Case List for LLB 5th Semester

Medicine and Law

Case Reference	Case Details	Topic
Civil Negligence (HLWHNP)		
Hunter vs Hanley 1955	A doctor can be held liable for negligence only if one can prove that she/ he is guilty of a failure that no doctor with ordinary skills would be guilty of if acting with reasonable care.	
Bolam vs Friern Hospital Management Committee Aka Bolam Test 1957	A person falls below the appropriate standard, and is negligent, if he fails to do what a reasonable person would in the circumstances. But when a person professes to have professional skills, as doctors do, the standard of care must be higher.	
Dr Laxman Balakrishna Joshi vs Dr Trimbak Bapu Godbole AIR 1969	SC held that a doctor, who holds himself ready to give medical advice and treatment, impliedly undertakes that he is possessed with the skills required for that purpose. Such a person, when consulted by a patient, owes the patient certain duties - 1. a duty of care in deciding whether to take the case 2. a duty of care in deciding the treatment 3. a duty of care in administering the treatment A breach of such duty gives the patient a cause for action of negligence to the patient. Further held that if a doctor has adopted a practice that is considered "proper" by a reasonable body of medical professionals who are skilled in that particular field, he or she will not be held negligent only because something went wrong.	
Whitehouse vs. Jordan 1981	An error of judgment constitutes negligence only if a reasonably competent professional with the standard skills that the defendant professes to have, and acting with ordinary care, would not have made the same error.	
State of Haryana vs Smt Santra 2000	Lady got pregnant due to failure in sterilization procedure. She was awarded compensation. SC held that every doctor has a duty to act with a reasonable degree of care and skill.	
Dr J K Nathan vs M E Masane 2002	Res Ipsa Loquitor - In certain circumstances no proof of negligence is required beyond the accident itself. The National Consumer Disputes Redressal Commission applied this principle in this case.	
Dr P Luthra vs Iftekhar 2004	Held that a medical professional cannot give a warranty of the perfection of their skill or a guarantee of cure. If the doctor has adopted the right course of treatment, if she/ he is skilled and has worked with a method and manner best suited to the patient, she/ he cannot be blamed for negligence if the patient is not totally cured.	
Criminal Negligence (IBSJ)		
IPC Sections applicable in criminal negligence by a doctor	304A – Causing death of any person by doing a rash or negligent act 336 – Act endangering life or personal safety of others 337 – Causing hurt by endangering life and personal safety of others 338 – Causing grievous hurt by endangering life and personal safety of others	
R v Bateman 1925	Clearly made the distinction between civil and criminal negligence. It was held that a negligence is criminal only when it involves the following elements - 1. the defendant owed a duty to the deceased to take care 2. the defendant breached this duty 3. the breach caused the death of the deceased 4. the defendant's negligence was gross, that is, it showed such a disregard for the life and safety of others as to amount to a crime and deserve punishment	
Dr. Suresh Gupta vs Government of NCT of Delhi 2004	Delhi HC held that legal decision is almost firmly established that where a patient dies due to negligent medical treatment by doctors, they can be made liable in civil law by praying compensation and damages in law of torts and if the degree of negligence is so gross and his act was reckless as to endanger the life of the patient he would also be made criminally liable to offence under section 304-A of IPC. Thus he cannot be held criminally responsible for a patient's death unless his negligence or incompetence showed such disregard for life and safety of his patient as to amount to a crime against the state.	
Dr Jacob Matthew Vs. State of Punjab 2005	Punjab HC opined against the judgment in Dr. Suresh Gupta vs Govt. of NCT of Delhi. They questioned the adjective "gross" and opined that negligence is negligence and the doctor should not be treated on a different pedestal. All negligent acts causing death should be treated are par. Upon appeal, SC referred the case to a larger bench which approved the test laid down in Bolam vs Friern Hospital Management Committee, aka Bolam's test, and held the following – 1. Negligence is the breach of a duty caused by omission to do some thing which reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and a reasonable man would not do. Negligence becomes	

	actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person, sued. The essential components of negligence are three: "duty", "breach" and "resulting damage". 2. Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of professional, in particular a doctor, additional considerations apply. So long as a doctor follows a practice acceptable to the medical profession of that day, he can not be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. 3. The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a high degree may provide a ground for action in civil law but can not form the basis for prosecution. 4. The word "gross" has not been used in Section 304-A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression 'rash or negligent act' as occurring in Section 304-A of the IPC has to be read as qualified by the word "grossly". 5. To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something 'which in the given facts and circumstances' no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was likely imminent. 6. Res ipsa louqitur is only a rule of evidence and operates in the domain of civil law especially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It can not be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence. 7. A private complaint of rashness or negligence against a doctor may not be entertained without prima facie evidence in the form of a credible opinion of another competent doctor supporting the charge. In addition, the investigating officer should give an independent opinion, preferably of a government doctor. Finally, a doctor may be arrested only if the investigating officer believes that she/ he would not be available for prosecution unless arrested.
Defenses	
Section 80, 88, 92 of IPC	**Section 80 –** Nothing is an offence that is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution. **Section 88 –** A person cannot be accused of an offence if she/ he performs an act in good faith for the other's benefit, does not intend to cause harm even if there is a risk, and the patient has explicitly or implicitly given consent. **Section 92 -** Act done in good faith for benefit of a person without consent.
CMRI vs Bimalesh Chatterjee 1999	Held that the onus of proving negligence and the resultant deficiency in service was clearly on the complainant.
Kanhaiya Kumar Singh vs Park Medicare & Research Centre 1999	Held that negligence has to be established and cannot be presumed.
Consumer Protection Act, 1986	
Indian Medical Association vs V P Santha 1995	Did not accept the claim of medical professionals who argued that the doctor-patient relationship is similar to master – servant relationship, which is a contract of personal service that should be exempted from CPA. Decreed that the doctor – patient relationship is a contract for personal service and it is not master – servant relationship. It is also said that the doctor is an independent contractor and the doctor, like the servant, is hired to perform a specific task. However, the master or principal (the hirer) is allowed to direct only what is to be done, and done, and when. The 'how' is left up to the specific discretion of the independent contractor (doctor). So, the doctor-patient relationship is a contract for personal service and as such, cannot be excluded from CPA. As a result of this judgment, medical profession has been brought under the Section 2(1) (o) of CPA, 1986 and also, it has included the following categories of doctors/hospitals under this Section: 1. All medical / dental practitioners doing independent medical / dental practice unless rendering only free service. 2. Private hospitals charging all patients. 3. All hospitals having free as well as paying patients and all the paying and free category patients

	receiving treatment in such hospitals. 4. Medical / dental practitioners and hospitals paid by an insurance firm for the treatment of a client or an employment for that of an employee. It exempts only those hospitals and the medical / dental practitioners of such hospitals which offer free service to all patients. Further, this judgment concedes that the summary procedure prescribed by the CPA would suit only glaring cases of negligence and in complaints involving complicated issues requiring recording of the evidence of experts, the complainant can be asked to approach the civil courts. Also, this judgment says that the deficiency in service means only negligence in a medical negligence case and it would be determined under CPA by applying the same test as is applied in an action for damages for negligence in a civil court.	
Poonam Verma vs Ashwin Patel 1996	A homeopathic doctor prescribed an allopathic medicine to the patient. The patient died. The doctor was held to be negligent and liable to compensate the wife of the deceased on the ground that he was under a statutory duty not to enter any other system of medicine and since he trespassed into a prohibited field, his conduct amounted to negligence.	
Spring Meadows Hospital vs Harjot Ahluvalia 1998	Held that error of judgment is not necessarily negligence. The court referred and approved the observation in Whitehouse vs Jordan by Lord Fraser – "The true position is that an error of judgment may or may not be negligence. It depends on the nature of the error. If it is one that would not have been made by a reasonably competent professional, professing to have the standard and type of skill that the defendant holds himself out as having, and acting with ordinary care, then it is negligence."	
Constitutional Provisions (PCMPTBKGK)		
Paramanda Katara vs Union of India 1989	Held that it is the professional duty of all doctors whether govt. or private, to extend medical aid to the injured immediately to preserve life without waiting for legal formalities. Art 21 casts an obligation to preserve life on the state and it is the obligation on those in charge of the health of the community to preserve life.	Art 21 – Right to Emergency Medical Care
Consumer Education and Research Center vs Union of India 1995	SC held that right to health and medical care is a fundamental right under art 21 as it is essential for making the life of workmen meaningful and purposeful with dignity of person. Thus, Art 21 includes heath and strength of the workers. It further held that, State – be it the Union or the state govt. is enjoined to take all such action which will promote health, strength, and vigor of the workmen during the period of employment and leisure and health even after retirement as basic essentials of life with health and happiness. Court laid down the following guidelines – 1. All asbestos industries must make health insurance of workers 2. every worker suffering from occupational health hazard would be entitled for compensation of 1 lac 3. All asbestos industries must maintain health record of every worker up to a minimum period of 40 yrs. 4. All factories whether covered by ESIC or WCA, should insure health coverage to every worker.	Art 21 – Right to Health of workers
Paschim Bengal Khet Mazdoor Society vs State of WB 1996	Patient was refused admission in a govt hospital due to lack of bed. So he went to a private hospital and asked for compensation. Held that failure on part by a govt. hospital to provide timely medical treatment to a patient who is in need of such treatment amounts to violation of the right to life.	Art 21 – Right to Medical Aid
State of Punjab vs Mahinder Singh Chawla 1997	A govt servant needed to have a heart surgery which was not available in Punjab. So he was referred to AIIMS. Govt. of Punjab, refused to pay for the treatment. Right to life includes right to health. Govt. must pay for the cost of treatment of govt servant.	Art 21 – Right to Health
Dr Tegukha Yepthamo vs Apollo Hospital 1998	If a person has an apprehension that his/her prospective spouse has AIDS, he has a right to seek information about the spouse from a hospital where the spouse's blood report is kept as it is a part of right to life.	Art 21 – Medical Confidentiality
D K Basu vs State of WB 1997	Custodial Death is one of the worst crimes in a civilized society. SC laid several guidelines in all cases of arrest. One is – the person should be subjected to medical examination by a trained doctor within 48 hours of his detention or by a doctor on panel of doctors approved by the state for this purpose. Court can award compensation and held that state is vicariously liable for the action of govt. servants. This is based on strict liability.	Art 21 – Right to Medical Examination
KS Gopinath vs Union of India	He challenged Pharmaceutical Policy. Sought SC order to control prices of Life saving drugs.	rt 21 – Right to Life
Gian Kaur vs State of Punjab 1996	Right to die is not included in Right to life.	Art 21 – Right to Life

