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(ii) Natural justice - Doctrine of *audi alteram partem* - Object of - Held: Is to strike at arbitrariness and want of fair play.

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(1) Arts. 14 and 16.

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(2) Art. 226 - Contractual disputes and writ jurisdiction - Held: Generally the court should not exercise its writ jurisdiction to enforce contractual obligation.

(Also see under: Rajasthan State Industrial and Investment Corporation Limited (Disposal of Land)

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(3) (i) Art. 234 - Appointment as Civil Judge denied - On the basis of police report alleging association of candidate and her husband with banned political party - Held: Since complete papers were not placed before High Court on administrative side, it cannot be said that there has been meaningful consultation with High Court as required u/Art. 234 - High Court administration thus failed in discharging its responsibility u/Art. 234 - Direction to State Government to place the Police Report before High Court on administrative side.

(ii) Art. 22(1) - Appointment as Civil Judge - Denied on the basis of police report alleging association of candidate's husband (an advocate) with a banned political party - Held: Candidate cannot be made to suffer for the role of her husband who was discharging his duty as an advocate in furtherance of fundamental rights provided u/Art. 22(1) of litigants - Also as per rules framed by Bar Council of India, an advocate is bound to accept any brief and it is duty of advocate to uphold the interests of his client - Constitution of India, 1950 - Art. 22(1) - Advocates Act, 1961 - s. 49 - Bar Council of India Rules - rr. 11 and 15 - Judicial Service. (Also see under: Judicial Review)

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CONTRACT:

(1) Termination of, by respondent-authority - Termination challenged on ground of denial of a fair hearing - Held: Termination of contract was preceded by a show-cause notice issued to appellant and a hearing provided to it by competent authority - Issue of show-cause notice and disclosure of material on the basis of which action was proposed to be taken was in compliance with fairness to appellant - Absence of any allegation of mala fides against those taking action as also the failure of appellant to disclose any prejudice, indicated that procedure was fair and in substantial compliance with requirements of *audi alteram partem*.

(ii) Contract for collection of fee for using stretch of road on National Highway - Awarded to appellant - Contract subsequently terminated by respondent-authority - Termination challenged - Held: Reports submitted by the agency employed by respondent-authority clearly showed that appellant-contractor was indulging in malpractices - It was abusing its position as a contractor, putting the public at large to unnecessary harassment and demanding money not legally recoverable from them - Appellant-contractor, thus, not entitled to claim any relief.

(iii) Termination of contract by respondent-authority - Forfeiture of performance security - Held: Justified - Such forfeiture was available to respondent-authority under the terms of contract, and provisions of s.74 of Contract Act did not forbid the same - An aggrieved party is entitled to receive compensation from the party who has broken the contract whether or not actual damage or loss is

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proved to have been caused by the breach - Contract Act, 1872 - s.72.

(iv) Termination of contract - Invoking of bank guarantee furnished by contractor - Held: Not justified as respondent-authority had already recovered the penalty levied and also forfeited the performance security - Without a proper estimation of the excess received by contractor, it was not open to respondent-authority to invoke the bank guarantee.

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(2) Terms and conditions - Interpretation - Held: The contract is to be interpreted giving the actual meaning to the words contained in the contract - It is not permissible for the court to make a new contract, however reasonable, if parties have not made it themselves.

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(ii) s.110 - Presumption of title as a result of possession - Held: Can arise only where facts disclose that no title vests in any party.

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commencement of the Act - Held: In view of the  
provisions in ss.7A and 20, the Act would be  
applicable - In the instant case, accused was below  
18 years on the date of commission of the offence,  
and, as such, would be treated as juvenile under  
the provisions of the Act - Therefore, case qua the  
juvenile accused remitted to Juvenile Justice Board  
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(1) s.302 - Assault with deadly weapon on vital  
part of body causing death of a person - Conviction  
u/s.302 - Held: Justified - Appellant chose sharp  
side of 'darat' cutting through the skull of deceased  
resulting in exposing the brain tissue - Five  
witnesses stated in unison, that appellant was in  
the process of inflicting a second blow on the  
deceased, when they caught hold of him - In such  
a situation, it would be improper to treat/determine  
the culpability of the appellant by assuming that he  
had inflicted only one injury on the deceased -  
Appellant must be deemed to have committed the  
offence of 'culpable homicide amounting to murder'  
u/s.302, as he had struck the 'darat' blow, with the  
intention of causing such bodily injury, which he  
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in all probability cause death of the victim.

