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NATIONAL JUDICIAL ACADEMY



TRAINING PROGRAM FOR SEBI OFFICERS (SE-32)

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REFERENCE MATERIAL

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COMPILED AND EDITED

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12.	R. Vijayan, <i>Administrative Decisions and Duty to Give Reasons A Search for Justification</i> , 26 JILI (1984) 70	143
13.	M.P. Singh, <i>Duty to Give Reasons for Quasi-Judicial and Administrative Decisions</i> , 21 JILI (1979) 45	151
<u>Case Law Jurisprudence:</u>		
<p>1. <i>T. Takano vs Securities and Exchange Board of India</i>, [A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication - An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority - The actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure. (Para 39)</p>		

Principles of Natural Justice - Quasi Judicial Authority - The disclosure of material serves a three- fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions. (Para 51)

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - Regulation 9, 10 - Consideration of the report of the investigating authority which is submitted under Regulation 9 is one of the components guiding the Board's satisfaction on the violation of the regulations - the investigation report is not merely an internal document - The Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9 (Para 21, 51)

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - Regulation 9 - Whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person to whom a notice to show cause is issued ? - The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled in show cause notice. (Para 52)

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 - The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. It should prima facie established that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the noticee to prove that the information is necessary to defend his case appropriately. (Para 51)]

2. ***Vishal Tiwari v. Union of India & Ors***, 2023 SCC OnLine SC 236
3. ***Prakash Gupta v. SEBI***, 2021 SCC OnLine SC 485, *The provisions of the SEBI Act, as analyzed earlier in this judgment, would indicate the importance of the role which has been ascribed to it as a regulatory, adjudicatory and prosecuting agency. SEBI has vital functions to discharge in the context of maintaining an orderly and stable securities' market so as to protect the interests of investors.*
4. ***Balram Garg v. Securities and Exchange Board of India***, 2022 SCC OnLine SC 472, Regulation 2(1)(d)(i), Regulation 2(1)(g), Regulation 2(1)(d)(ii)(a), Regulation 2(1)(f) and Regulation 3 of the SEBI (Prevention of Insider Trading Regulations), 2015 - Section 12A of the Securities and Exchange Board of India Act, 1992 - Reliance of SEBI on transactions between appellant and PCJ and the subsequent payments of rent by PCJ is against the principles of natural justice as these allegations were not part of the Show Cause Notices- Final orders of Whole Time Member (WTM) of Securities and Exchange Board of India and SAT set aside - Whole Time Member (WTM) and SAT wrongly rejected the claim of estrangement of the Appellants without appreciating the facts and evidence as was produced before them - SAT erred in holding the appellants in C.A. No. 7590 of 2021 to be “insiders” in terms of regulation 2(1)(g)(ii) of the PIT Regulations on the basis of their trading pattern and their timing of trading (circumstantial evidence) - Final orders of Whole Time Member (WTM) of Securities and Exchange Board of India and SAT set aside.
5. ***Chairman, State Bank of India v. M.J. James***, (2022) 2 SCC 301, Disciplinary proceeding- Application of principle of natural justice in enquiries by quasi-judicial or administrative power – Appeal should be filed within a reasonable time – Doctrine of Delay & Laches and Acquiescence - Right to be represented by a counsel or agent of one’s choice -Whether absolute – The right to be legally represented depends on how the rules govern such representation-Rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, nature of right affected and the consequences-What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose – Court can refuse relief in exercise of their “discretion” even though natural justice is not followed – Waiving of requirement of notice – Individual benefit and public interest – Exercise of writ jurisdiction is always discretionary which has to keep in view the conduct of the parties.
6. ***State Bank of India and Another v. Ajay Kumar Sood***, 2022 SCC OnLine SC 1067, Elements of writing good judgment - Supreme Court remitted the proceeding back to the High Court for consideration afresh because of incomprehensible judgment – The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded -

The findings and directions should be precise and specific. Writing judgments is an art, though it involves skillful application of law and logic.

7. **Indian Commodity Exchange Ltd. v. Neptune Overseas Ltd.**, (2020) 20 SCC 106, Forward Contracts (Regulation) Act, 1952 – Alleged violation of the principle of natural justice - Failure to serve show cause notice - Show-cause notice should be comprehensive with full supporting documents - The documents asked by the Respondents should be supplied – No fresh show-cause notice is required to be served on Respondent 1 and the show cause notice dated 21-06-2011 would be treated as a show cause notice to both Respondents 1 and 2
8. **Ashok Kumar Kalra v. Surendra Agnihotri**, (2020) 2 SCC 394, Procedural justice and procedural fairness - Interpretation of Order 8 Rule 6-A of the Civil Procedure Code - Filing of counterclaim by a defendant in a suit – Whether the language of Order 8 Rule 6-A of the Civil Procedure Code is mandatory in nature - Procedural rules should not be interpreted so as to defeat justice, rather than furthering it - Even though Rule 6-A permits the filing of a counterclaim after the written statement, the court has the discretion to refuse such filing if it is done at a highly belated stage- Allowing counterclaims after the framing of issues would prolong the trial and will also prejudice the rights that may get vested with the plaintiff over the course of time - In exceptional circumstance the court may entertain a counterclaim even after the framing of issues so long as the court has not started recording the evidence - Apex Court explained considerations that must be borne in mind while allowing the filing of a belated counterclaim - It is not mandatory for a counterclaim to be filed along with the written statement.
9. **State of U.P. v. Sudhir Kumar Singh**, 2020 SCC OnLine SC 847, the scope and applicability of the Audi alteram partem rule were discussed.
10. **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others**, (2015) 8 SCC 519, Natural Justice Principle - Withdrawal of exemption of Central Excise in respect of certain goods – Challenge to withdrawal notification – Matter remanded to commissioner (Appeals) by High Court – Commissioner (Appeals) decided the appeals in favour of the appellant and held that issuance of show-cause notice was mandatory before a valid recovery of demand could be made from the appellant and, thus, remitted the matter to the adjudicating authority - Writ appeals of the appellant before the Division Bench were disposed of as infructuous – Parties filed appeals aggrieved against the order passed by the Commissioner (Appeals) - Customs, Excise and Service Tax Appellate Tribunal (“CESTAT”) reversed the orders of the Commissioner (Appeals) - Appellant challenged the order of CESTAT before the High Court of Gauhati was dismissed by the High Court on the ground of res judicata - Review petition also dismissed by the High Court - Appellant challenged both the orders passed in the tax reference as well as the order passed in the review petition - Can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be cause to the person against whom the acting is contemplated? - Non-issuance of notice before sending communication dated 23-06-2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality - Appeals dismissed.
11. **Anand Brothers P. Ltd v. Union of India**, (2014) 9 SCC 212, When a statutory authority frames an order all reasons justifying the same must be incorporated in the order itself and cannot be supplemented/improved by additional grounds in the affidavit.
12. **Union of India v. Alok Kumar**, (2010) 5 SCC 349, the nature and character of the "prejudice" to be demonstrated by the distressed party were explicated.
13. **Uma Nath Pandey v. State of U.P.**, (2009) 12 SCC 40, Natural Justice Principle – High Court order allowing the revision petition filed by Respondent 2 without issuing notice to the present appellants and to the other parties under challenge - Whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused - Impugned order set aside and the matter remitted to the High Court to consider the matter afresh after issuance of notice to the respondents.
14. **P.D. Agrawal v. State Bank of India**, (2006) 8 SCC 776, Mere technical/small violations will not make any order a nullity unless some real prejudice is caused to the complainant. The Court should apply the principles of natural justice regarding the situation obtained in each case. It is not applied in a vacuum

without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula.