	When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during, the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which Magistrate shall, if requested by the arrested person so to do direct the examination of' the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of Justice	Section 54(1) CrPC
	The state shall, in particular, direct its policy towards securing – that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.	Art 39(e)
	- that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandon.	Art 39(f)
	The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular state shall endeavor to bring about prohibition of the consumption, except for medical purposes, of intoxicating drinks and drugs which are injurious to heath.	Art 47
Loucy D'sousa vs State of Goa 1990	Bombay HC held that the law enacted by State of Goa which enabled the police to isolate an AIDS patient is valid.	AIDS

The following sections deal with the health provisions for factory workers as per Factories Act, 1948
CWTDA, OLDLS

Sec. 11 Cleanliness
Floor must be cleaned every day, if possible by disinfectant.
If the floor is wet and cannot be drained, special provisions must be made to drain the water.
Walls must be regularly cleaned. They must be whitewashed every 6 months. If oil based paint/varnish is used, it must be cleaned every year and must be repainted every 3 years.
Doors, windows, and railings must be cleaned periodically.
A register must be maintained that logs all the cleaning activities performed.
Sec. 12 Waste and Effluents
All the waste and effluents generated in the factory must be removed from the factory with proper treatment.
Sec. 13 Temperature and Ventilation
The temperature of the working place must be maintained. Special care must be take to not let the temperature increase where any work that use or produces heat is performed. Fresh air must be circulated through adequate ventilation.
Sec. 14 Dust and Fumes
Proper steps must be taken to remove the dust and fumes from the working area. Gases or exhaust fumes generated by any equipment such as diesel generator should be routed and released outside the workplace.
Sec. 15 Artificial Humidity
Any place where humidity is increased artificially, proper instruments must be installed to record the humidity.
Sec 16 Overcrowding
A factory established before this act must have at least 9.1 sq ft of space per person, while new factories must have 14.2 sq ft. The maximum capacity of a room or enclosure must be posted outside the room and a log must be maintained.
Sec 17 Lighting
Proper lighting arrangements must be made to ensure that it does not cause glare in eyes. Light source must be such that a shadow is not created in the work area.
Sec 18 Drinking water
Clean safe drinking water must be provided. Water must be kept away from any dirty place. No waste should be routed from the place where drinking water is kept. At least six meters away from latrines, urinals, washing place. "Drinking water" must be written in bold and legible to all.
Sec 19 Latrines and Urinals
A separate place must be created for men and women. Height must be the floor and walls must be properly tiled. It must be cleaned every day.
Sec 20 Spittoons
Spittoons must be placed at several appropriate locations.

Health and Safety In Mines - Mines Act 1952
Sec. 19 - Drinking Water
Sec. 20 - Conservancy (Latrines and Urinals)
Sec. 21 - Medical Appliances
Notice, Prevention, and investigation of Accidents and Diseases.

Health and Welfare In Plantations - Plantations Labor Act 1951
Heath
Drinking water, conservancy, medical facilities, Annual leave with wages, sickness and maternity benefits.

Welfare
Canteens for 150+ workers, creches, recreationals, educational, housing facilities.

Rights of Unborn	
Kanta Kotecha vs United India Insurance Company 2007	Kanta Kotecha filed the claim on the deaths of her husband, her son and daughter-in-law, and her unborn grandchild of seven months gestation, who were all killed in a tragic automobile accident, The Times of India reported March 6. In permitting a separate insurance claim for the unborn child, the India court ruling gave the unborn child rights commensurate with personhood, as a separate identity from the mother under law.

THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Section - 3 When pregnancies may be terminated by registered medical practitioners -
(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, -
(a) Where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or
(b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioner are, of opinion, formed in good faith, that -
(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.
Explanation 1 - Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.
Explanation 2 - Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be resumed to constitute a grave injury to the mental health of the pregnant woman.

(3) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2), account may be taken of the pregnant women's actual or reasonable foreseeable environment.

(4)(a)No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.
(b) Save as otherwise provided in clause (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

Section 4 - Place where pregnancy may be terminated.-No termination of pregnancy shall be made in accordance with this Act at any place other than—
(a) a hospital established or maintained by Government, or
(b) a place for the time being approved for the purpose of this Act by Government or a District Level Committee constituted by that Government with the Chief Medical officer or District Health officer as the Chairperson of the said Committee:
Provided that the District Level Committee shall consist of not less than three and not more than five members including the Chairperson as the Government may specify from time to time.

Section 5 - Sections 3 and 4 when not to apply -
(1) The provisions of section 4, and so much of the provisions of sub-section (2) of section 3 as relate to the length of the pregnancy and the opinion of not less than two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of opinion, formed in good faith, that he termination of such pregnancy is immediately necessary to save the life of the pregnant woman.

(2) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of pregnancy by a person who is not a registered medical practitioner shall be an offence punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years under that Code, and that Code shall, to this extent, stand modified.

(3) Whoever terminates any pregnancy in a place other than that mentioned in section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

(4) Any person being owner of a place which is not approved under clause (b) of section 4 shall be punishable with rigorous imprisonment for a term which shall not be less than two years but which may extend to seven years.

Explanation 1.—For the purposes of this section, the expression "owner" in relation to a place means any person who is the administrative head or otherwise responsible for the working or maintenance of a hospital or place, by whatever name called, where the pregnancy may be terminated under this Act.

Explanation 2.—For the purposes of this section, so much of the provisions of clause (d) of section 2 as relate to the possession, by registered medical practitioner, of experience or training in gynecology and obstetrics shall not apply.

IPC Offences -

Section 312 - Causing miscarriage - Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
Explanation- A woman, who causes her self to miscarry, is within the meaning of this section.

Section 313 - Causing miscarriage without woman's consent – Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 314 - Death caused by act done with intent to cause miscarriage - Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.
Explanation.-It is not essential to this offence that the offender should know that the act is likely to cause death.
Section 315 - Act done with intent to prevent child being born alive or to cause it to die after birth - Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994

Section 3 -
(1) No medical geneticist, gynecologist, pediatrician, registered medical practitioner or any other person shall conduct or cause to be conducted or aid in conducting by himself or through any other person, any pre-natal diagnostic techniques at a place other than a place registered under this Act.
(2) No Genetic Counseling Center or Genetic Laboratory or Genetic Clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment who does not possess the qualifications as may be prescribed.

Section 3A - No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them.

Section 3B - No person shall sell any ultrasound machine or imaging machine or scanner or any other equipment capable of detecting sex of foetus to any Genetic Counseling Centre, Genetic Laboratory, Genetic Clinic or any other person not registered under the Act.

Section 4 - Pre natal diagnostic techniques to be used only for purposes described in this section, such as for finding out chromosomal defects, genetic metabolic diseases, haemoglobinopathies, genetic disorders, congenital anomalies etc.
(3) no pre-natal diagnostic techniques shall be used or conducted unless the person qualified to do so is satisfied for reasons to be recorded in writing that any of the following conditions are fulfilled namely:-

(i) age of the pregnant woman is above thirty-five years,

(ii) the pregnant woman has undergone two or more spontaneous abortions or foetal loss;

(iii) the pregnant woman had been exposed to potentially teratogenic agents such as, drugs, radiation, infection or chemicals;

(iv) the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as, spasticity or any other genetic disease;

(v) any other condition as may be specified by the Board:

Provided that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic in such manner, as may be prescribed, and any deficiency or inaccuracy found therein shall amount to contravention of the provisions of section 5 or section 6 unless contrary is proved by the person conducting such ultrasonography;

(4) no person including a relative or husband of the pregnant woman shall seek or encourage the conduct of any pre-natal diagnostic techniques on her except for the purposes specified in clause (2);

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.

Section 5 - No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of the foetus by words, signs or in any other manner.
(2) No person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs, or in any other manner.

Section 6 - Determination of sex of the fetus is prohibited using any technique such as ultrasound

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception

Offences and Penalties

Section 22 - Prohibition of advertisement relating to pre-natal determination of sex and punishment for contravention - 3 yrs/10000Rs punishment.
Subsequent offence - 5yr/50000Rs

Section 23 - Offences and penalties- (1) Any medical geneticist, gynaecologist, registered medical practitioner or any person who owns a Genetic Counseling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic and renders his professional or technical services to or at such a Centre, Laboratory or Clinic, whether on an honorary basis or otherwise, and who contravenes any of the provisions of this Act or rules made there under shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

(2) The name of the registered medical practitioner who has been convicted by the court under sub-section (1), shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

(3) Any person who seeks the aid of a Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic or of a medical geneticist, gynaecologist or registered medical practitioner for conducting pre- natal diagnostic techniques on any pregnant woman (including such woman unless she was compelled to undergo such diagnostic techniques) for purposes other than those specified in clause (2) of section 4, shall, be punishable with imprisonment for a term which may extend to three years and with fine which may extend to ten thousand rupees and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to fifty thousand rupees.

Section 24 - Presumption in the case of conduct of pre-natal diagnostic techniques - Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo pre-natal diagnostic technique and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section.

Section 27 - Offence to be cognizable, non-bailable and non-compoundable - Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Section 30 - Power to search and seize records, etc. - (1) If the Appropriate Authority has reason to believe that an offence under this Act has been or is being committed at any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic, such Authority or any officer authorized thereof in this behalf may, subject to such rules as may be prescribed, enter and search at all reasonable times with such assistance, if any, as such authority or officer considers necessary, such Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic and examine any record, register, document, book, pamphlet, advertisement or any other material object found therein and seize the same if such Authority or officer has reason to believe that it may furnish evidence of the commission of an office punishable under this Act

Organ Transplantation

THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

3. Authority for removal of human organs –
(1) Any donor may, in such manner and subject to such conditions as may be prescribed, authorize the removal, before his death, of any human organ of his body for therapeutic purposes.