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(2) s.302/s.34 - Prosecution under - Conviction by courts below - Held: First appellant is guilty of offence u/s.302 - Prosecution case is supported by eye-witness account corroborated by reliable evidence direct as well as circumstantial - Therefore, his conviction upheld.

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(3) s.302 r/w ss.34, 143 and 148 - Murder - Of husband, by wife's father and uncles - Five accused - Conviction of three accused (appellants) u/s.302 r/w s.34 - Held: Justified - Deceased was done to death in furtherance of common intention - The fact that two of the appellants held the deceased and facilitated third appellant to give the fatal blow and made no effort to prevent him from assaulting the deceased leads to the irresistible and inescapable conclusion that appellants shared the common intention.

(ii) s.34 - Scope of - Common intention - Held: s.34 lays down a principle of joint liability in the doing of a criminal act - The common intention is gathered from the manner in which the crime has been committed, the conduct of accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by accused and from the nature and injury caused by one or some of them - For arriving at a conclusion whether the accused had the common intention to commit an offence of which they could be convicted, the totality of

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circumstances must be taken into consideration.

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PROPERTY LAW:

Ownership and title - Suit filed by respondent in 1974 on basis of registered sale deed dated 11-11-1959 for declaration of title - Trial court decreed the suit, holding that appellant-Government was not the owner of the suit property, and that respondent had a better title over it - Order upheld by High Court - Held: Courts below erred in ignoring the revenue record, particularly, the documents showing that the Government was the absolute owner of suit property since 1920 - Unless vendor of respondent had valid title, latter could not claim any relief whatsoever from court - There was clear admission by respondent that vendor had no title over suit property, and had executed sale deed in its favour by way of misrepresentation - Documents on record established vendor merely a lessee of appellant-Government - Sale deed relied upon by respondent was invalid and inoperative - Suit filed by respondent dismissed - Maxims - *Nemo dat quid non habet* and *Nemo plus juris tribuit quam ipse habet*.

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RAJASTHAN STATE INDUSTRIAL AND INVESTMENT CORPORATION LIMITED (DISPOSAL OF LAND) RULES, 1979:

r.24 - Land notified for public purpose - Possession of land taken over by State Government and handed over to appellant-RIICO - Appellant allotted the land to respondent-company, to facilitate establishment of an Industrial Estate - Lease deed executed - Appellant cancelled the lease deed on ground of non-completion of project within stipulated period, and took back possession of land - Held: The allotment was made on "as-is-where-is" basis which was accepted by respondent-company without any protest - Terms of lease deed made it clear that no obligation was placed upon appellant to provide to the respondent the access road - The entire project was to be completed within five years, but construction was made just on a fraction of allotted land - Lease deed also contemplated that, the lessee will not transfer nor sub-let nor relinquish rights without prior permission from appellant - However, respondent-company had negotiated with a third party for

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development of the land - Cancellation of allotment was made by appellant in exercise of its power under r. 24 of 1979 Rules read with the terms of the lease agreement - Respondent-company did not resort to any of the statutory remedies, rather preferred a writ petition which could not have been entertained by High Court - Order of cancellation of allotment in favour of respondent-company restored - Rajasthan Land Revenue (Industrial area allotment) Rules, 1959 - r.11-A - Rajasthan Land Acquisition Act, 1953 - ss. 4 and 6.

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SERVICE LAW:

(1) Appointment - Co-terminus appointment - Entitlement of, such appointees to continue in service after cessation of engagement of the person with whose engagement their services were made co-terminus - Held: Respondents were engaged only because their names were sponsored by the Chairman of the Pondicherry Khadi and Village Industries Board, a statutory body corporate - They did not come into the service either through the Employment Exchange or through any procedure in which they were required to compete against other eligible candidates - Also, respondents had been clearly told that their services were co-terminus, and they will have no right to be employed thereafter - It was not permissible for them to challenge their dis-engagement when tenure of the Chairman was over - Pondicherry Khadi and Village Industries Board Act, 1980 - ss.3 and 15.

