? A ‘shared household’ would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member – Exclusive and self owned property of mother-in-law of petitioner does not come within the sweep of ‘shared household’	338	551

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**Section 12** – Whether a judgment and decree of a competent Civil Court can be declared null and void in collateral proceedings? Held, No

353 568

## **RAILWAY CLAIMS TRIBUNAL ACT, 1987**

**Sections 13 and 15** – *Res judicata* – Decree passed by the court not having inherent jurisdiction – Such decree is a nullity and would never operate as *res judicata*

Void decree and wrong, incorrect and irregular decree – Distinction between

Jurisdiction of Civil Court – Suit for refund of freight – Jurisdiction of civil court is excluded by Section 15 of the Railway Claims Tribunal Act, 1987

Whether objection as to want of inherent jurisdiction can be raised in the execution proceedings? Held, Yes

137 239

## **RENT CONTROL AND EVICTION**

At the time of granting stay against eviction decree, appellate Court has enhanced rent taking into consideration the prevalent market rate – The rent so fixed should be reasonable, just and proper

To minimize the landlord-tenant litigation at all levels, Hon'ble the Supreme Court has laid down guidelines to fix reasonable rent akin to market rent for rental premises

421 660

Once the tenanted premises have been shown by evidence to be not in occupation of the tenant continuously for six months, the pleading of the landlord that such non-user is not without reasonable cause as the effect of putting the tenant on notice to plead and prove the availability of reasonable cause ceasing to occupy the tenanted premises prohibition contained in Section 22 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 does not cover proceedings instituted by landlord of a sick industrial company for eviction of company premises let out to it as per Rent Control and Eviction Act – Legal position reiterated

259 428

Subletting/sub-tenancy comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and put another person in exclusive possession there of without the knowledge of the landlord – Such arrangements take place behind the back of the landlord and the Court is required to draw its own inference upon the facts of the case

61 93

Sub-letting – Mode of proof – Production of affirmative evidence showing payment of monetary consideration by sub-tenant to the tenant is not necessary

Non-user of non-residential accommodation – Proof of

339 552

## **RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009**

**Section 3** – Right to education – Every child of the age of 6-14 years has the right to have free and compulsory education in the neighbourhood school till completion of elementary education

210 349

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## **RIGHT TO INFORMATION ACT, 2005**

**Sections 2, 6, 8, 9 and 24** – Right of examinee to inspect his evaluated answer books – The answer book is a document or record in terms of Sections 2 (f) and 2 (i) and evaluated answer books and records contain the “opinion” of the examinee – Therefore, the evaluated answer book is also an “information” under the Right to Information Act

Right to information – Nature and extent of – It is a facet of freedom of “speech and expression” as contained in Article 19 (1) (a) of the Constitution of India and such a right is subject to reasonable restriction in the interest of the security of the State and to exemptions and exceptions 422 662

**Section 8 (1) (d)** – Information regarding instructions and model answers issued to examiners and moderators for evaluation of answer script – Entitlement to exemption from disclosure – Information can be sought under RTI Act at different stages for different points of time – Depending upon the nature of exemption, what is exempted from declaration at one point may cease to be exempted at a later point of time 423 (i) 669

## **RULES AND ORDERS (CRIMINAL)**

**Rules 382 and 383** – See Section 441 of the Criminal Procedure Code, 1973

35\* 55

## **SALE OF GOODS ACT, 1930**

**Section 37 (2)** – Delivery of excess quantity – Plaintiff (seller) delivered excess amount of goods to the defendants (buyers) and the same were accepted by the defendants – Neither the excess quantity of goods was returned back to the plaintiff nor a notice to uplift the goods immediately was sent to the plaintiff – The goods which were lying in the possession of the defendants for a considerably long period, became of no use – Held, defendants are liable to pay the price of the goods 424 670

**Section 64 A (1) (b)** – Delay in delivery of goods – Liability to pay extra amount on increase in price due to enhancement of excise duty – In the absence of any deliberate intention on the part of the seller to delay delivery of the goods, it is the liability of the purchaser to pay extra price when the excise duty has been enhanced prior to the delivery of the goods 189 318