(2) If any donor had, in writing and in the presence of two or more witnesses (at least one of whom is a near relative of such person), unequivocally authorized at any time before his death, the removal of any human organ of his body, after his death, for therapeutic purposes, the person lawfully in possession of the dead body of the donor shall, unless he has any reason to believe that the donor had subsequently revoked the authority aforesaid, grant to a registered medical practitioner all reasonable facilities for the removal, for therapeutic purposes, of that human organ from the dead body of the donor.

(3) Where no such authority as is referred to in sub-section (2), was made by any person before his death but no objection was also expressed by such person to any of his human organs being used after his death for therapeutic purposes, the person lawfully in possession of the dead body of such person may, unless he has reason to believe that any near relative of the deceased person has objection to any of the deceased person's human organs being used for therapeutic purposes, authorize the removal 4 of any human organ of the deceased person for its use for therapeutic purposes.

(4) The authority given under sub-section (1) or sub-section (2) or, as the case may be, sub-section (3) shall be sufficient warrant for the removal, for therapeutic purposes, of the human organ; but no such removal shall be made by any person other than the registered medical practitioner.

(5) Where any human organ is to be removed from the body of a deceased person, the registered medical practitioner shall satisfy himself, before such removal, by a personal examination of the body from which any human organ is to be removed, that life is extinct in such body or, where it appears to be a case of brain-stem death, that such death has been certified under sub-section (6).

(6) Where any human organ is to be removed from the body of a Person in the event of his brain-stem death, no such removal shall be undertaken unless such death is certified, in such form and in such manner and on satisfaction of such conditions and requirements as may be prescribed, by a Board of medical experts.

(7) Notwithstanding anything contained in sub-section (3), where brain-stem death of any person, less than eighteen years of age, occurs and is certified under sub-section (6), any of the parents of the deceased person may give authority, in such form and in such manner as may be prescribed, for the removal of any human organ from the body of the deceased person.

4. Removal of human organs not to be authorized in certain cases -
(1) No facilities shall be granted under sub-section (2) of section 3 and no authority shall be given under sub-section (3) of that section for the removal of any human organ from the body of a deceased person, if the person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) No authority for the removal of any human organ from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of interment, cremation or other disposal.

5. Authority for removal of human organs in case of unclaimed bodies in hospital or prison –
(1) In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person within forty-eight hours from the time of the death of the concerned person, the authority for the removal of any human organ from the dead body which so remains unclaimed may be given, in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison, or by an employee of such hospital or prison authorized in this behalf by the person in charge of the management or control thereof.

(2) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body even though such near relative has not come forward to claim the body of the deceased person within the time specified in sub-section (1).

6. Authority for removal of human organs from bodies sent for postmortem examination for medico-legal or pathological purposes - Where the body of a person has been sent for postmortem examination- (a) for medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause; or (b) for pathological purposes, the person competent under this Act to give authority for the removal of any human organ from such dead body may, if he has reason to believe that such human organ will not be required for the purpose for which such body has been sent for postmortem examination, authorize the removal, for therapeutic purposes, of that human organ of the deceased person provided that he is satisfied that the deceased person had not ex- pressed, before his death, any objection to any of his human organs being used, for therapeutic purposes after his death or, where he had granted an authority for the use of any of his human organs for therapeutic purposes, after his death, such authority had not been revoked by him before his death.

7. Preservation of human organs - After the removal of any human organ from the body of any' person, the registered medical practitioner shall take such steps for the preservation of the human organ so removed as may be prescribed.

9. Restrictions on removal and transplantation of human organs –
(1) Save as otherwise provided in sub-section (3), no human organ removed from the body of a donor before his death shall be transplanted into a recipient unless the donor is a near relative of the recipient.

(2) Where any donor authorizes the removal of any of his human organs after his death under sub-section (2) of section 3 or any person competent or empowered to give authority for the removal of any human organ from the body of any deceased person authorizes such removal, the human organ may be removed and transplanted into the body of any recipient who may be in need of such human organ.

(3) If any donor authorizes the removal of any of his human organs before his death under sub-section (1) of section 3 for transplantation into the body of such recipient, not being a near relative, as is specified by the donor by reason of affection or attachment towards the recipient or for any other special reasons, such human organ shall not be removed and transplanted without the prior approval of the Authorization Committee.

(4) (a) The Central Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the Central Government on such terms and conditions as may be specified in the notification for each of the Union territories for the purposes of this section. (b) The State Government shall constitute, by notification, one or more Authorization Committees consisting of such members as may be nominated by the State Government on such terms and conditions as may be specified in the notification for the purposes of this section.

(5) On an application jointly made, in such form and in such manner as may be prescribed, by the donor and the recipient, the Authorization Committee shall, after holding an inquiry and after satisfying itself that the applicants have complied with all the requirements of this Act and tile rules made there under, grant to the applicants approval for the removal and transplantation of the human organ.

(6) If, after the inquiry and after giving an opportunity to the applicants of being heard, the Authorization Committee is satisfied that the applicants have not complied with the requirements of this Act and the rules made there under, it shall, for reasons to be recorded in writing, reject the application for approval.

10. Regulation of hospitals conducting the removal, storage or transplantation of human organs –
(1) On and from the commencement of this Act,- (a) no hospital, unless registered under this Act, shall conduct, or associate with, or help in, the removal, storage or transplantation of any human organ; (b) no medical practitioner or any other person shall conduct, or cause to be conducted, or aid in conducting by himself or through any other person, any activity relating to the removal, storage or transplantation of any human organ at a place other than a place registered under this Act; and (c) no place including a hospital registered under sub-section (1) of section 15 shall be used or cause to be used by any person for the removal, storage or transplantation of any human organ except for therapeutic purposes.
(2) Notwithstanding anything contained in sub-section (1), the eyes or the ears may be removed at any place from the dead body of any donor, for therapeutic purposes, by a registered medical practitioner.
Explanation - For the purposes of this sub-section, "ears" includes ear drums and ear bones.

11. Prohibition of removal or transplantation of human organs for any purpose other than therapeutic purposes - No donor and no person empowered to give authority for the removal of any human organ shall authorize the removal of any human organ for any purpose other than therapeutic purposes.

12. Explaining effects, etc., to donor and recipient - No registered medical practitioner shall undertake the removal or transplantation of any human organ unless he has explained, in such manner as may be prescribed, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively.

18. Punishment for removal of human organ without authority - (1) Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

19. Punishment for commercial dealings in human organs - Whoever- (a) makes or receives any payment for the supply of, or for an offer to supply, any human organ; (b) seeks to find a person willing to supply for payment any human organ; (c) offers to supply any human organ for payment; (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ:, (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist 10 of or include the initiation or negotiation of any arrangement referred to in clause (d); or (f) Publishes or distributes or causes to be published or distributed any advertisement,-- (a) inviting persons to supply for payment of any human organ; (b) offering to supply any human organ for payment; or (c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d), shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees: Provided that the court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

20. Punishment for contravention of any other provision of this Act.- Whoever contravenes any provision of this Act or, any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees.

Interpretation of Statutes

Case Reference	Case Details	Topic
Directory and Mandatory Provisions		
Sharif ud Din vs Abdul Gani Lone AIR 1980	SC pointed out the difference between mandatory and directory rule – while power must be strictly observed in a directory rule, substantial compliance may be sufficient. The court has to ascertain the object of the rule and if the object of the rule is defeated by non-compliance, the rule is mandatory. That the statute uses the word shall while laying down a duty is not conclusive	
State of MP vs Azad Bharat Finance Company AIR 1966	A truck of the respondent was confiscated on the ground that it was carrying contraband opium, which the respondent did not know about. The old act provided that vehicle used in such act “is liable to be confiscated” and the new act said that “it shall be confiscated”. SC held that the provision was permissive i.e. directory and not mandatory. It observed that if absurdity or injustice results while interpreting a provision, the Court is under a duty not to give effect to such interpretation.	
Wasim Beg vs State of UP	SC held that it is always mandatory to follow the principles of Natural Justice before taking an adverse action against a person and such enabling provisions are mandatory in nature.	
State of Orissa vs Ganesh Chandra Jew AIR 2004	SC remarked that the mandatory character of the protection afforded to a public servant is brought out by the expression, “no court shall take cognizance of such offence except with the previous sanction” used in Section 197 of CrPC. The use of the words no and shall make it abundantly clear that the bar on the exercise of power by the court is absolute and complete.	