15. **Makhan Lal Bangal v. Manas Bhunia**, (2001) 2 SCC 652, Role of a judge – Adversarial v. Inquisitorial approach - Appeal under Section 116-A of the Representation of the People Act, 1951 - Corrupt practices having been committed at the election - Election petition is remanded to the High Court for deciding afresh after compliance with Section 99 of the RPA and in accordance with law - Section 98 of the RPA provides for an order at the conclusion of the trial of an election petition being made by the High Court - Ambit and scope of Sections 98 and 99 of the RP Act - Civil Trial – Stage of framing of issues and recording of evidence - A Judge presiding over any trial needs to effectively control examination, cross-examination and re-examination of the witnesses - Power to disallow questions should be effectively exercised by reference to Sections 146, 148, 150, 151 and 152 of the Evidence Act by excluding improper and impermissible questions - Though the trials in India are adversarial, the power vesting in the court to ask any question to a witness at any time in the interest of justice gives the trial a little touch of its being inquisitorial - An alert Judge actively participating in court proceedings with a firm grip on oars enables the trial smoothly negotiating on shorter routes avoiding prolixity and expeditiously attaining the destination of just decision - Presiding Judge to hold the proceedings so as to achieve the dual objective of search for truth and delivering justice expeditiously cannot be subdued - Courtroom is no place for play of passions, emotions and surcharged enthusiasm.
16. **State Bank of Patiala v. S.K. Sharma**, (1996) 3 SCC 364, The Supreme Court evolved detailed parameters apropos substantial compliance of rules of natural justice.
17. **ECIL v. B. Karunakar**, (1993) 4 SCC 727, the right to receive the report of the enquiry officer in a disciplinary proceeding is considered an essential part of reasonable opportunity and also a principle of natural justice.
18. **Trehan v. Union of India**, (1989) 1 SCC 764, As a general rule, hearing should be afforded before a decision is taken and not afterwards. Once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.
19. **K.L. Tripathi v. State Bank of India**, (1984) 1 SCC 43, Cross-examination is an indefeasible right and is an integral part and parcel of the principles of natural justice.
20. **Ram Chander v. State of Haryana**, (1981) 3 SCC 191, Section 302 read with Section 34 of the Penal Code, 1860- Examination of witnesses - True role of a Judge trying a criminal case? Is he to assume the role of a referee in a football match or an umpire in a cricket match? - Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? the court must actively participate in the trial to elicit the truth and to protect the weak and the innocent - It is the duty of a Judge to discover the truth and for that purpose, he may “ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant” (Section 165 Evidence Act) - But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defense Counsel, without any hint of partisanship and without appearing to frighten or bully witnesses - Questions Sessions Judge did not adhere to fair trial principles by threatening the witnesses that if they changed their statements they would involve themselves in prosecutions for perjury.
21. **East India Commercial Co. Ltd. v. Collector of Customs**, AIR 1962 SC 1893 [Decisions of the High Court have binding effect upon the subordinate judiciary and the tribunals.]

Judgments of Securities Appellate Tribunal

1. **Vupadhyayula Sasidhar v. Securities & Exchange Board of India**, 2022 SCC OnLine SAT 140, *Natural Justice Principles*
2. **P.F. Sundesha and Others v. Securities and Exchange Board of India**, 2022 SCC OnLine SAT 126, *Natural Justice - Admissibility & Proof of Documents*
3. **Geofin Comtrade Ltd. v. Securities and Exchange Board of India**, 2022 SCC OnLine SAT 109, *No Notice - No Opportunity of Hearing*

4. *Devendra Kapil v. Defaulters Committee, National Stock Exchange of India*, 2022 SCC OnLine SAT 83, *Cryptic Order Lacking Reasons – Not considered Issues Raised by the Appellants*
5. *Rana Kapoor v. Securities and Exchange Board of India*, 2022 SCC OnLine SAT 69, *Cross-Examination of Witnesses*
6. *Vital Communications Ltd. v. Securities and Exchange Board of India*, 2021 SCC OnLine SAT 2595, *Application of Principle of Res Judicata*
7. *Madhav Acharya v. Securities and Exchange Board of India and Another*, 2021 SCC OnLine SAT 1261, *Natural Justice Principles-Disclosure of Documents*
8. *Sunil D Agarwal v. Securities and Exchange Board of India*, 2021 SCC OnLine SAT 2489, *Natural Justice Principles*
9. *Shri B. Ramalinga Raju v. Securities and Exchange Board of India*, 2017 SCC OnLine SAT 183, *Cross Examination-Inspection of Documents*
10. *Pooja Wadhawan v. Securities & Exchange Board of India*, 2021 SCC OnLine SAT 1874, *Natural Justice Principles – Disclosure of Documents*

SESSION 2: COLLECTION AND APPRECIATION OF EVIDENCE

1.	Dr. Justice B. S. Chauhan, [Unpublished, prepared for NJA programme, 19.10.22.] – <i>Appreciation of Evidence</i> – <i>Burden of Proof and Evidentiary Presumptions</i>	176 195
2.	S.S. Upadhyay, <i>Appreciation of Evidence in Civil Cases</i> , available at: http://lawhelpline.in/pdfs/civil laws/appreciation of evidence in civil cases.pdf	220
3.	Anton Koshelev and Ekaterina Rusakova, <i>The Problem of Admissibility of Evidence in Indian Civil Proceedings</i> , SHS Web of Conferences 106 , 02015 (2021) MTDE 2021	258
4.	Justice Raja Vijayaraghavan, <i>Electronic Evidence</i> , Workshop on Adjudicating Terrorism Cases National Judicial Academy, Bhopal-January 24, 2021	263
5.	Seth, Hasit, <i>Impossibility Exception To The S.65-B(4) Electronic Evidence Certificate (June 1, 2021)</i> . Available at SSRN: https://ssrn.com/abstract=3859581 or http://dx.doi.org/10.2139/ssrn.3859581	280
6.	Armaan Patkar & Diya Uday, <i>Standard of Proof: Civil Securities Fraud, market Manipulation and Insider Trading in India</i> , (2018) 8 SCC (J) 25	290

