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**ALL INDIA SERVICE (CONDUCT) RULES, 1968:**

r. 3(3)(iii).  
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**ARBITRATION:**

Arbitration clause - Validity - Suit seeking injunction against arbitration of disputes - Maintainability - Appellant filed request for arbitration in the International Chamber of Commerce (ICC), Paris in relation to an agreement of restructuring dated 12th January, 2002 by invoking arbitration clause contained in Clause 15 of the agreement dated 12th January, 2002 - Dispute as whether Clause 7.5 of the subsequent Agreement dated 8th March, 2002 invoking the exclusive jurisdiction of the courts of Calcutta nullified the scope of arbitration as mentioned in the agreement dated 12th January, 2002 - Suit filed by respondents, seeking injunction against arbitration of disputes between the parties - Maintainability - Held: In view of the clauses of the Principal Agreement dated 12th January 2002 and subsequent Agreements dated 8th March 2002 and 30th July, 2004, read with section 5 of the A&C Act, it is clear that the Arbitration clause in the Principal Agreement

continued to be valid in view of clause no. 6 of the Agreement dated 30th July, 2004 and also by virtue of its mention in different parts of both the supplementary agreements dated 8th March, 2002 and 30th July, 2004 - Appellant thus entitled to invoke the arbitration clause for settling their disputes - Since, the arbitration clause was valid, suit filed by respondent no.1 for declaration and permanent injunction against arbitration of disputes between the parties unsustainable and liable to be dismissed - Parties directed to resolve their disputes through arbitration as mentioned in clause 15 of the letter of Agreement dated 12th January, 2002 in accordance with the Rules of ICC - Rules of Arbitration of the International Chamber of Commerce - Arbitration and Conciliation Act, 1996 - ss. 5, 16 and 45.

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**ARBITRATION AND CONCILIATION ACT, 1996:**

ss. 5, 16 and 45.  
(See under: Arbitration) ..... 1101

**CIVIL SERVICE:**

Preservation of integrity, fearlessness and independence of civil servants - Need of reforms for - Writ petition seeking writ of mandamus requiring Union, State and Union Territories to create independent Civil Services Board, to provide fixed tenure for posting of civil servants and requirement for every civil servant to record instructions/orders - Held: There are various lacunae in the present system in which the civil servants function, which calls for serious attention

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- Directions issued to constitute Civil Services Board (CSB) with high ranking serving officers, till the Parliament brings in proper legislation in setting up of CSB - Direction to appropriate directions to secure minimum tenure of service to the civil servants - Direction also to issue directions requiring the civil servants to record oral orders/instructions - Absence of recording oral instructions would defeat the rights guaranteed under Right to Information Act and would also give room for favouritism and corruption - Constitution of India, 1950 - Chapter XIV and parts V and VI - Right to Information Act, 2005 - ss. 3 and 4 - All India Service (Conduct) Rules, 1968 - r. 3(3)(iii).

*T.S.R. Subramanian & Ors. v. Union of India & Ors.* ..... 991

#### CODE OF CIVIL PROCEDURE, 1908:

s.100 - High Court framing substantial questions of law and while answering the same in favour of defendants, setting aside concurrent findings of both the courts below - Held: High Court has rightly come to the conclusion that substantial questions of law were to be answered in the negative, holding that since plaintiff-appellants have not produced any document of title in relation to suit property, grant of decree in their favour was erroneous in law - Substantial questions of law framed by High Court at the time of admission of second appeal is based on law laid down by Supreme Court - Therefore, High Court was justified in recording cogent and valid reasons to annul the concurrent findings of courts below and in holding that non-appreciation of pleadings and evidence on record by courts below rendered their finding on the

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contentious issues/points as perverse and arbitrary, and, therefore, the same have been rightly set aside by High Court by answering the substantial questions of law in favour of defendants - There is, therefore, no reason to interfere with the judgment and decree passed by High Court.

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#### CODE OF CRIMINAL PROCEDURE, 1973:

s. 311 - Retrial - Held: Court can direct retrial, where prosecution lacks in bringing necessary evidence - Facts of the present case do not justify parameters for retrial.

*Mary Pappa Jebamani v. Ganesan & Ors.* ..... 1042

#### CONSTITUTION OF INDIA, 1950:

(1) Arts.129, 142.