Retrospective Operation of Statutes		
Mithilesh Kumari vs Prem Bihari Khare AIR 1989	SC held that Benami Transactions Act was declaratory in nature and so Section 4 of the act applies retrospectively on Benami transactions of the past as well.	Retrospective operation of Declaratory Statutes
Garikapatti vs Subbaiah AIR 1957	A suit valued at 11,000/- was decided by HC but no special leave to appeal to the SC was allowed on the ground that the minimum value of the suit was increased to 25.000/- for appeal to SC. However, it was contented that the minimum value at the time of filing of the suit was 10,000/- and so the right to appeal was already vested. SC accepted the contention and held that it is a substantive right and a new legislation cannot affect it unless explicitly stated so by the act.	Substantive rights cannot be affected by new statute.
Shriram Durgaprasad vs Director of Enforcement AIR 1987	SC held that Section 113 A, which allows the court to presume that the husband is guilty abetting suicide of his wife, is retrospectively applicable because it is only a matter of evidence and does not affect any substantive right.	Retrospective operation of laws regarding procedure and evidence.
B Prabhakar Rao vs State of AP AIR 1986	Age of retirement was reduced from 58 to 55 yrs. The govt., after realizing that injustice has been caused, reversed the order. However, the ordinance restoring the previous age of retirement took time to promulgate and the employees who retried before the reversal was passed were excluded from the benefit. SC held that the law reducing the age of retirement was anyway invalid due to arbitrary classification and so the new law must be given retrospectivity.	
Internal Aids		
Aswini Kumar Ghose vs Arabinda Bose AIR 1952	Petitioner was an advocate in Calcutta High Court as well as Supreme Court. He filed in the registry in the Original side a warrant of authority executed in his favor to appear for his client. On the ground that under the High Court Rules and Orders, Original Side, an advocate cannot act but only plead, the warrant of authority was returned. He argued that since he is also an Advocate of SC, he had a right to act and plead all by himself without any instruction from an attorney. The SC looked at the long title of the Supreme Court Advocates (Practice in High Courts Act, 1951, which said, “An act to authorize Advocates of SC to practice as of right in any High Court” and accepted the contention of the petitioner.	Long Title
Kesavanand Bharati vs State of Kerala AIR 1973	SC held that preamble is a part of the constitution. It is in fact a key to the minds of the framers of constitution.	Preamble
A C Sharma vs Delhi Administration AIR 1973	Appellant challenged his conviction under Section 5 of Prevention of Corruption Act, 1947 on the ground that after the establishment of the Delhi Special Police Establishment, the anti corruption department of the Delhi Police has ceased to have power of investigating bribery cases because the preamble of the Delhi Special Police Establishment Act pointed out to this effect. SC rejected the contention and held that no preamble can interfere with the clear and unambiguous words of a statue.	Preamble
Ardeshir vs State of Bombay AIR 1963	Appellant was working salt mines without a license. He claimed that a salt mine is not a Factory as per Factories Act, 1948 because it is an open space with no building and so it does not fall under the definition of a factory, which requires a factory to have a precinct. SC held that the definition of Factory in S. 2(m), which says, “Factory means any premises including the precincts thereof…” is an inclusive definition and does not delimit the meaning of the word premises but enlarges its scope.	Definition or Interpretation clause – It is used for extending the natural meaning of some words.
T Devadasan vs Union of India 1958	Carry forward rule in reservation under which if SC/ST quota was unfilled it would be carried over, was in question. Due to this rule, the number of reserved posts exceeded 65%, which violated Art 16(1). SC held that unlimited reservation under 16(4) would destroy the spirit of 16(1). Art 16(4) is a sort of proviso to 16(1) and so it could not be interpreted so as to destroy the main provision.	Proviso
Dwaraka Prasad vs Dwarak Das AIR 1975	SC held that the lease of a building along with its equipment for cinema business was not an accommodation within the meaning of UP (temporary) Control of Rent and Eviction Act. If the principal enactment in a statue is unambiguous, proviso can neither extend nor restrict its meaning.	Proviso
M/s Aphali Pharmaceuticals Ltd vs State of Maharashtra Air 1989	SC held that in the case of a clash between the schedule and the main body of the act, the main body prevails and the schedule has to be rejected. In this case, SC held that Ashvagandharisht, an Ayurvedic medicinal preparation containing self generated alcohol but not capable of being consumed as ordinary alcoholic beverage would be exempt from excise duty.	Schedule

Mohd Shabbir vs State of Maharashtra AIR 1979	One of the provisions of Drugs and Cosmetics Act, 1940 said that "whoever manufactures for sales, sells, stocks or exhibits for sale or distribute…" SC held that mere stocking is not an offence unless it is for sale because there is no comma after stocks and so the words stocks or exhibits both are qualified by "for sale.	Punctuation
External Aids		
Ramavatar vs Assitant Sales Tax Commissioner AIR 1961	The question was whether betel leaves are vegetables and therefore exempt from imposition of sales tax. The dictionary meaning of the term vegetable includes betel leaves, however, SC held that the dictionary meaning could not be said to reflect the true intention of the framers and the word vegetable should be interpreted in the same sense in which it is commonly used.	Dictionary
Kesavananda Bharati vs State of Kerala AIR 1973	A large number of text books were quoted. However, observed that in view of many opinions and counter opinions, it was not desirable to follow the opinions in the books and the safest route for the court was to interpret keeping mind always the whole context of the issues.	Textbook
State of W B vs Nirpendra Nath AIR 1966	SC held that courts are free to look into the earlier state of the law to find out the true meaning of the enactment.	Historical Background
A K Gopalan vs State of Madras AIR 1950	SC, while disallowing a speech to be considered as an aid to interpretation observed that a speech made in course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect eh inarticulate mental process lying behind the majority vote which carried the bill.	Legislative History
Kesavananda Bharati vs State of Kerala AIR 1973	Speeches made by the members of parliament in course of debates relating to an enactment of a statute cannot be used as aids for interpreting any of the provisions of the statute. However, Justice Shelat, Grover, Reddy, Palekar, and Matthew, were of the opinion that the speeches in the Constituent Assembly could always be used to find out the true intention of the framers of the constitution. It seems that this opinion is limited to the interpretation of the constitution.	Legislative History
Indra Sawhney vs Union of India AIR 1993	SC held that since the word "backward classes" used in Art 16(4) is not defined anywhere, it is permissible to refer to the speeches of Dr B R Ambedkar to understand the context, background, and objective of the provision.	Legislative History
Primary Rules of Statutory Interpretation		
J P Bansal vs State of Rajasthan 2003 Crawford vs Spooner 1846	SC observed that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition, substitution, or removal of words or which results in rejection of words as meaningless has to be avoided. This is accordance with the case of Crawford vs Spooner, 1846, where privy council noted that the courts cannot aid the legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up for deficiencies which are left there.	Literal Rule
Kannailala Sur vs Parammindhi Sadhu Khan 1957	J Gajendragadkar observed that if the words used in statute are capable of only one construction then it is not open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged objective and policy of the act	Literal Rule
M V Joshi vs M V Shimpi AIR 1961	In this case involving Food and Adulteration Act, it was contented that the act does not apply to butter made from curd. However, SC held that the word butter in the said act is plain and clear and there is no need to interpret it differently. Butter is butter whether made from milk or curd.	Literal Rule
Whiteley vs Chappel 1868; LR 4 QB 147	In this case the court came to the reluctant conclusion that Whiteley could not be convicted of impersonating "any person entitled to vote" at an election, because the person he impersonated was dead. Using a literal construction of the relevant statutory provision, the deceased was not "a person entitled to vote." This, surely, could not have been the intention of Parliament. However, the literal rule does not take into account the consequences of a literal interpretation, only whether words have a clear meaning that makes sense within that context. If Parliament does not like the literal interpretation, then it must amend the legislation.	Disadvantage of Literal Rule
Becke v Smith, 1836 and Grey v Pearson, 1857	The Golden rule was evolved by Parke B (who later became Lord Wensleydale) in these cases, who stated, "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument	Golden Rule

	in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."	
Lee vs Knapp 1967 QB	The interpretation of the word "stop" was involved. Under Road Traffic Act, 1960, a person causing an accident "shall stop" after the accident. In this case, the driver stopped after causing the accident and then drove off. It was held that the literal interpretation of the word stop is absurd and that the requirement under the act was not fulfilled because the driver did not stop for a reasonable time so that interested parties can make inquiries from him about the accident.	Golden Rule – Application 1
Bedford vs Bedford 1935	It concerned a case where a son murdered his mother and committed suicide. The courts were required to rule on who then inherited the estate, the mother's family, or the son's descendants. The mother had not made a will and under the Administration of Justice Act 1925 her estate would be inherited by her next of kin, i.e. her son. There was no ambiguity in the words of the Act, but the court was not prepared to let the son who had murdered his mother benefit from his crime. It was held that the literal rule should not apply and that the golden rule should be used to prevent the repugnant situation of the son inheriting. The court held that if the son inherits the estate that would amount to profiting from a crime and that would be repugnant to the act.	Golden Rule – Application 2
Sir John Heydon's Case 1584	Lord Coke developed this rule, where it was stated that there were four points to be taken into consideration when interpreting a statute: What was the common law before the making of the act? What was the "mischief and defect" for which the common law did not provide? What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth? What is the true reason of the remedy?	Mischief Rule aka Rule in Heydon's case
Smith v Hughes 1960	Under the Street Offences Act 1959, it was a crime for prostitutes to "loiter or solicit in the street for the purposes of prostitution". The defendants were calling to men in the street from balconies and tapping on windows. They claimed they were not guilty as they were not in the "street." The judge applied the mischief rule to come to the conclusion that they were guilty as the intention of the Act was to cover the mischief of harassment from prostitutes.	Mischief Rule
Secondary Rules of Statutory Interpretation		
Foster v Diphwy vs Casson 1887 18 QBD 428	It involved a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under Noscitur a sociis, it was held that the bag could not have been within the statutory definition, because parliament's intention was refering to a case or container of the same strength as a canister.	Noscitur a sociis
State of Assam vs R Muhammad AIR 1967	SC made use of this rule to arrive at the meaning of the word "posting" used in Article 233 (1) of the Constitution. It held that since the word "posting" occurs in association with the words "appointment" and "promotion", it took its color from them and so it means "assignment of an appointee or a promotee to a position" and does not mean transfer of a person from one station to another.	Noscitur a sociis
Lokmat Newspapers vs Shankarprasad AIR 1999	It was held that the words "discharge" and "dismissal" do not have the same analogous meaning and so this rule cannot be applied.	Noscitur a sociis - cannot be applied when words have disjoint meaning.
	Justice Hidayatullah explained the principles of this rule through the following example - In the expression, "books, pamphlets, newspapers, and other documents", private letters may not be held included if "other documents" be interpreted ejusdem generis with what goes before. But in a provision which reads, "newspapers or other documents likely to convey secrets to the enemy", the words "other documents" would include documents of any kind and would not take their meaning from newspaper.	Ejusdem Generis
UP State Electricity Board vs Harishankar AIR 1979	SC laid the following conditions for the application of this rule – 1. The statue contains an enumeration of specific words 2. The subject of the enumeration constitute a class or a category 3. The class or category is not exhausted by the enumeration 4. A general term is present at the end of the enumeration 5. There is no indication of a different legislative intent	Ejusdem Generis
Ishwar Singh Bagga vs State of Rajasthan 1987	The words "other person", in the expression "any police officer authorized in this behalf or any other person authorized in this behalf by the State government" in Section 129 of Motor Vehicles Act, were held not to be interpreted ejusdem generis because the mention of a single species of "police officers" does not constitute a genus.	Ejusdem Generis