Case Law Jurisprudence

1. **Vijay v. Union of India**, 2023 SCC OnLine SC 1585 [Law requires the best evidence to be given first, that is, primary evidence. Section 63 of the Evidence Act provides a list of the kinds of documents that can be produced as secondary evidence, which is admissible only in the absence of primary evidence. If the original document is available, it has to be produced and proved in the manner prescribed for primary evidence. So long as the best evidence is within the possession or can be produced or can be reached, no inferior proof could be given. A party must endeavor to adduce primary evidence of the contents, and only in exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party. When the non-availability of a document is sufficiently and properly explained, then the secondary evidence can be allowed. Secondary evidence could be given when the party cannot produce the original document for any reason not arising from his default or neglect. When the copies are produced in the absence of the original document, they become good secondary evidence. Still, there must be foundational evidence that the alleged copy is a true copy of the original.]

2. **Securities and Exchange Board of India v. Mega Corporation Limited**, 2022 SCC OnLine SC 361, *Section 15Z of the Securities and Exchange Board of India Act - Restricting the respondent-company from accessing the capital market for one year and further restraining the promoter directors from buying, selling or otherwise dealing with securities for India - Principles of natural justice would be violated if an opportunity to cross-examine is not granted in a case where a material adverse to the party is taken cognisance by SEBI - There is a right of disclosure of the relevant material - However, such a right is not absolute and is subject to other considerations - There was no necessity for the Tribunal to lay down as an inviolable principle that there is a right of cross-examination in all cases.*
3. **Reliance Industries Limited v. Securities and Exchange Board of India and Others**, 2022 SCC OnLine SC 979, *Alleged violation of Section 77 of the Companies Act, 1956 – Alleged Violation of Regulations 3, 5 and 6 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 - Whether SEBI is required to disclose documents in the present set of proceedings? – Norms for disclosure of documents - SEBI's attempt to cherry-pick the documents it proposes to disclose - Such cherry-picking by SEBI only derogates the commitment to a fair trial – Direction to SEBI to furnish a copy of the documents to the appellants.*
4. **Kavi Arora v. Securities & Exchange Board of India**, 2022 SCC OnLine SC 1217, *Violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 - Documents sought from SEBI - Copy of the opinion formed by Respondent SEBI for issuance of the Show Cause Notice to the notice - SEBI Adjudication Rules 1995 - There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the notice in its entirety. The documents relied upon for the formation of opinion under Rule 3, are not required to be disclosed to the notice unless relied upon in the inquiry - In the event, the Petitioner is prejudiced by reason of any adverse order, based on any materials not supplied to the Petitioner, or any prejudice is demonstrated to have been caused to the Petitioner, it would be open to the Petitioner to approach the appropriate forum.*
5. **T. Takano v. Securities and Exchange Board of India and Another**, 2022 SCC OnLine SC 210, *SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003 - whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person to whom a notice to show cause is issued- Party has a right to disclosure of the material relevant to the proceedings initiated against him with some exceptions - The right to disclosure is not absolute - SEBI can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.*
6. **State Bank of India and Another vs. K.S. Vishwanath**, 2022 SCC OnLine SC 667, *Bank fraud - False documents - enquiry officer found respondent guilty - confirmed by the Appellate Authority- Appeal - Single Judge set aside the order of punishment and directed the Bank to give all the consequential benefits- Division Bench confirmed judgment of the Single Judge - Whether the High Court can reappreciate evidence of a quasi-judicial authority while exercising writ jurisdiction – Standard of proof in enquiry under departmental proceeding - Impugned judgment and order passed by the Division Bench of the High Court and order passed by the learned Single Judge were quashed and set aside - Standard of proof which is required in a criminal case and that of the disciplinary proceedings is different - Standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings.*
7. **Balram Garg v. SEBI, (2022) 9 SCC 425**, *he presumption is raised only when some foundational facts are established by the prosecution. In the present case the foundational facts were not proved which could raise the alleged presumption.*
8. **Lachhmi Narain Singh (D) Through Lrs and Others v. Sarjug Singh (Dead) Through Lrs. and Others**, 2021 SCC OnLine SC 606, *Probate proceeding – Admissibility of Deed canceling the Will - Genuineness of the cancellation deed - Objection as to the admissibility of a registered document must be raised at the earliest stage before the trial court and the objection could not have been taken in appeal, for the first time - Objection as to the mode of proof must be taken when the document is tendered and before it is marked as an exhibit. It cannot be taken in appeal. The objection as to the mode of proof should be taken before a document is admitted and marked as exhibit- A plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial Court at the appropriate stage.*

9. **Z. Engineers Construction (P) Ltd. v. Bipin Bihari Behera**, (2020) 4 SCC 358, *Power of attorneys - Objection of admissibility of the document on account of being insufficiently stamped - Objection related to deficiency in stamp duty on a power of attorney which the appellants claim to be conveyance, depends upon the finding regarding delivery of possession in terms of the power of attorney - Such objection is required to be decided before proceeding further - However, in a case where evidence is required to determine the nature of the document, it is reasonable to defer the admissibility of a document for insufficient stamp duty at the time of final decision in the suit.*
10. **Om Prakash v. Suresh Kumar.**, (2020) 13 SCC 188, *Where the Counsel has made an admission before the Court and the question arose as to whether such an admission is binding on the Client, taking note of the provisions of the CPC and provisions of the Advocates Act, 1961 unless the Client makes a statement that he had instructed his Counsel not to make such an admission, it is binding on the Client.*
11. **Jagdish Prasad Patel v. Shivnath**, (2019) 6 SCC 82, *Evasive denial or non-specific denial of averments in the plaint may constitute an implied admission.*
12. **SEBI v. Kishore R. Ajmera**, (2016) 6 SCC 368, *What is the degree of proof required to hold brokers/sub-brokers liable for fraudulent/manipulative practices under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and/or liable for violating the Code of Conduct specified in Schedule II read with Regulation 9 of the SEBI (Stockbrokers and Sub-brokers) Regulations, 1992 - It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and leveled - While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless - It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom - Test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion – Appeal is dismissed and the order passed by SAT is affirmed.*
13. **Yellapu Uma Maheswari v. Buddha Jagadheeswararao**, (2015) 16 SCC 787, *Partition suit – Admissibility of documents – Nomenclature given to the document is not a decisive factor but the nature and substance of the transaction have to be determined with reference to the terms of the documents and the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question - Compulsorily registrable documents if not registered then inadmissible in evidence for the purpose of proving the factum of partition- Whether unregistered documents can be used for any collateral purpose - In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded.*
14. **Omprakash v. Laxminarayan**, (2014) 1 SCC 618, *Suit for specific performance of contract, possession and permanent injunction in respect of unirrigated land - Admissibility of the agreement to sell as evidence - Deed of the agreement having been insufficiently stamped, the same was inadmissible in evidence.*
15. **H. Siddiqui v. A. Ramalingam**, (2011) 4 SCC 240, *Agreement to sell- Power of attorney – Whether the power of attorney had been executed by the respondent in favour of his brother enabling him to alienate his share in the property? Whether the same had been proved in accordance with the law- Secondary evidence - In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence - Secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for - Mere admission of a document in evidence does not amount to its proof- Documentary evidence is required to be proved in accordance with the law.*
16. **Madan Mohan Singh v. Rajnikanth**, AIR 2010 SC 2933, *Non- application of mind by the Court and as a result accepting the inadmissible evidence or rejecting the admissible evidence tantamount to non-appreciation of evidence.*
17. **Shalimar Chemical Works Ltd. v. Surendra Oil & Dal Mills**, (2010) 8 SCC 423, *Infringement of its registered trademark - Photocopies of registration certificates under the Trade and Merchandise Marks Act, 1958 along*