(See under: Investigation) ..... 1051

(2)(i) Articles 301 and 304(a) - Inter-State Trade and Commerce - Tax rebate - Granted by State Government (State of U.P.) by Notification - To cement manufacturing units - The first condition for getting benefit of the rebate was that the units were established in the districts of that State and the second condition was that the units were manufacturing cement by using fly-ash purchased from that State - The Notification whether in violation of Arts. 301 and 304(a) - Held: The Notification is violative of Arts. 301 and 304(a) - It is discriminated between imported goods and similar locally manufactured goods (i.e. cement manufactured by using fly-ash procured from the

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State of U.P.) - Object of the Government was to grant rebate to provide incentive to the manufacturing units using fly-ash - Thus the first condition was discriminatory - If the first condition is severed from the Notification, it would not frustrate the object of the notification - Therefore, using doctrine of severability, condition No. 1 is severed from the Notification - Uttar Pradesh Trade Tax Act, 1948 - s. 5.

(ii) Art. 304(a) - Nature and scope of - Held: Article 304(a) is an exemption to Art. 301 - It does not prevent levy of tax on goods - But such levy of tax is prohibited, which would result in goods imported from other States and similar goods produced or manufactured within the State.

(iii) Art. 304 - Powers under - Extent and Scope of - Held: The powers given to State Legislatures are not unrestricted, and are bound to function within limitations stipulated u/Art. 304(a) - The power u/ Art. 304(a), though an exception to Art. 301, but is not a blanket power intended to be conferred to the State Legislature - Powers u/Art. 304(b) also are to be exercised sparingly.

(iv) Arts. 302 and 304(a) - Powers under - Distinction between.

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(3) Chapter XIV and parts V and VI.  
(See under: Civil Service) ..... 991

#### CONSTITUTIONALISM:

Test of constitutional validity of a statute - Held: Machinery provisions cannot be used to test the

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constitutional validity of a statute - Issue of territoriality should also not be a factor to determine the constitutional validity of a notification.

*State of U.P. and Ors. v. Jaiprakash Associates Ltd.* ..... 943

CONTEMPT OF COURTS ACT, 1971:  
s.2(b) and 2(c)(iii) and 12.  
(See under: Investigation) ..... 1051

#### DOCTRINE/PRINCIPLES:

(1) Doctrine of lis pendens - Transfer of property pendente lite - Effect of - Held: Transferee cannot deprive the successful plaintiff of the fruits of decree, if purchased the property pendente lite - He is bound by the decree just as much as he was a party to the suit.

*KN Aswathnarayana Setty (D) Tr. LRs. & Ors. v. State of Karnataka & Ors.* ..... 1029

(2) Doctrine of severability - Applicability of - Discussed.

*State of U.P. and Ors. v. Jaiprakash Associates Ltd.* ..... 943

#### EDUCATION/EDUCATIONAL INSTITUTIONS:

Admission - Medical admissions - MBBS - Choice given by respondents to SC/ST/OBC candidates taking admission in open competition, to opt for better Institution of their choice for which he/she would have been eligible as per the rules of reservation - Challenged - Whether once a candidate in reserved category had taken admission under the open competition, he could not have been given a choice for better Institution

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on the premise that he/she will be governed by Rules of reservation - Held: Respondents, at the time of counseling, only accorded a higher/better choice to meritorious reserved candidates (MRC) who got recommended against general/unreserved seats vis-à-vis those reserved category candidates who were accommodated against their quota - It was an inter-se adjustment between two kinds of persons belonging to reserved category - In inter-se merit, persons who were able to find their place in general list on account of their merit are definitely better placed than those candidates who are selected in the reserved category, though both types of candidates belong to reserved category - If between two categories of persons belonging to same class, higher choice is not given to the persons who are better in merit viz. the MRCs, it would clearly be injustice to them - Action of the respondents not prejudicial to the interests of the petitioners in any manner.

*Samta Aandolan Samiti & Anr. v. Union of India & Ors.* ..... 1124

ELECTRICITY ACT, 2003:

s. 111.