(ii) Recruitment - Proper channel - Requirement of - Held: The requirement of being employed through proper channel could not be relaxed in an arbitrary and cavalier manner for the benefit of a few persons - This would be clearly violative of Arts. 14 and 16 of the Constitution - Constitution of India, 1950 - Arts. 14 and 16.

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(2) Leave encashment benefit - To teachers of Pune University employed with Government affiliated colleges - Held: Though 1974 Act entitled the teachers of affiliated colleges the benefit of leave encashment, but neither 1974 Act nor 1994 Act oblige the State to extend this benefit - Merely because University statute provides for the benefit, it does not entitle University/College to claim reimbursement from State as of right - State was also justified in issuing directives to Universities to amend their statutes - Maharashtra Universities Act, 1994 - s.115 - Poona University Act, 1974 - Statutes of Pune University - Statutes 424(3) and 424(C).

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(3) (i) Promotion - Eligibility - Held: Respondents were already holding the post of Scientific Officer and, therefore, were eligible to promotion quota of 25% posts of Assistant Director after completion of five years of service as Scientific Officers in terms of Rules of 1987 - Subsequent amendment of 1990 laying down to fill in all posts of Assistant

Director by direct recruitment could not be applied in case of the respondents - Even if respondents had not completed five years of experience on the post of Scientific Officer for any reason, they had the statutory protection and benefit of the proviso to r. 5 of 1987 Rules which provided that where permanent scientific officers were not available for absorption under the 25% quota, such temporary and officiating personnel were also to be considered for promotion to the said posts who were functioning on permanent basis on the next lower post - U.P. Forensic Science Laboratories Technical Officers Service Rules, 1987 - rr.5 and 16 - U.P. Forensic Science Laboratories Technical Officers' Service (First Amendment) Rules 1990. (ii) Service rules - Applicability - Effective date - Held: The rules cannot be made effective from the date of its preparation but will attain legal sanctity and capable of enforcement only when the rules are made effective - The date on which the rules is to be made effective would be the date when the rules are published vide the gazette notification.

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(4) Re-appointment - Of teachers - In aided schools in State of Kerala - Minimum continuous service in an academic year - If a pre-requisite for raising claim for re-appointment u/r.51A in view of r.7A(3) - Held: Sub r. (3) of r.7A cannot be read in isolation, it has to be read in light of the proviso to r.51A - Requirement of preventing the aided school managers in creating short-term vacancies and appointing several persons in those vacancies so as to make them claimants u/r.51A - Looking to the mischief or evil sought to be remedied,

purposive construction required to be adopted - A teacher relieved from service under rr.49 and 53, is entitled to get preference for appointment under r.51A only if the teacher has a minimum prescribed continuous service in an academic year as on the date of relief - Kerala Education Rules, 1959 - Chapter XIV A - r.7A(3) r/w r.51A.

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#### URBAN DEVELOPMENT:

Illegal and unauthorized construction made by developers/builders - Demolition order - Plea of flat buyers for regularization of construction - Held: The 1966 Act does not mandate regularization of construction made without obtaining the required permission or in violation thereof nor does it entitle flat buyers to seek a mandamus for regularization of unauthorized/illegal construction - The 1991 Regulations also cannot be invoked for regularization of disputed construction because the same were enforced much later - No case made

out for directing the respondents to regularize construction made in violation of sanctioned plan - Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions - Flat buyers, however, free to avail appropriate remedy against developers/builders - Mumbai Municipal Corporation Act, 1888 - ss.337, 351 and 354A - Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 - ss.2(c), 3(2), 4, 7(2) and 13 - Development Control Rules for Greater Mumbai, 1967 - Development Control Regulations for Greater Mumbai, 1991.

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#### WORDS AND PHRASES:

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(ii) "as if" - Meaning of.

(iii) "mutatis mutandis" - Meaning of - Rajasthan Land Revenue (Industrial area allotment) Rules, 1959 - r.11A (as amended).

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(2) 'Duration of vacancy' - Meaning of.

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