## **SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

**Section 3 (1) (x)** – Offences of atrocities – Whether presence of victim is necessary? Held, Yes – The words used are “in any place within public view” occurring in Section 3 (1) (x) which means that the public must view the victim being insulted for which he must be present – If victim is not present no offence of allegation in above section gets attracted 260 430

**Sections 3 (1) (x) and 3** – Whether use of words “pallan”, “pallapalay”, “parayan” or “paraparayan” with intent to insult is an offence under the Act? Held, Yes

In tea shops and restaurants, two tumbler system prevalent – Separate tumblers for serving tea and other drinks to Scheduled Caste persons and non Scheduled Caste persons are used – It is an offence under the Act – These wrong doers must be criminally

proceeded against and given harsh punishment if found guilty – All administrative and police officers will be accountable and departmentally proceeded against, if despite having knowledge of those acts in the area under their jurisdiction, they do not launch criminal proceedings against the culprits

**261 431**

## **SERVICE LAW**

After revocation of suspension entitlement of back wages more so, where employee is acquitted from criminal charge – If competent authority is of the opinion that suspension of the employee was not wholly unjustified and employer is not entitled to back wages then Administrative Tribunal and Court cannot interfere in such order

**425 671**

Compulsory retirement – Service record evaluated by a Committee of Judges of High Court – The order of compulsory retirement cannot be said to be vitiated on account of non-application of mind, malafides or for want of material available on record – The decision to compulsory retire is bonafide and in the public interest

Grant of Selection Grade – Criteria prescribed for grant of Selection Grade – Held, taking into account the ACRs for the past five years as well as the criteria which has been framed by High Court, the petitioner is entitled to grant of Selection Grade

**426\* 672**

Disciplinary proceedings, commencement of – Held, the disciplinary proceedings commence only when chargesheet is issued to the delinquent employee

*De novo* enquiry – Meaning thereof – The entire proceedings including the chargesheet issued earlier stood quashed – In such a situation, it is not permissible to proceed on the basis of the chargesheet issued earlier – Thus, to initiate a fresh enquiry, a fresh chargesheet would be required

**262 432**

Purpose of probation in District Judiciary – Upright and honest Judicial Officers are needed in the District Judiciary which is the bedrock of our judicial system – If any judicial officer on probation is not found suitable by the Controlling/Appointing authority after considering his overall performance, conduct and suitability for the job, he is liable for termination simpliciter – While taking a decision in the regard, neither any notice is required to be given to such Judicial Officer nor is he required to be given any opportunity of hearing

**263 434**

Right to promotion – Earlier rules provided for promotion – Amendment in Rules denying right to promotion – Validity thereof – No accrued or vested rights were taken away by the amendment as the consideration for promotion took place after amendment came into operation – Amendment valid

Promotion – Application of Rule – It is the Rules that are prevalent at the time when the consideration took place for promotion, which would be applicable – Legal position reiterated

**340 554**

## **SICK INDUSTRIAL COMPANIES (SPECIAL PROVISIONS) ACT, 1985**

**Section 22** – See the Rent Control and Eviction

**259 428**

## **SPECIFIC RELIEF ACT, 1963**

**Sections 15 and 16 (c)** – Specific performance of contract – Plaintiff should not only plead and prove the terms of agreement but should also plead and prove his readiness and willingness to perform his obligation in terms of the contract

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To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract	62 (i)	94
<b>Section 16 (c)</b> – “Readiness” and “willingness”, averment and proof of – Must be established throughout the relevant points of time – “Readiness” refers to financial capacity and “willingness” to the conduct of the plaintiff wanting performance	122 (i)	203
<b>Section 20</b> – See Sections 19, 20 and 22 of the Partnership Act, 1932	256	421
<b>Section 20</b> – See Order 3 Rule 4 of the Civil Procedure Code, 1908	341 (ii)	555
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