with the related documents attached to the certificates - Admitting the original trademark registration certificates at the appellate stage as additional evidence – The trial court should not have “marked” as exhibits the xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to the objection of proof and admissibility - Division Bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41 Rule 27. Additional documents produced by the appellant were liable to be taken on record as provided under Order 41 Rule 27(b) in the interest of justice.

18. **Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate** (2009) 4 SCC 410., Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto or at the request of any party, so that the court itself can put questions and elicit answers. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.
19. **Ravinder Singh Gorkhi v. State of U.P.**, (2006) 5 SCC 584, The Evidence Act does not make any distinction between a civil proceeding and a criminal proceeding.
20. **Dayamathi Bai v. K.M. Shaffi**, (2004) 7 SCC 107, Property suit – Certified copy of a registered sale deed - Where copies of the documents are admitted without objection in the trial court, no objection to their admissibility can be taken afterward in the court of appeal - When a party gives in evidence a certified copy, without proving the circumstances entitling him to give secondary evidence, the objection must be taken at the time of admission and such objection will not be allowed at a later stage.
21. **Prithi Chand v. State of H.P.**, (1989) 1 SCC 432, A copy of a copy is admissible as secondary evidence if it has been compared with the original or if this copy is taken from the original by a mechanical process. Copy of a copy not compared with the original is not secondary evidence of the original.
22. **Smt. Savithamma v. Cecil Naronha & Anr.**, AIR 1988 SC 1987, Affidavits can be used as evidence only if for sufficient reason court passes an order under Order XIX, Rules 1 or 2 of the Code of Civil Procedure.
23. **State of Bihar and Ors. v. Sri Radha Krishna Singh & Ors.**, AIR 1983 SC 684., The admissibility of a document is one thing and its probative value quite another. These two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and the weight of its probative value may be nil.
24. **Bareilly Electricity Supply Co. v. The Workmen & Ors**, 1971 (2) SCC 617, It is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry.
25. The application of the principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand, it means that no materials can be relied upon to establish a contested fact that are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used.
26. **Narayan Ganesh Dastane v. Sucheta Narayan Dastane**, 1975 AIR 1534, A fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
27. **Badat and Co. Bombay v. East India Trading Co.**, AIR 1964 SC 538, If the denial of a fact is not specific but evasive, the said fact shall be taken to be admitted.
28. **Addagada Raghavamma v. Addagada Chenchamma**, (1964) 2 SCR 933, There is an essential distinction between the burden of proof and the onus to prove; the burden of proof lies upon the person who has to prove a fact and it never shifts... Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of the onus is a continuous process in the evaluation of evidence.....
29. **King. v. Burdett**, (1820) 4 B. & Ald. 95, There is no difference between the rules of evidence in civil and criminal cases. If the rules of evidence prescribe the best course to get at the truth, they must be and are the same in all cases and in all civilized countries.

Case Law on Electronic Evidence

1. **Ravinder Singh Alias Kaku v. State of Punjab** (2022) 7 SCC 581 [*Indian Evidence Act, 1872; Section 65B (4) - Certificate under Section 65B (4) is a mandatory requirement for production of electronic evidence - Oral evidence in the place of such certificate cannot possibly suffice. Criminal Trial - Circumstantial Evidence - Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.*]
2. **Virendra Khanna v. State of Karnataka**, 2021 SCC OnLine Kar 5032 [*Polygraph Test - Whether Petitioner's application to recall order of Polygraph test is not tenable in Law as it amounts to testimonial compulsion hit by Article 20(3) of Constitution is rightly rejected by court below? - Held, trial court has directed Petitioner accused to co-operate with Investigating agency and provide password, pass code for smart phone, as also for e-mail account of Petitioner, this court is of opinion that examination of a smart phone or an e-mail account is in nature of a search being carried out, such a search cannot be so carried out without a search warrant - Trial Court by merely directing Petitioner to co-operate with Investigating agency, Petitioner cannot be forced or constrained to provide such a password, passcode, biometrics etc, for purpose of opening of smartphone and or an e-mail account, much less without recording reasons for same - Process and procedure as discussed above would have to be followed - For all above reasons, order passed by trial directing Petitioner to co-operate with investigating agency ad provide a password to open smart phone and email account is not proper or legal and is therefore set aside - Liberty is, however, reserved to prosecution to file necessary applications, which would be considered by trial court in accordance with applicable law - Whether order passed by Trial Court directing Petitioner to undergo a polygraph test violates rights of Petitioner under Article 20 of Constitution? - Trial Court, by its order 29.03.2020, had directed administration of polygraph test on Petitioner - This order was passed on an oral request without there being an application filed by prosecution and no opportunity having been provided to either Petitioner or his counsel - Petitioner was also not heard on same nor was his consent obtained by trial Court before order of relevant date was passed - Though it is contended by Spl. P.P. that order of relevant date only directed administration of a polygraph test and that no polygraph test would have been administered without consent of Petitioner; no such order could have been passed without having obtained consent of an accused like Petitioner - Petitioner having not consented to administration of a polygraph test and in fact having challenged same, refusing administration thereof, had categorically indicated that he does not wish to be subjected to a polygraph test, this court is of opinion that no polygraph test could be administered on Petitioner - Mere silence of person would not amount to consent on behalf of such person - If a person were to refuse administration of polygraph test, no such polygraph test could be administered and even if administered, result of said test would be void and cannot be considered by a Court of Law - Order passed by trial Court, directing petitioner to furnish password, pass code or Biometrics of his mobile phone and e-mail account is set aside - Order passed by trial Court, directing petitioner to undergo a polygraph test is set aside - Order impugned passed on recalling application does not survive for consideration*]
3. **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors**, (2020) 7 SCC 1 [*Held that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in by the 3-judge bench in Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473, and incorrectly "clarified" by a division bench in Shafi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801. The Court further clarified that the required certificate under Section 65B (4) is unnecessary if the original document itself is produced. The Court was hearing the reference from the July 26, 2019 order where, after quoting Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473(a three Judge Bench decision of this Court), it was found that a Division Bench judgment in Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801 may need reconsideration by a Bench of a larger strength. The Division bench, in the Shafi Mohammad judgment, had "clarified" that the requirement of a certificate under Section 64B(4), being procedural, can be relaxed by the Court wherever the interest of justice so justifies, and one circumstance in which the interest of justice so justifies would be where the electronic device is produced by a party who is not in possession of such device, as a result of which such party would not be in a position to secure the requisite certificate.*]