(See under: Electricity Regulatory Commission Act, 1998) ..... 915

ELECTRICITY REGULATORY COMMISSION ACT, 1998:

(i) s.27 - Appeal under - Maintainability of - After repeal of the 1998 Act and enactment of Electricity Act, 2003 - Held: Maintainable, since the legislature never intended to take away the vested right of appeal in the forum under the 1998 Act, as the

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2003 Act did not provide for transfer of pending cases - Electricity Act, 2003 - s. 111.

(ii) s.22 - Determination of Tariff under - By regulatory Commission - Also issued certain directions as part of the tariff order - The Commission imposed fine on Electricity Board for non-compliance of the directions - Propriety of - Held: The Commission was competent to issue the directions as all the directions were connected with the tariff fixation - However, it was not correct for the Commission to impose penalty on the Board, as the Board had substantially complied with the directions.

*Himachal Pradesh State Electricity Regulatory Commission and another v. Himachal Pradesh State Electricity Board* ..... 915

EVIDENCE ACT, 1872:

ss.101 and 102 - Burden of proof - Suit for declaration that plaintiff was owner and in possession of 1/3rd of suit property - Held: It was upon plaintiff-appellants to furnish proof regarding ownership of 1/3rd share of suit property and discharge their burden of proof as per ss. 101 and 102 - It was primarily and essentially necessary for plaintiff-appellants to establish their claim of ownership before they could invite the court to address itself to the issue of their challenge to title of defendants-respondents to suit property - Plaintiff-appellants having failed to do so, their entire claim was liable to be rejected.

*Sebastiao Luis Fernandes (Dead) Through Lrs. & Ors. v. K.V.P. Shastri (Dead) Through Lrs. & Ors.* ..... 1076

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#### INVESTIGATION:

Court-monitored criminal investigation - Interference in - Responsibility and duty cast on the court - Held: Is to see that investigation is carried out in the right direction and the Officers entrusted with the task are not intimidated or pressurised by any person, however high he may be -Constitutional powers are conferred on the Supreme Court u/ Art.129 to examine, whether, there has been any attempt by anybody to interfere with an investigation monitored by the Supreme Court - Art. 142 also confers powers on the Supreme Court to pass such orders as necessary for doing complete justice in any cause or matter pending before it - Any interference, by anybody, to scuttle a court monitored investigation would amount to interfering with the administration of justice - Contempt petition filed in the case at hand perfectly maintainable - Notice issued to respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation - Constitution of India, 1950 - Arts.129, 142 - Contempt of Courts Act, 1971 - s.2(b) and 2(c)(iii) and 12 - Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 - r.12.

*Rajeshwar Singh v. Subrata Roy Sahara & Ors.* ..... 1051

#### LAND ACQUISITION ACT, 1894:

(i) ss. 4 and 48(1) - Purchase of land, subsequent to issuance of notification for acquisition of land - Competence of purchaser to challenge the validity of acquisition - Held: Vendee not competent to challenge the validity of acquisition - He can at the most claim compensation on the basis of his

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vendor's title.

(ii) ss. 48(1), 16 and 17 - Application of de-notification of acquired land - Maintainability of - Held: Once possession is taken u/ss. 16 and 17, the land vests in State, free from all encumbrances - Once land is vested in State, free from all encumbrances, it cannot be divested.

*KN Aswathnarayana Setty (D) Tr. LRs. & Ors. v. State of Karnataka & Ors.* ..... 1029

#### LIABILITY:

Omission liability - 'Omission to act' whether amounts to 'act' - Held: Liability for an omission, requires a legal duty to act arising from either civil or criminal law - A moral duty to act is not sufficient for invoking omission liability - Penal Code and in particular s. 338 IPC does explicitly include the liability due to omissions.

*Dr. P.B. Desai v. State of Maharashtra & Anr.* ..... 863

#### MAXIMS:

*Maxim út lite pendente nihil 'innovetur'* (During a litigation, nothing new should be introduced).

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#### MEDICAL NEGLIGENCE:

(1)(i) Medical negligence - Liability of the offending doctor - Negligent act/omission by a doctor gives rise to civil as well as criminal liability - Distinction is required to be drawn between the two.

(ii) Medical negligence - Civil liability - If the patient suffers because of negligent act/omission of doctor,

the doctor is liable to pay damages - Torts.