Koteshwar Vittal Kamat vs K Rangappa Baliga AIR 1969,	In the construction of the Proviso to Article 304 of the Constitution which reads, "Provided that no bill or amendment for the purpose of clause (b), shall be introduced or moved in the legislature of a state without the previous sanction of the President". It was held that the word introduced applies to bill and moved applies to amendment.	Reddendo Singula Singulis
Beneficial Construction		
B Shah vs Presiding Officer AIR 1978	Section 5 of Maternity Benefits Act, 1961 was is question, where an expectant mother could take 12 weeks of maternity leave on full salary. In this case, a woman who used to work 6 days a week was paid for only 6x12=72 days instead of 7x12=84 days. SC held that the words 12 weeks were capable of two meanings and one meaning was beneficial to the woman. Since it is a beneficial legislation, the meaning that gives more benefit to the woman must be used.	
Alembic Chemical Works vs Workmen AIR 1961,	An industrial tribunal awarded more number of paid leaves to the workers than what Section 79(1) of Factories Act recommended. This was challenged by the appellant. SC held that the enactment being a welfare legislation for the workers, must be beneficially constructed in the favor of workers and thus, if the words are capable of two meanings, the one that gives benefit to the workers must be used.	
U Unichoyi vs State of Kerala 1963	The question was whether setting of a minimum wage through Minimum Wages Act, 1948 is violative of Article 19 (1) (g) of the constitution because the act did not define what is minimum wage and did not take into account the capacity of the employer to pay. It was held that the act is a beneficial legislation and it must be construed in favor of the worker. In an under developed country where unemployment is rampant, it is possible that workers may become ready to work for extremely low wages but that should not happen.	
Strict Construction in Penal Statutes		
Seksaria Cotton Mills vs State of Bombay 1954,	SC held that in a penal statute, it is the duty of the Courts to interpret the words of ambiguous meaning in a broad and liberal sense so that they do not become traps for honest unlearned and unwary men. If there is honest and substantial compliance with an array of puzzling directions then it should be enough, even if on some hyper critical view of the law other ingenious meanings can be devised.	
Chinubhai vs State of Bombay AIR 1960	In this case, several workers in a factory died by inhaling poisonous gas when they entered into a pit in the factory premises to stop the leakage of the gas from a machine. The question was whether the employer violated section 3 of the Factories Act, which says that no person in any factory shall be permitted to enter any confined space in which dangerous fumes are likely to be present. The Supreme Court, while construing the provision strictly, held that the section does not impose an absolute duty on the employer to prevent workers from going into such area. It further observed that the fact that some workers were present in the confined space does not prove that the employer permitted them to go there. The prosecution must first prove that the workers were permitted to enter the space to convict the accused.	
Strict Construction in Taxing/Fiscal Statutes		
CIT vs Shahazada Nand and Sons 1966	SC observed that the underlying principle of construction of fiscal statute is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used their in rather than any notions which be entertained by the Courts as to what is just or expedient.	
Attorney General vs Calton Ban 1989	Lord Russel said, "I see no reason why special canons of construction should be applied to any act of parliament and I know of no authority for saying that a taxing statute is to be construed differently from any other act."	
Cape Brandy Syndicate vs I.R.C.	The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in this case. He said, "In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."	
A V Fernandes vs State of Kerala AIR 1957	Supreme Court stated the principle that if the Govt. satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case does not fall within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter.	
CIT vs J H Kotla Yadgiri 1985	SC held that since the income from business of wife or minor child is includible as income of the assessee, the profit or loss from such business should also be treated as the profit or loss from a business carried on by him for the purpose of carrying forward and set-off of the loss u/s.	
CIT vs Kurji Jinabhai Kotecha,AIR 1977	Section 24(2) of IT Act was constructed as not to permit assessee to carry forward the loss of an illegal speculative business for setting it off against profits in subsequent years.	
Constitutional Interpretation		
State of Bihar vs Kameshwar Singh AIR 1952	SC used one of the standard principles of interpretation that where more than one reasonable interpretation of a constitutional provision are possible, that which would ensure a smooth and harmonious working of the constitution shall be	Harmonious Construction

	accepted rather than the one that would lead to absurdity or give rise to practical inconvenience, or make well existing provisions of existing law nugatory, while interpreting the constitution. However, even if an argument based on the spirit of the constitution is very attractive, it must be validated with the spirit of the constitution as reflected by the words of the constitution. In the same case mentioned above, SC observed that spirit of the constitution cannot prevail if the language of the constitution does not support that view.	
Jugmendar Das vs State 1951	SC has held that not only the general definitions given in General Clauses Act, but also the general rules of construction given therein are applicable to the constitution.	Art 367 allows the use of General Clauses Act
Keshvananda Bharati vs State of Kerala AIR 1973	SC identified the basic structure of the constitution that reflects its true spirit and held that nothing that hurts the basic structure of the constitution is constitutional. In the same case, SC held that one should give the freedom to the parliament to enact laws that ensure that the blessings of liberty be shared with all, but within the framework of the constitution. It is necessary towards that end that the constitution should not be construed in a narrow and pedantic sense.	
Raj Krishna vs Binod AIR 1954	In this case, two provisions of Representation of People Act, 1951, which were in apparent conflict, were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to nominate or second a candidate and forbidding him to assist the candidate it any other manner.	Harmonious Construction
State of Maharashtra vs F N Balsara AIR 1951	Illustrates this principle very nicely. In this case, the State of Maharashtra passed Bombay Prohibition Act that prohibited the sale and storage of liquor. This affected the business of the appellant who used to import liquor. He challenged the act on the ground that import and export are the subjects that belong in Union list and state is incapable of making any laws regarding it. SC rejected this argument and held that the true nature of the act is prohibition of alcohol in the state and this subject belongs to the State list.	Doctrine of Pith and Substance
State of W Bengal vs Kesoram Industries 2004	Held that the courts have to ignore the name given to the act by the legislature and it must also disregard the incidental and superficial encroachments of the act and has to see where the impact of the legislation falls. It must then decide the constitutionality of the act.	Doctrine of Pith and Substance
K C Gajapati Narayan Deo vs State of Orissa AIR 1953	In this case, the validity of Orissa Agricultural Income Tax (Amendment) Act 1950 was in question. The argument was that it was not a bonafide taxation law but a colorable legislation whose main motive was to artificially lower the income of the intermediaries so that the state has to pay less compensation to them under Orissa Estates Abolition Act, 1952. SC held that it was not colorable legislation because the state was well within its power to set the taxes, no matter how unjust it was. The state is also empowered to adopt any method of compensation. The motive of the legislature in enacting a law is totally irrelevant. In this case, SC observed that the constitution has clearly distributed the legislative powers to various bodies, which have to act within their respective spheres. These limitations are marked by specific legislatives entries or in some cases these limitations are imposed in the form of fundamental rights of the constitution. Question may arise whether while enacting any provision such limits have been transgressed or not. Such transgression may be patent, manifest or direct. But it may also be covert, disguised, or indirect. It is to this later class of transgression that the doctrine of colorable legislation applies. In such case, although the legislation purports to act within the limits of its powers, yet in substance and in reality, it transgresses those powers. The transgression is veiled by mere pretense or disguise. But the legislature cannot be allowed to violate the constitutional prohibition by an indirect method.	Colorable Legislation
K T Moopil Nair vs State of Kerala AIR 1961	In this case, the state imposed a tax under Travencore Cochin Land Tax Act, 1955, which was so high that it was many times the annual income that the person was earning from the land. The SC held the act as violative of Articles 14 and 19(1)(f) in view of the fact that in the disguise of tax a person's property was being confiscated.	Colorable Legislation
Balaji vs State of Mysore, AIR 1963	SC held that the order reserving 68% of the seats for students belonging to backward classes was violative of Article 14 in disguise of making a provision under Article 15(4).	Colorable Legislation

Law of Evidence

Case Reference	Case Details	Topic
Relevancy		
DPP vs Kilbourne 1973	Lord Simon of Glaisdale has said, "Evidence is relevant if it is logically probative or disprobative of some matter which requires proof. A relevant evidence is evidence that makes the matter which requires proof more or less probable."	S. 3 - Relevant Fact
STEPHEN	A transaction is a group of facts so connected together as to be referred to by a single name, as a crime, a contract, a wrong, or any other subject of inquiry which may be in issue.	S. 6 - Relevancy of facts forming part of the same transaction
R vs Foster 1843	Accused was charged with manslaughter in killing a person by driving over him. A witness saw the vehicle driven fast but did not see the accident. Immediately after, on hearing the victim groan, he went up to him and asked him what happened. The deceased then made a statement as to the cause of the injury. The court held that what the deceased said at the instant, as to the cause of the accident is clearly admissible.	S. 6 - Res Gestae
R vs Beddingfield 1879,	A woman, with her throat cut, came suddenly out of a room, in which she had been injured. Shortly before she died, she said, "Oh dear Aunt, see what Beddingfield has done to me." This statement was not accepted as Res Gestae. According to CJ Cockburn, anything uttered while the crime was being done would be admissible but here, what she said was said after the crime was all over.	S. 6 - Res Gestae
R vs Richardson	A person was charged with the rape and murder of a girl. The fact that the girl was alone in her cottage at the time of her murder is relevant because it provided the occasion in which the crime happened.	S. 7 – Occasion
Indian Airlines vs Madhuri Chaudhury AIR 1965	The report of an Inquiry Commission relating to an air crash was held relevant under Section 7 as establishing the cause of the accident.	S. 7 – Cause
R vs Richardson	The fact that Richardson left his fellow workers at about the time of murder under the pretense of going to a smith's shop is relevant because it provided an opportunity for the fact in issue, namely her rape and murder, to happen	S. 7 – Opportunity
Rattan vs Reginum AIR 1971	A person shot his wife and his plea was that it was an accident. The facts that he was unhappy with his wife and was having an affair with another woman were held to be a relevant facts.	S. 7 – State of things
Mithilesh Upadhyaya vs State of Bihar 1997	The accused stated that he was in the hospital at the time of crime but did not give any supporting documents. His plea was not accepted. The burden of proof is on the accused and strict evidence is required to establish such pleas of alibi.	S. 11 – Facts otherwise irrelevant become relevant – (a) if they are inconsistent with facts in issue or relevant fact
JAMES FITZAMES STEPHEN The author on Indian Evidence Act in his book Introduction To The Indian Evidence Act	Observed that the facts relevant under S. 11 would, in most cases, be relevant under other sections. The object of drawing the act in this manner was that the general ground on which facts are relevant might be stated in so many and popular forms as possible, so that if a fact is relevant its relevancy may be easily ascertained.	S. 11 – (b) if they make the existence or non-existance of facts in issue or relevant facts highly probable or improbable
Ram Kumar Pande vs State of MP 1975	It was held that important omissions would be relevant under this rule.	S. 11 – Facts otherwise irrelevant
Admission and Confession		
Chekham Koteshwara Rao vs C Subbarao AIR 1981	SC held that before the right of a party can be taken to be defeated on the basis of an alleged admission by him, the implication of the statement must be clear and conclusive. There should not be any doubt or ambiguity. Further, it held that it is necessary to read all of his statements together. Thus, stray elements elicited in cross examination cannot be taken as admission.	S. 17 – Admission
R vs Hardy 1794	It was observed that every man, if he were in difficulty, or in view of one, might make declarations to suit his own case and then lodge them in proof of his case. That's why a person is not allowed to prove his own admissions.	S. 21 - Proof of admissions against persons making them, and by or on their behalf
Pakala Narayan Swami vs Emperor	Privy Council, in case of, did not accept the definition of STEPHEN	General Concept of