4. **Rakesh Shetty v. State of Karnataka**, 2020 SCC OnLine Kar 4638 [Whether the investigating agency can retain the user name and password of social media/digital platform like Facebook and YouTube pending investigation?]
5. **P. Gopalkrishnan v. State of Kerala and Anr.**, (2020) 9 SCC 161 [The contents of the memory card/pen drive being electronic record must be regarded as a document. If the prosecution was relying on the same, ordinarily, the Accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the Accused and his/her lawyer or expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.]
6. **State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath**, (2019) 7 SCC 515 [Requirement of producing a certificate arises, when the electronic record is sought to be used as evidence]
7. **Shamsher Singh Verma v. State of Haryana**, (2016) 15 SCC 485 [The object of Section 294 Code of Criminal Procedure is to accelerate pace of trial by avoiding the time being wasted by the parties in recording the unnecessary evidence. Where genuineness of any document is admitted, or its formal proof is dispensed with, the same may be read in evidence. In view of the definition of 'document' in Evidence Act, and the law laid down by this Court, the Court held that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document Under Sub-section (1) to Section 294 Code of Criminal Procedure personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 Code of Criminal Procedure. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.
8. **Anvar PV v. P.K. Basheer and Ors.**, (2014) 10 SCC 473 [The Court held that for any electronic evidence to be admissible in its secondary form, it is necessary to meet the mandatory requirements of Section 65-B, which includes giving a certificate as per terms of Section 65-B (4), at the time of proving the record and not anytime later, failing which the electronic record will be considered inadmissible.]
9. **Gajraj v. State (NCT of Delhi)**, (2011) 10 SCC 675 [The court observed that the IEMI number of mobile phone (sim) registered in the name of a person being evidence of a conclusive nature, it cannot be discarded on the basis of minor discrepancies especially when there is serious discrepancy in oral evidence.]

SESSION 3: OBLIGATION OF GOVERNMENT AGENCIES UNDER DATA PROTECTION LAWS

1.	K. Vaitheeswaran, Delving into Digital Personal Data Protection Act , (January 17,2024) Available at: https://www.lawstreetindia.com/experts/column?sid=782	299
2.	Anirudh Burman, Understanding India's New Data Protection Law , (October 3, 2023) Available at: https://carnegieindia.org/2023/10/03/understanding-india-s-new-data-protection-law-pub-90624#:~:text=The%20law%20provides%20exemptions%20from,tribunals%2C%20or%20for%20the%20prevention%2C	302
3.	Taft Stettinius & Hollister LLP, Breaking Down India's Digital Personal Data Protection Act, 2023 , (November 20, 2023) Available at: https://www.lexology.com/library/detail.aspx?g=66a7202b-31ae-4b00-92b6-719ce6734755	314
4.	Florence A. Ogonjo, Key Observations from India's Digital Personal Data Protection Act 2023 , (September 29, 2023)	319

	Available at: https://cipit.strathmore.edu/key-observations-from-indias-digital-personal-data-protection-act-2023/	
5.	Economic Laws Practice, <i>Overview of the Digital Personal Data Protection (DPDP) Bill, 2023</i> , (August 2023) Available at: https://elplaw.in/wp-content/uploads/2023/08/ELP-Update-DPDP-Bill-2023.pdf	324
6.	Economic Laws Practice, <i>Data Protection & Privacy Issues in India</i> Available at: https://elplaw.in/wp-content/uploads/2018/08/Data-Protection-26-Privacy-Issues-in-India.pdf	329
7.	NN Mishra et.al, <i>Privacy and the Right to Information Act, 2005</i> , 5(4) Indian J Med Ethics. (2008): 158–161.	364
8.	PRS Legislative Research, <i>Legislative Brief: The Digital Personal Data Protection Bill, 2023</i> , Available at: https://prsindia.org/billtrack/prs-products/prs-legislative-brief-4181	371

Case Law Jurisprudence

1. **Supreme Court of India v. Subhash Chandra Agarwal**, (2020) 5 SCC 481 [While Section 8(1)(d) of Right to Information Act, 2005 is concerned with breach of confidence of commercial information only, Section 11 extends to all types of confidentiality including commercial confidentiality. Test of balancing public interest applicable to confidential information other than commercial information.]
2. **Yashwant Sinha v. CBI**, (2019) 6 SCC 1 [Exemption from disclosure of information as per Section 8(1)(a), RTI Act can be waived if public interest in disclosure comparatively outweighs harm to protected interest. Information pertaining to allegations of corruption and human rights violations excluded from privilege of secrecy and would be accessible by virtue of Section 24 Proviso RTI Act
3. **Unique Identification Authority of India v. CBI**, (2017) 7 SCC 157 [UIDAI restrained from transferring any biometric information of any person who has been allotted the Aadhaar number to any agency without his written consent.]
4. **RBI v. Jayantilal N. Mistry**, (2016) 3 SCC 525 [Disclosure of information which is detrimental to economic interests of country, commercial confidence and public interest could harm the national economy. However lower level economic and financial information life contracts and departmental budgets should not be withheld under this exemption]
5. **Justice K. S. Puttaswamy (Retd.) v. Union of India**, (2017) 10 SCC 1 [The nine Judge Bench in this case unanimously reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy and liberty.]
6. **R. Rajagopal v. State of T.N.**, (1994) 6 SCC 632 [Publication of any matter concerning privacy of a citizen's own as well as of his family, including information regarding marriage, procreation, education etc. without his/her consent would entitle him/her to damages except where the publication is based on public records including court records (except in cases relating to victims of sexual assault, kidnap, abduction etc.). However, publications relating to acts or conduct of public officials in discharge of their official duty, unless shown to have been made in reckless disregard for truth, would not entitle officials to invoke the right of privacy and claim damages. Nor the Government, local authority, other organs and institutions exercising governmental powers are entitled to sue for damages.]