(iii) Medical negligence - Criminal liability - Of the offending doctor - Held: Criminal liability is to be answered in terms of mens rea - The only state of mind which deserves punishment is that which demonstrates an intention to cause harm or where there is deliberate willingness to subject others to the risk of harm.

(iv) Medical negligence - Ascertainment of - Doctor-patient relationship - Establishment of - Held: Formation of a doctor-patient relationship is integral to formation of a legal relationship and consequent rights and duties, forming the basis of liability of a medical practitioner - A contract between doctor and patient is always implied, except when written informed consent is obtained - When contractual relationship is established, it gives foundation to legal obligation between the doctor and patient - Once it is found that there is 'duty to treat' there would be corresponding 'duty to take care' - Whenever the principle of 'duty to take care' is founded on a contractual relationship it acquires a Legal character.

(Also See under: Penal Code, 1860)

*Dr. P.B. Desai v. State of Maharashtra & Anr.* ..... 863

#### NEGLIGENCE:

(1) Medical Negligence.

(See under: Medical negligence, Liability and Penal Code, 1860) ..... 863

(2) 'Negligence' - Connotation of. 'Negligence' and 'Recklessness' - Difference between.

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#### PENAL CODE, 1860:

(1) ss. 294(b) and 323 - Prosecution under - Summary trial - Acquittal by trial court - Conviction by appellate court - High Court in exercise of its revisional jurisdiction set aside the order of conviction and revived the acquittal order - Held: Since the High Court in exercise of its revisional jurisdiction, set aside the order of first appellate court without assigning any reason, matter remanded to High Court for consideration afresh.

*Mary Pappa Jebamani v. Ganesan & Ors.* ..... 1042

(2)(i) s. 338 r/w. s. 109 - Prosecution under - Of medical practitioner (surgeon) - Conviction by courts below - Held: The omission on the part of the accused to take care of the patient, in the facts of the case, can come within the realm of professional misconduct and civil liability (actionable wrong in tort) but not criminal liability - The omission on the part of the accused was not the cause for patient's death - Hence he cannot be held liable u/s. 338 as the ingredients of s. 338 have not been satisfied - Tort - Actionable wrong - Professional Misconduct - Medical Negligence.

(ii) s. 338 - Offence under - Scope of - Held: An offence u/s. 338 is capable of being committed by omission - Medical profession is included in it.

*Dr. P.B. Desai v. State of Maharashtra & Anr.* ..... 863

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PROSPECTIVE OPERATION:

Enactments dealing with vested rights are primarily prospective, unless expressly or by necessary intention or implication given effect retrospectively - A right to appeal as well as forum is a vested right.

(Also see under: Electricity Regulatory Commission Act, 1985) ..... 915

RESERVATION:

(See under: Education/Educational Institutions) ..... 1124

RIGHT TO INFORMATION ACT, 2005:

ss. 3 and 4.  
(See under: Civil Service) ..... 991

RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE:

(See under: Arbitration) ..... 1101

RULES TO REGULATE PROCEEDINGS FOR CONTEMPT OF THE SUPREME COURT, 1975:  
r.12.

(See under: Investigation) ..... 1051

TAX/TAXATION:

(i) 'Rebate of tax' - Held: It is such a device or weapon of taxation used by the Government, validity where of is tested on the touchstone of Article 304(a), in the circumstances under which they are used - Exemption or rebate of tax is within the purview of taxation.

(ii) Trade tax.

*State of U.P. and Ors. v. Jaiprakash Associates Ltd.* ..... 943

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TORT:

Actionable wrong - Professional Misconduct.  
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TRANSFER OF PROPERTY.

(See under: Doctrines/Principles) ..... 1029

UTTAR PRADESH TRADE TAX ACT, 1948:

s. 5.  
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WORDS AND PHRASES:

(i) 'Discrimination' - Meaning of, in the context of taxation and in the context of Art. 304(a) of the Constitution of India, 1950.

(ii) 'Rebate' - Meaning of - Explained in the context of Taxation.

(iii) 'Rebate of tax' and 'incentive' - Distinction between: 'Tax' and 'Taxation' - Meaning of, in the context of Article 304(a) of the Constitution of India, 1950.

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