AIR 1939	that a confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed the crime. In this case Lord ATKIN observed that no statement that contains self exculpatory matter can amount to a confession. A confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact is not in itself a confession. For example, an admission that the accused is the over of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession, is not a confession even though it strongly suggests that the accused has committed the murder.	Confession
Palvinder Kaur vs State of Punjab AIR 1952	Palvinder was on trial for murder of her husband along with another, who all the time remained absconding. In her statement to the court, her husband was hobbyist photographer and used to keep handy photo developing material which is quick poison. On this occasion, he was ill and she brought him some medicine and the medicine was kept near the liquid developer and by mistake swallowed the liquid and died. She got afraid and with the help of the absconder, she dumped the body in the well. The statement, thus, partially admitted guilt and partially showed innocence. Here, the lower courts sorted out the exculpatory part and convicted her on the inculpatory part. However, SC rejected this approach and held that the rule regarding confession and admission is that they must either be accepted or rejected as whole.	General Concept of Confession
Lokeman Shah vs State of WB AIR 2001	Regarding admission that contains multiple sentences, Justice Thomas, of SC stated the law in this case as follows - The test of discerning whether a statement recorded by a judicial magistrate under Section 164 of CrPC, is confessional or not is **not** to determine it by dissecting the statement into different sentences and then to pick out some as inculpative. The statement must be read as a whole and then only the court should decide whether it contains admissions of his inculpatory involvement in the offence. If the result of that test is positive the the statement is confessional otherwise not.	General Concept of Confession
Veera Ibrahim vs State of Maharashtra AIR 1976	A person being prosecuted under Customs Act told the customs officer that he did not know that the goods loaded in his truck were contraband nor were they loaded with his permission. SC held that the statement was not a confession but it did amount to admission of an incriminating fact that the truck was loaded with contraband material.	Difference between Admission and Confession
Sahoo vs State of UP AIR 1966	An accused who was charged with murder of his daughter in law with whom he was always quarreling was seen on the day of the murder going out of the home saying words to the effect, "I have finished her and with her the daily quarrels." The statement was held to be a valid confession because it is not necessary for the relevance of a confession that it should communicate to some other person.	Example of extra-judicial confession
Raja Ram vs State of Bihar AIR 1964	SC held that the term police-officer is not to be interpreted strictly but must be given a more comprehensive and popular meaning. However, these words are also not to be construed in so wide sense as to include a person on whom only some powers exercised by the police are conferred. The test for determining whether such a person is a police officer is whether the powers are such as would tend to facilitate the obtaining of confession by him from a suspect. Thus, a chowkidar, police patel, a village headman, an excise officer, are all considered to be police officer.	S. 25 - Confession to police-officer not to be proved
Nisa Sree vs State of Orissa AIR 1954	Indian Evidence Act was written before the Constitution of India and Article 20(3) of the constitution says that no person shall be compelled to be a witness against himself. This article seemingly made Section 27 unconstitutional. SC considered this issue in this case and held that it is not violative of Article 20(3). A confession may or may not lead to the discovery of an incriminating fact. If the discovered fact is non incriminatory, there is no issue and if it is self-incriminatory, it is admissible if the information is given by the accused without any threat.	S. 27 – Confession to police when admissible. Constitutionality
Rex vs Shaw	A was accused of a murder and B, a fellow prisoner, asked him about how he did he do the murder. A said, "Will you be upon your oath not to mention what I tell you?" to which B promised on his oath that he will not tell anybody. A then made a statement. It was	S. 29 - Confession made under promise, deception, etc.

	held that it was not such an inducement that would render the confession inadmissible.	
Relevancy of Character		
Attorney General vs Bowman 1771	In this case a man was tried for a penal action for carrying false weights and offering to corrupt an officer. He called a witness to testify that he was a man of good character and conduct. This was not admitted by the court. Similarly, previous criminal conviction cannot be given to show the bad character of a person in a civil suit.	S. 52 - Character is irrelevant in civil case
Hollington vs Hewthorn & Co ltd 1943	Also known as rule in Hollington vs Hewthron case. Held that previous criminal conviction cannot be given to show the bad character of a person in a civil suit. In this case, an action was brought against the defendant for damages caused by the defendant's negligent driving of a motor car. The defendant had also been prosecuted for the same accident and convicted. The plaintiff sought to give evidence of this conviction in proof of the fact that he was guilty of careless driving. However, the evidence was not accepted as admission on the ground that conviction by a criminal court is at best an opinion of that court that the defendant was guilty and such opinion is not admissible.	S. 52 - Character is irrelevant in civil case
Scott vs Sampson 1882	In this case a journalist was suing the defendant for libel. The defendant tried to show the character of the plaintiff but the trial judge refused to admit it. Upon appeal for retrial, J Cave, held that the evidence should have been allowed to be admitted. He remarked that if the plaintiff claims an injury to his reputation, the jury should know whether he is a man of reputation or not before awarding any damages. If evidence about the character of the plaintiff is not allowed then there will be no difference between an honorable person and a cheat. A virtuous woman will be kept at the same level with a prostitute. To enable a jury to estimate the quantum of injury sustained, the knowledge of party's character is relevant.	S. 55 – Character relevant in civil case to ascertain damage to reputation
Goody vs Oldham Press Ltd 1967	Lord Denning observed that previous convictions are a class in itself. They are the raw material upon which bad reputation is built up. They have taken place in an open court and are of public knowledge. They are very different from previous misconducts that are not tried in a court and which therefore might lead to dispute. But previous convictions offer not possibility of such disputes and so are relevant and admissible.	S. 53 – In criminal cases - Good character relevant S. 54 – In criminal cases - bad character irrelevant. Exception - Past conviction is relevant
What facts need not be proved		
Managing Committee of Raja Sidheshwar High School vs State of Bihar AIR 1993	The court took judicial notice of the fact that education in the state was virtually crumbled. In another case, court took judicial notice of the fact that several blind persons have acquired great academic distinction.	S. 56 - Facts judicially noticeable need not be proved.
Burden of Proof		
Soward vs Legatt 1836	A landlord suing the tenant asserted that the tenant did not repair the house. Here, he was asserting the negative. But the same statement can also be said affirmatively as the tenant let the house dilapidate. In this case, Lord ABINGER observed that In ascertaining which party is asserting the affirmative the court looks to the substance and not the language used. Looking at the substance of this case, the plaintiff had to prove that the premises were not repaired.	S. 101 – Burden of proof
Ranchhodbhai vs Babubhai AIR 1982	There is a subtle distinction between burden of proof and onus of proof, which was explained in this case. The first one is the burden to prove the main contention of party requesting the action of the court, while the second one is the burden to produce actual evidence. The first one is constant and is always upon the claimant but the second one shifts to the other party as and when one party successfully produces evidence supporting its case.	S. 102 – Onus of proof
K M Nanavati vs State of Mah AIR 1962	In this case, Nanavati was accused of murdering Prem Ahuja, his wife's paramour, while Nanavati claimed innocence on account of grave and sudden provocation. The defence's claim was that when Nanavati met Prem at the latter's bedroom, Prem had just come out of the bath dressed only in a towel; an angry Nanavati swore at	S. 105 – Burden of proving that the case of the accused comes within exceptions