SESSION 4: POWERS OF TRIBUNALS VIS-À-VIS SAT PROCEDURES

1.	Sumit Agrawal & Krithika Kataria, <i>Imposition of Costs On SEBI – A Tussle Between SAT and SEBI</i> , (May 2022),	377
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2.	Dr. Sameera A Raees, <i>National Company Law Tribunal – The New Era of Corporate World</i> , 10 Annual Research Journal of Symbiosis Centre for Management Studies 43-52 (2022)	382
3.	Gayatri Puthran, <i>Litigating Insider Trading : Decoding Evidences in Cases Under SEBI (Prohibition of Insider Trading) Regulations, 2015</i> , (2021) 14 NUJS L Rev 387	392
4.	Binny Kumari, <i>SEBI's Jurisdiction to Decide Auditor's Liability in Light of the Price Waterhouse and Co. Order of 2019</i> , 7.1 RFMLR (2020) 181	421
5.	Qurath-ul-Ain, Radhesh R. Bhat, Rajashri Bhat and Ravilal VR, <i>Project Report on NCLT & NCLAT-Opportunities & Challenges; Provisions under NCLT for Oppression & Mismanagement</i> , The Institute Of Company Secretaries of India Bengaluru Chapter	429
6.	Sujoy Datta & Uma Lohray, <i>Consent Orders in Securities Regulations Consent Orders in Securities Regulations: A Review of the SEBI and SEC Mechanism</i> , 3.1 NLIU LR (2012) 112	478

Case Law Jurisprudence: -

1. **National Securities Depository Ltd. v. SEBI**, (2017) 5 SCC 517 , administrative orders such as circulars issued under the Securities Exchange Board of India (SEBI) Act are obviously outside the appellate jurisdiction.
2. **Prakash Gupta v. Securities and Exchange Board of India**, (2021) 17 SCC 451
3. **Vallal RCK v. M/s. Siva Industries And Holdings Limited** Civil Appeal Nos. 1811-1812 of 2022 (Supreme Court), [NCLT/NCLAT should not sit in appeal over commercial wisdom of CoC to allow withdrawal of CIRP]
4. **Ashok G. Rajani v. Beacon Trusteeship Ltd.** Civil Appeal No. 4911 of 2021 (Supreme Court), [Order of NCLAT refusing to exercise inherent powers was only an interim order and as such the NCLT has the power to allow withdrawal under Section 12A, IBC]
5. **Tata Consultancy Services Limited v. SK Wheels Private Ltd.** (2022) 2 SCC 583, [The jurisdiction of NCLT under IBC cannot be invoked by the corporate debtor if the termination of a contract by a third party takes place on grounds unrelated to the insolvency of the corporate debtor and hence the NCLT did not have any residuary jurisdiction to entertain the dispute. Therefore, the Supreme Court set aside of the judgments of the NCLT and NCLAT. The Court further clarified that even where the termination of a contract by a third party was in relation to the insolvency of the corporate debtor, the NCLT should restrain the third party from terminating the contract only if it is central to the success of the insolvency proceedings or to keep the corporate debtor as a going concern]
6. **Gujarat Urja Vikas Nigam Limited v. Amit Gupta** (2021) 7 SCC 209, [NCLT cannot derive its powers from the “spirit” or “object” of IBC. Section 60(5)(c) vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. However, that NCLT’s residuary jurisdiction though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do. The Court observed that lack of a legislative voice on the issue of validity/invalidity of ipso facto clauses relating to insolvency will lead to confusion and reduced commercial clarity]
7. **M/s R.K. Industries (Unit-II) LLP v. M/s H.R. Commercial Private Limited** Civil Appeal Nos. 7722/2021 and 7731/2021 (Supreme Court), [The powers vested in and the duties cast upon the Liquidator have been made subject to the directions of the Adjudication Authority (NCLT) under Section 35 of the IBC. Once the Liquidator applies to the Adjudicating Authority (NCLT) for appropriate orders/directions, including the decision to sell the movable and immovable assets of the corporate debtor in liquidation by adopting a particular mode of sale and the Adjudicating Authority (NCLT) grants approval to such a decision, there is no provision in the IBC that empowers the Appellate Authority (NCLAT) to suo motu conduct a judicial review of the said decision. The jurisdiction bestowed upon the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) are circumscribed by the provisions of the IBC]

8. **Embassy Property Developments (Private) Limited v. State of Karnataka** (2020) 13 SCC 308, [The Court held that only provision that could help outline the scope of jurisdiction of the NCLT in respect of decisions taken under the Mines and Minerals (Development and Regulation) Act, 1957 was section 60(5) of the IBC. Section 60(5), was recognized to be very broad in its sweep, conferring jurisdiction upon the NCLT in respect of any question of law or fact, arising out of or in relation to insolvency resolution. However, any decision taken by a government or statutory authority in relation to a matter which was in the realm of public law, cannot by any stretch of imagination be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution". NCLT being a creation of a special statute to discharge certain specific functions cannot be elevated to the status of a superior court having power of judicial review over administrative action]
9. **Invesco Developing Markets Fund v. Zee Entertainment Enterprises** 2022 SCC OnLine Bom 630, [Section 430 of the Companies Act bars the High Court from adjudicating matters arising under the Act. It further observed that under section 100 of the Act, the High Court does not have the authority to decide upon the validity of a requisition notice to call for the extraordinary general meeting]
10. **Securities and Exchange Board of India v. Mega Corporation Ltd.** Civil Appeal No. 2104 of 2009 (Supreme Court), [The Supreme Court will exercise jurisdiction only when there is a question of law arising for consideration from the decision of the Tribunal. A question of law may arise when there is an erroneous construction of the legal provisions of the statute or the general principles of law. In such cases, the Supreme Court in exercise of its jurisdiction of Section 15Z may substitute its decision on any question of law that it considers appropriate]
11. **Printland Digital (India) Pvt. Ltd. v Nirmal Trading Company** Order Delivered on 03.02.2021 (NCLAT, New Delhi), [NCLT has the power to recall its order of closing the right to file reply. It will not be considered as recalling an order and review of an order where an issue is decided on merit by the Tribunal]
12. **Adish Jain v. Sumit Bansal and Worldwide Metals Pvt. Ltd.** Order Delivered on 03.02.2021 (NCLAT, New Delhi), [NCLAT does not have the inherent power to review its own orders, the power to review cannot be exercised under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, which spell out the inherent powers of the NCLAT, and that the power to review can only be conferred upon the NCLAT by a statute or by necessary implication. The error assailed in a review application must be patent, manifest, and self-evident, and a re-appraisal of the evidence and finding of facts in the garb of a review application was not permissible]

SESSION 5: PRINCIPLES OF INSOLVENCY & BANKRUPTCY CODE

1.	Mani Gupta, Aman Choudhary and Saumya Upadhyay, Overview of India's Insolvency and Bankruptcy Code , Sarthak Advocates & Solicitors, (September 09, 2022)	494
2.	Akaant Kumar Mittal, Issues under the Insolvency and Bankruptcy Code post Admission of Insolvency Application , (2018) 8 SCC J-5	502
3.	Anand Jayachandran & Supriya Aakulu, SEBI Amendments to the LODR – An Overview of Key Changes , India Corporate Law, Cyril Amarchand Mangaldas, (July 4, 2023)	522
4.	Sara Jain, Analysing the Overriding Effect of the Insolvency and Bankruptcy Code, 2016 13(1) NUJS Law Review 39-62 (2020)	530
5.	Sunil Gupta, Personal Guarantors of Corporate Debtors Finally in the Net of IBC , (2021) 7 SCC J-1	554
6.	Lohit K. Bimal and Sujit Jain, SEBI v. IBC: The Case for SEBI , Retrieved from – https://www.anilbimal.com/pdf/Opinion-%20SEBI%20vs%20IBC.pdf	569
7.	Abhishek Bhardwaj, A Disquisition of Section 32 of Insolvency and Bankruptcy Code, 2016 , (2)(1) Jus Corpus Law Journal 156-175 (2021)	576
8.	Adity Chaudhury and Deeya Ray, SEBI Regulations amended for listed companies undergoing insolvency resolution process under the Insolvency and Bankruptcy Code , Retrieved from – https://www.argusp.com/uploads/blog_article/download/1528462113_SEBI_Regulations_and_IBC_-_June_6_2018.pdf	596

9.	Recent Judicial Developments - Insolvency And Bankruptcy Code, 2016 - PART 2, Insolvency and Bankruptcy Hotline, Nishith Desai Associates, (April 06, 2023)	604
10.	Vasanth Rajasekaran and Harshvardhan Korada, 10 Important Insolvency Law Judgments of 2023 , 2024 SCC OnLine Blog Exp 1	610
11.	Pramod Rao, Critique of the Insolvency & Bankruptcy Code, 2016 , 2016 NLS Bus L Rev 1	630

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1. **Asset Reconstruction Company (India) Ltd. v. Tulip Star Hotels Ltd.** Civil Appeal Nos. 84-85 of 2020 (Supreme Court), [Entries in book of accounts/balance sheet of corporate debtor can be treated as acknowledgment of liability of debt payable to financial creditor]
2. **Maitreya Doshi v. Anand Rathi Global Finance Ltd.** Civil Appeal No. 6613 of 2021 (Supreme Court, [The Court held that just like the resolution of principle borrower doesn't discharge the liability of a surety, in the same manner resolution in respect of one borrower cannot certainly discharge a co-borrower]
3. **EBIX Singapore Private Ltd. v. Committee of Creditors of Educomp Solutions Ltd.** (2022) 2 SCC 401, [A resolution plan, once approved by the CoC of the corporate debtor, cannot be withdrawn from consideration. In absence of any provision under IBC, allowing for withdrawal of the resolution plan by a successful resolution applicant, vesting the resolution applicant with such a relief through a process of judicial interpretation would be impermissible]
4. **K. Parmasivam v. The Karur Vyasya Bank Ltd.** Civil Appeal No. 9826 of 2019 (Supreme Court), [CIRP can be initiated against corporate guarantor without proceeding against principal borrower]
5. **State Tax Officer (1) v. Rainbow Papers Limited** Civil Appeal No. 1661 of 2020 (Supreme Court), [Resolution plan which ignores statutory dues payable to state government/legal authority liable to be rejected]
6. **Manish Kumar v. Union of India** (2021) 5 SCC 1, [The Court upheld the constitutional validity of Sections 3, 4 & 10 of IBC Amendment Act, 2020. The Provisos to Section 7(1) and Section 32A inserted were also upheld. It was iterated that **wider latitude** is given to legislature in economic matters]
7. **P. Mohanraj v. Shah Brother Ispat Private Ltd.** (2021) 6 SCC 258, [The Court held that cases brought under Section 138 of the Negotiable Instruments Act cannot be initiated or continued against corporations subject to the moratorium imposed by Section 14 (1) (a) of the IBC. The Bench held that these proceedings are in nature of a "civil sheep" dressed as a "criminal wolf". An order of moratorium passed by the NCLT, would apply with equal force vis-à-vis proceedings initiated under Chapter XVII, Section 138 of the Act, qua the corporate debtor alone. The proceedings may continue after the moratorium period (330 days) comes to an end. Irrespective of the moratorium in force against the corporate debtor, the proceedings under Section 138 of the Negotiable Instruments Act, 1881, against the directors/persons in management of the corporate debtor can be continued or initiated and they will be statutorily liable]
8. **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta** (2020) 8 SCC 531, [The court upheld the constitutional validity of amended Section 12(3) except the word 'madatorily'. It was considered excessive, arbitrary and unreasonable restriction being violative of Article 14 and 19(1) (g) of the Constitution. The Court propounded the "clean slate" theory for the first time under the IBC, wherein a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan is approved. The Court gave primacy to the commercial wisdom of the Committee of Creditors and held that only a limited judicial review is available to interfere with this wisdom]
9. **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.** Civil Appeal No. 4633 of 2021 (Supreme Court), [A term loan to meet the financial requirements of a Corporate Debtor for its operation has the commercial effect of borrowing & would be covered under section 5(8) as a financial debt]
10. **Anuj Jain v. Axis Bank Ltd.** Civil Appeal Nos. 8512-8527 of 2019 (Supreme Court), [Essential element of disbursal, that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as "financial debt"]