	Prem and proceeded to ask him if he intends to marry Sylvia and look after his children. Prem replied, "Will I marry every woman I sleep with?", which further enraged Nanavati. Seeing Prem go for the gun, enclosed in a brown packet, Nanavati too went for it and in the ensuing scuffle, Prem's hand caused the gun to go off and instantly kill him. Here, SC held that there is a presumption of innocence in favor of the accused as a general rule and it is the duty of the prosecution to prove the guilt of the accused beyond any doubt. But when an accused relies upon the general exception or proviso contained in any other part of the Penal Code, Section 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Thus, it was upon the defence to prove that there existed a grave and sudden provocation. In absence of such proof, Nanavati was convicted of murder.	
Competency of Witness		
Jai Singh vs State 1973, Cr LJ	A seven year old girl who was the victim of attempted rape was produced as a witness and her testimony was held valid.	S. 118 - Who may testify?
Queen vs Seva Bhogta 1874	A ten year old girl, who was the only eye witness of a murder, was made a witness. She appeared to be intelligent and was able to answer questions frankly and without any hesitation. However, she was not able to understand the meaning of oath. It was held that her un-sworn evidence was admissible in the given circumstances.	S. 118 - Who may testify?
Rameshwar Kalyan Singh vs State of Rajasthan AIR 1952	The same was observed this case where the accused was charged with the offence of rape of a girl of 8 years of age. It was held that ommission of oath only affects the credibility of the witness and not competency of the witness. The question of competency is determined by section 118, and the only ground that is given for incompetence is the inability to comprehend the questions or inability to give rational answers.	S. 118 - Who may testify?
Shyam Singh vs Shaiwalini Ghosh AIR 1947,	Calcutta HC held that Husband and wife are both competent witness against each other in civil and criminal cases. They are competenet witness to prove that there has been no conjugation between them during marriage.	S. 120 – Competency of spouse
Refusal To answer question		
M C Verghese vs T J Ponnan AIR 1976	SC held that it is not material whether the relationship between husband and wife subsists at the time of giving the evidence. So, where a woman was divorced from first husband and married another person, and was called to provide evidence of a communication between her and her first husband that happened while they were married, she was deemed incompetent to do so.	S. 122 – Communications during marriage
Testimony of Witness		
Ravinder Kumar Sarma vs State of Assam 1999	The appallant sued two police officers for damages for malicious prosecution. The appallant put questions in that regard to one of them who denied the allegation that he demanded a bribe. He did not put the allegation on the other police officer. It was held that the appallant had not properly substantiated the allegation.	S. 138 – Order of examinations – Cross Examination - The witness must be given an opportunity to explain the apparant contradictions while he is in the witness box.
Tej Prakash vs State of Haryana 1996	It was held that tendering a witness for cross examination without examination in chief is not warranted by law and it would amount to failure to examine the witness at the trial.	S. 138 – Order of examinations
Rajendra vs Darshana Devi 2001	Held that Section 138 provides a valuable right to cross examine a witness and Section 146 further gives the right to ask additional questions to shake the credibility of the witness. If a party has not taken advantage of these provisions, he cannot be allowed to complain about the credibility of the witness.	S. 138
Leading Question		
BENTHAM	A Leading Question is a question that indicates to the witness the real or supposed fact which the examiner expects or desires to have	S. 141 – Leading questions

	confirmed with the witness.	
Impeaching the credit of a witness		
State of UP vs Nahar Singh AIR 1998	Held that if you indent to impeach a witness, you are bound, while he is in witness box, to give him an opportunity to explain, even as a rule of profession ethics and fair play. A similar provision is given by Section 145 as well, which says that when a witness is cross examined about his previous writing, without such writing is shown to him or is proved, and if it is intended to contradict his writing, his attention must be drawn to those parts which are to be used for the purpose of contradicting him, before such writing is proved.	When - S. 146 – Questions lawful in cross examination – Witness may be asked any questions which tend to – a) test his veracity b)to discover who he is and what his position is in life c) to shake his credit How – S. 155
Hostile Witness		
Sat Pal vs Delhi Administration 1976	Held that in a criminal prosecution, when a witness is cross examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as a matter of law, be treated as completely wiped off the record altogether. If is for the court to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or still can be believed in regard to a part of his testimony.	S. 154
Presumptions		
Dr T T Thomas vs Elisa AIR 1987	A doctor failed to perform an emergency operation due to lack of consent. The court presumed that the consent was there since the patient was brought to the hospital. It was up to the doctor to prove that the consent was not there.	S. 4 - May presume
Sodhi Transport vs State of UP 1986	Justice Venkataramiah, of SC observed that presumption is not evidence in itself but only makes a prima facie case for party in whose favor it exists. It indicates the person on whom the burden of proof lies. When the presumption is conclusive, it obviates the production of any evidence, but when it is rebuttable, it only points out the party on whom lies the duty of going forward with evidence on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over.	S. 4 – Presumption and Burden of proof
Hearsay Evidence		
Expert Opinion		

Criminal Procedure Code

Case Reference	Case Details	Topic
Arrest		

Joginder Kr vs. State of UP CrLJ 1994	Held that no arrest can be made merely because it is lawful to do so. There must be a justifiable reason to arrest.	S. 41 Arrest Without Warrant
State vs. Bhera CrLJ, 1997	Held that the "reasonable suspicion" and "credit information" must relate to definite averments which must be considered by the Police Officer himself before he arrests the person.	S. 41 Arrest Without Warrant
Swami Hariharanand Saraswati vs Jailer I/C Dist. Varanasi AIR 1954	The arrested person must be produced before another magistrate within 24 hours, otherwise his detention will be illegal	S. 44 Arrest By Magistrate
Bharosa Ramdayal vs. Emperor AIR 1941	If a person makes a statement to the police accusing himself of committing an offence, he would be considered to have submitted to the custody of the police officer.	S. 46 Arrest How Made
Birendra Kumar Rai vs Union of India CrLJ, 1992	held that arrest need not be by handcuffing the person, and it can also be complete by spoken words if the person submits to custody.	S. 46 Arrest How Made
Kultej Singh vs Circle Inspector of Police 1992	Held that keeping a person in the police station or confining the movement of the person in the precincts of the police station amounts to arrest of the person	S. 46 Arrest How Made
Rights of Arrested Person		
Satish Chandra Rai vs Jodu Nandan Singh ILR 26 Cal 748	If the substance of the warrant is not notified, the arrest would be unlawful.	S. 50(1) Right to know grounds of arrest
Udaybhan Shuki vs State of UP 1999 CrLJ, All HC	Held that right to be notified of grounds of arrest is a precious right of the arrested person. This allows him to move the proper court for bail, make a writ petition for habeas corpus, or make appropriate arrangements for his defence	S. 50(1) Right to know grounds of arrest
Harikishan vs State of Maharashtra AIR 1962	SC held that the grounds of arrest must be communicated to the person in the language that he understands otherwise it would not amount to sufficient compliance of the constitutional requirement.	S. 50(1) Right to know grounds of arrest
Khatri (II) vs State of Bihar 1981 SCC	SC has strongly urged upon the State and its police to ensure that this constitutional and legal requirement of bringing an arrested person before a judicial magistrate within 24 hours be scrupulously met. This is a healthy provision that allows magistrates to keep a check on the police investigation. It is necessary that the magistrates should try to enforce this requirement and when they find it disobeyed, they should come heavily upon the police.	Art 22(2) – Must be produced before magistrate within 24 hrs S. 57 – In case of arrest without warrant S. 76 – In case of arrest upon warrant
Sharifbai vs Abdul Razak AIR 1961,	SC held that if a police officer fails to produce an arrested person before a magistrate within 24 hours, he shall be held guilty of wrongful detention.	Art 22(2), S. 57, S. 76
Khatri (II) vs State of Bihar 1981 SCC	SC held that access to a legal practitioner is implicit in Article 21, which gives fundamental right to life and liberty. The state is under constitutional mandate to provide free legal aid to an indigent accused person and this constitutional obligation arises not only when the trial is commenced but also when the person is first produced before a magistrate and also when he is remanded from time to time.	Art 21 – Right to free legal aid S. 304 – Court shall assign a pleader at state expense for indigent person
Suk Das vs Union Territory of Arunachal Pradesh 1986 SCC	SC has held that non-compliance of this requirement or failure to inform the accused of this right would vitiate the trial entailing setting aside of the conviction and sentence.	Art 21, S. 304 – Right to free legal Aid
Joginder Kumar vs State of UP 1994	SC formulated the rules that make it mandatory on the police officer to inform one friend, relative, or any other person of the accused person's choice, about his arrest. These rules were later incorporated in CrPC under section 50 A in 2005.	S. 50 A (1), (2),(3),(4) Right to inform a friend or relative, or any other person
Sheela Barse vs State of Maharashtra 1983 SCC	SC held that the arrested accused person must be informed by the magistrate about his right to be medically examined in terms of Section 54(1).	S. 54(1) Right to medical examination
Summons		
Danatram Karsanal CrLJ 1968	Held that summons should not only be shown but a copy of it be left, exhibited, delivered, or tendered, to the person summoned. In a case, where a copy was tendered to the person, it was held that the summon was served.	S. 62 – Summons how served
E Chathu vs P Gopalan CrLJ 1981	Held that when the person sought to be summoned is employed abroad, the court can send summons to the concerned embassy official for the purpose of service since the embassy official is also a public servant. Summons to such person cannot be served by affixing one of the copies on some conspicuous part of the house.	S. 62 – Summons how served, S. 65 – Procedure when service cannot be affected as in S. 62, 63, and 64
Central Bank of India vs Delhi Development Authority 1981	Held that a Branch Manager is a local manager and if he has been served the service shall be deemed to have been effected on the company itself.	S. 63 Service of summons on Corporate bodies

Warrant		
P K Baidya vs Chaya Rani AIR 1995	Held that when a witness avoids his appearance in spite of the summons being appropriately served, court can take steps for securing his presence under this section	S. 87 Court can issue a warrant in a summons case
Absconder		
Kartary vs State of UP 1994 Allahbad	Held that when in order to evade the process of law a person is hiding from (or even in) his place of residence, he is said to abscond.	Definition
Bishnudayal vs Emperor AIR 1943	If there is no authority to arrest, the issuing of proclamation would be illegal.	S. 82(2) Procedure of publication of the proclamation
Commencement of Proceedings		
MacCulloch vs State 1974 SC	Held that the provisions of section 200 are not a mere formality, but have been intended by the legislature to be given effect to for the protection of the accused persons against unwarranted complaints.	S. 200 Magistrate taking cognizance of an offence
Chandra Deo Singh vs Prokash Chandra Bose 1963 SC	The test specified by Section 203 for dismissing a complaint is only whether sufficient grounds exist for proceeding further and not whether sufficient grounds exist for conviction.	S. 203 Dismissal of Complaint
Charge		
State vs Ajit Kumar Saha 1988	The material on record did not show a prima facie case but the charges were still framed by the magistrate. Since there was no application of mind by the magistrate, the order framing the charges was set aside by the High Court.	
Shashidhara Kurup vs Union of India 1994	No particulars of offence were stated in the charge. It was held that the particulars of offence are required to be stated in the charge so that the accused may take appropriate defence. Where this is not done and no opportunity is afforded to the accused to defend his case, the trial will be bad in law for being violative of the principles of natural justice.	S. 212 Time and Place of Charge
Rawalpenta Venkalu vs State of Hyderabad 1956	The charge failed to mention the Section number 34 of IPC but the description of the offence was mentioned clearly. SC held that the section number was only of acedemic significance and the omission was immaterial.	S. 215 Error in charge
Kailash Gir vs V K Khare, Food Inspector 1981	Sections 215 and 464 read together lay down that whatever be the irregularity in framing the charge, it is not fatal unless there is prejudice caused to the accused.	S. 464 – Order, sentence, or finding of a court is not invalid merely due to an error in charge
Banwarilal Jhunjhunwala vs Union of India AIR 1963	Held that "distinct offence" is different from "every offence" and "each offence". Separate charge is required for distinct offence and not necessarily for every offence or each offence. Two offences are distinct if they are not identical and are not in any way interrelated.	S. 218 – Separate charge for distinct offences
State of AP vs Cheemalapati Ganeshwara Rao AIR 1963	SC observed that, it would always be difficult to define precisely what the expression “same transaction” means. Whether a transaction is to be regarded as same would depend upon the facts of each case. But is is generally thought that where there is proximity of time, place, or unity of purpose and design or continuity of action in a series of acts, it may be possible that they form part of the same transaction. It is however not necessary that every one of these elements should coexist for considering the acts as part of the same transaction.	S. 220(1) – Offences committed in the course of same transaction
Bail, Anticipatory Bail, Bond		
Moti Ram vs State of MP AIR 1978	SC held that a Bail covers both release on one's own bond with or without surety.	What is Bail?
Hussainara Khaton vs Home Secretory 1980 SC	It came to the courts attention for the first time that thousands of people were rotting in jails for 3 to 10 years for petty crimes which do not have punishment more than 6 months to an year. This was because they were unable to pay bond money for bail and the courts were too backlogged to hear their cases. In this respect, J Bhagwati observed that the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties.	General

Narsimhulu's case AIR 1978	SC gave a set of considerations that must be given while giving bail in case of non-bailable offences. These are - 1. the nature of the crime 2. the nature of the charge, the evidence, and possible punishment 3. the possibility of interference with justice 4. the antecedents of the applicant 5. furtherance of the interest of justice 6. the intermediate acquittal of the accused 7. socio-geographical circumstances 8. prospective misconduct of the accused 9. the period already spent in prison 10. protective and curative conditions on which bail might be granted.	S. 437 Bail in non-bailable offences
Adri Dharam Das vs State of WB 2005 CrLJ	Held that the power exercisable under S 438 is extraordinary and is exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to misuse his liberty.	S. 438 Anticipatory Bail
Gurbaksh Singh vs State of Punjab AIR 1980	SC held that while an ordinary order of bail is granted after arrest and therefore means release from the custody of the police, an anticipatory bail is granted in anticipation of arrest and is therefore effective at the very moment of arrest.	Difference between Bail and Anticipatory Bail
Surendra Singh vs State of Bihar 1990	Patna HC pointed out that a bail may be cancelled on following grounds - 1. When the accused was found tampering with the evidence either during the investigation or during the trial 2. When the accused on bail commits similar offence or any heinous offence during the period of bail. 3. When the accused had absconded and trial of the case gets delayed on that account. 4. When the offence so committed by the accused had caused serious law and order problem in the society 5. If the high court finds that the lower court has exercised its power in granting bail wrongly 6. If the court finds that the accused has misused the privileges of bail 7. When the life of accused itself is in danger	S. 439 – Special Powers of HC and Court of Session Cancellation of Bail
CBI vs Amarmani Tripathi S005 CrLJ	SC held that in an application for cancellation of bail conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail all aspects that were relevant under S. 439 read with S. 437 continue to be relevant.	S. 439 – Special Powers of HC and Court of Session S. 437 Cancellation of Bail
Chaganlal Kikabhai vs State of Guj CrLJ 1969	If the time and place for the appearance of the accused is not mentioned in the bond at all, the bond is vague and therefore void.	S. 441
Bekaru Singh vs State of UP AIR 1963	Leading case about changing of sureties. SC observed that the execution of the bond is necessary before the accused is released on bail. Affidavits by sureties can be accepted with a condition that they shall be verified. The magistrate can under S. 441 accept the bail bond and make further enquiry if he considers necessary. Hence, a formal acceptance of a surety bond on a future date does not in any way affect the surety's liability on the bond from the earlier date on which it was first accepted. Where the sureties are changed, furnishing of surety is sufficient, rewriting of the bond is not necessary. Writing of the contents of the two bonds one executed and one by the surety together does not mean that they should be on the same sheet of paper. Further, procedure in S 444 (2) and (3) is not condition precedent for acceptance of fresh surety. A new surety can be accepted even without the appearance of the accused.	S. 441 – Bond of accused and sureties S. 444 – Discharge of sureties
Anwar Ahmed vs State of UP AIR 1976	U P Police seized a car during investigation alleged to have been stolen and gave it to the complainant upon execution of a bond that he will produce it before the court whenever required and in case of failure, he will pay a penalty. SC held that the bond is legally invalid and unenforceable under S. 446.	S. 446 – Procedure when bond is forfeited – Applies only when the bond is taken by the court.
General Cases		

State of Bombay vs Rusy Mistry AIR 1960	SC defined FIR as so - A FIR means the information, by whomsoever given, to the officer in charge of a police station in relation to the commission of a cognizable offence and which is first in point of time and on the strength of which the investigation into that offence is commenced.	S. 154 - FIR
Tapinder Singh vs State 1972	SC held that when a telephone message did not disclose the names of the accused nor did it disclose the commission of a cognizable offence, it cannot be called a FIR.	S. 154 - FIR
State of UP vs R K Shrivastava 1989	SC held that if the allegations made in an FIR do not constitute a cognizable offence, the criminal proceeding instituted on the basis of the FIR should be quashed.	S. 154 - FIR
Ram Lochan vs State 1978	Held that although trying a govt. servant summarily is legal, it should not be done so because upon conviction, govt. servant may lose his job, which is a serious loss.	S. 260 – Summary Trial Which offences can be tried summarily?
Bhima Singh vs State of UP AIR 1974	SC held that when an offence is compoundable with the permission of the court, such permission may be granted by SC while an appeal is made against the conviction provided the parties have settled the matter amicably.	S. 320 - Compoundable Offences
Ram Lal vs State of J&K 1999	SC held that when an offence is declared non-compoundable by law, it cannot be compounded even with the permission of the court. However, the court may take the compromise into account while delivering judgment.	S. 320 - Compoundable Offences
B S Joshi vs State of Haryana AIR 2003	The case was about the matter related to Section 498A, which is non-compoundable offence. In this case, the parties reached a compromise but the High Court refused to quash the FIR, on the ground that the offence is non-compoundable. However, SC held that in the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently canalized and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. It further observed that in this case, the parties were not asking for compounding the offence but for quashing the FIR. It observed that since because of the amicable settlement, there is no chance of conviction and in such a case the court has the power to quash the proceeding.	S. 320 - Compoundable Offences
Probation of Offenders Act, 1958		
Justice Horwill in In re B. Titus	S. 562 is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.	Early guidance on when probation can be given instead of prison. S. 360 of CrPC was earlier S. 562.
Jugal Kishore Prasad vs State of Bihar 1972	Supreme Court observed that the object of the Probation of Offenders Act, is in accordance with the present trend in the field of penology, according to which efforts should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu.	
Isherdas vs State of Punjab	Supreme Court held that the Probation of Offenders Act was applicable to the offenses under the Prevention of Food Adulteration Act, 1954.	
Sanjay Dutt's Case	Court did not give him the benefit because he was convicted of a serious offence under Arms Act. Further, his character was not found suitable because of his association with Dawood Ibramim,	

	Iqbal Mirchi etc.	
Mohamad Aziz Mohamed Nasir vs State Of Maharashtra AIR 1976	The appellant was below 21 years of age. The appellant was at one time a well known child film actor and won several awards for acting in films. Subsequently he fell in bad company and took to evil ways. SC held that even if the point relating to Section 6 is not raised before the High Court, the court was bound to take notice of the provisions of the section and give its benefit to the applicant. It further held that Section 6 lays down an injunction not to impose a sentence of imprisonment on a reason who is under 21 years of' age and if found guilty of having committed an offence punishable with imprisonment other the that for if unless it is satisfied that it would not be desirable to deal with him under Section 3 or Section 4. This inhibition on the power of the court to impose a sentence of imprisonment applies not only at the state of trial but also at the stage of High Court or any other court when the case comes before it in appeal or revision.	S. 6 – Court must not sentence a person below 21 yrs of age to imprisonment unless Court is satisfied that provisions of S.3 and S.4 are not suitable for the offender
Uttam Singh vs Delhi Administration 1971	The appellant was of 36 yrs of age and was caught with 3 sets of playing cards and obscene photographs. SC refused to allow him the benefit of release on probation having regards to his age and nature of crime.	S. 4 – Release on Probation
Charan Singh vs M C D AIR 2007	Appellant was convicted under Section 324/34, but was released on probation. However, he was fired from his job by Municipal Corporation of Delhi. The dismissal was challenged. It was held that as per Section 12 of the act, an offender who has been dealt with under Section 3 or 4 of PofOA, he shall not suffer any disqualification attached to the conviction of any offence. Thus, his dismissal was held invalid.	S. 12 – Removal of disqualification attaching to conviction
Juvenile Justice Act, 2005		
Municipal Corporation of Delhi vs Rattanlal 1971	Held that while allowing the release of a juvenile, the court should consider the following - circumstances of the case, nature of the offence, character, age, and family background of the accused.	S. 15 – Orders that may be passed against Juvenile
Rejesh Kheton vs State of W B 1983	The Court observed that the main object of the provision contained in Section 16 of the act is to prevent the juvenile from the contact of hardened criminals so that they are saved from contamination.	S. 16 – Orders that may not be passed against Juvenile
Sheela Barse vs U of I AIR 1986	Held that juveniles should not be held in jail but in shelter homes.	