11. **Sesh Nath Singh v. Baidyabati Sheoraphuli Co-Operative Bank Ltd.** (2021) 7 SCC 313, [There is no bar to exercise by the tribunal of its discretion to condone delay, in the absence of a formal application under section 5 of the Limitation Act, 1963]
12. **B.K Educational Service Private Ltd. v. Parag Gupta and Associates** (2019) 11 SCC 633, [The Limitation Act, 1963 is applicable to applications filed under the IBC from its inception]
13. **Vidarbha Industries Power Ltd. v. Axis Bank Ltd.** Civil Appeal No. 4633 of 2021 (Supreme Court), [The Adjudicating Authority has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application]
14. **Swiss Ribbons Private Ltd. v. Union of India** (2019) 4 SCC 17, [The Court held that the classification between 'Financial Creditor' and 'Operational Creditor' is not discriminatory. An amendment which prescribed a mandatory outer limit of 330 days for completion of the CIRP was read down. The term "mandatorily" is struck down as being manifestly arbitrary and the time can be extended in certain circumstances]
15. **Innoventive Industries Ltd. v. ICICI Bank** (2018) 1 SCC 407, [No appeal can be maintained on behalf of the petitioner company itself as the directors are suspended and no longer in management. Non-obstante clause in the widest terms possible is contained in Section 238, IBC so that any right of corporate debtor under any other law cannot come in the way of IBC]
16. **Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.** (2018) 18 SCC 786, [Section 238, IBC will override the Income Tax Act. Income tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors]
17. **K. Sashidhar v. Indian Overseas Bank** (2018) 18 SCC 786, [NCLT has no jurisdiction to enquire into justness of rejection of the resolution plan]
18. **Harshad Govardhan Sondagar v. International Aseets Reconstruction Company Ltd.** (2014) 6 SCC 1, [The lawful possession of the secured asset with the lessee under a valid lease and the secured creditor cannot take over possession until the lawful possession of the lessee gets determined]
19. **Bhanu Ram v. M/s. HBN Dairies and Allied Ltd.** Order Delivered on 14.08.2018 (NCLT, New Delhi), [A group of 36 investors approached the NCLT preferring an insolvency application under Section 7 of the IBC. On The NCLT admitted the application and declared a moratorium under Section 14 of IBC on the basis that the investors could be considered as financial creditors of the Company. Further, it was held that, the provisions of Section 14 of IBC would, by virtue of the non-obstante clause present in Section 238 of IBC, prevail over Section 28A of the SEBI Act which provides for recovery of money from a Company by selling movable or immovable property]
20. **Bhanu Ram v. M/s. HBN Dairies and Allied Ltd.** Order Delivered on 30.04.2019 (NCLT, New Delhi), [Post the coming into force of Moratorium, SEBI was directed to detach the property of Corporate Debtor attached prior to the commencement of CIRP. It was held that due to the non-obstante clause in the IBC, provisions of IBC would prevail over the provisions of SEBI]
21. **Bohar Singh Dhillon v. Rohit Sehgal** Order Delivered on 09.05.2019 (NCLAT, New Delhi), [Till the period of Moratorium continues SEBI cannot recover any amount nor can sell the assets of the corporate debtor]
22. **Binani Industries Ltd. v. Bank of Baroda** Order Delivered on 14.11.2018 (NCLAT, New Delhi), [The Tribunal observed that the objective of the Code is to rescue a failing but viable business]
23. **Bharat Hotels Ltd. v. Tapan Chakraborty** Order Delivered on 05.09.2022 (NCLAT, New Delhi), [Issue of CIRP cost to be decided in CoC meeting, not by Adjudicating Authority]
24. **Rakesh Kumar Jain v. Jagdish Singh Nain** Order Delivered on 04.08.2022 (NCLAT, New Delhi), [Moratorium under section 14 of IBC, 2016 is no bar for initiation of proceedings under section 66 of the code]
25. **Sudhir Kumar Goel v. M/s Shashi Oils and Fats Pvt. Ltd.** Order Delivered on 04.08.2022 (NCLAT, New Delhi), [Once dissolution application is filed after liquidation, Adjudicating Authority has no discretion]

26. **Sumat Kumar Gupta v. Committee of Creditors of M/S Vallabh Textiles Company Ltd.** Order Delivered on 02.09.2022 (NCLAT, New Delhi), [Erstwhile Resolution Professional has no right to be heard before being replaced under Section 27]
27. **Wadhwa Rubber v. Bandex Packaging Pvt. Ltd.** Order Delivered on 24.08.2022 (NCLAT, New Delhi), [The Tribunal dismissed the appeal for being time barred while observing that limitation is to be counted from the date of preparation of the certified copy and not from the date of delivery of the certified copy]
28. **JSW Steel Limited v. Mahender Kumar Khandelwal** Order Delivered on 14.10.2019 (NCLAT, New Delhi), [The erstwhile management of a company would be held responsible for the crimes, if any, committed under their regime and the new management taking over the company after going through the IBC process cannot be held responsible for the acts of omission and commission of the previous management. Post the completion of the CIRP, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan]
29. **Dewan Housing Finance Corporation Ltd v. Securities and Exchange Board of India** Order Delivered on 09.10.2020 (SAT, Mumbai), [The Adjudicating Officer could not have considered the report of the insolvency committee to come to the conclusion that he had the power to proceed under SEBI law inspite of a moratorium having come into effect under section 14 of the IBC]

SESSION 6: IMPOSITION OF PENALTIES: EXERCISE OF DISCRETION BY ADJUDICATING OFFICERS

1.	Securities Law Enforcement: Calibrating the Discipline of Penalty Imposition, Retrieved from – https://corporate.cyrilamarchandblogs.com/2019/09/securities-lawenforcement-calibrating-the-discipline-of-penalty-imposition/	649
2.	Ambika Mehrotra, SAT orders ‘technical breaches’ an insufficient ground for imposing penalty for violation of law, Retrieved from – https://vinodkothari.com/wp-content/uploads/2019/08/SAT-orders-%e2%80%98technical%e2%80%99-breaches-an-insufficient-ground-for-imposing-penalty-for-violation-of-law.pdf	654

Case Law Jurisprudence:

1. **Securities and Exchange Board of India v. Bharti Goyal Etc.** Civil Appeal Nos. 3596-97 of 2020 (Supreme Court), [Prima facie, the direction of substituting the fine, which has been imposed for indulging in fraudulent and unfair trading practices with a warning is contrary to the statutory provisions]
2. **DKG Buildcon Pvt. Ltd. Vs. The Adjudicating & Enquiry Officer, S.E.B.I.** Civil Appeal No. 1742 of 2009 (Supreme Court), [The Court held that taking into consideration the severity of offences found to have been committed by the appellants and other entities, and the non-cooperative attitude of the appellants during the course of the investigation in attempting to obstruct the same, the quantum of penalty imposed under Section 15A(a) is justified and with effective consideration of the factors listed in Section 15J of the 1992 Act]
3. **MBL and Company Ltd. v. Securities and Exchange Board of India** (2022 8 SCC 273), [The Court refused to interfere with order debarring MBL from dealing in securities in its proprietary account for a period of 4 years]
4. **Securities and Exchange Board of India v. Sunil Krishnan Khaitan** Civil Appeal No. 8249 of 2013 (Supreme Court), [The object of the wide definitions in the Takeover Regulations, 1997 is to ensure that no one is able to dribble past and defeat its objects by resorting to camouflage and subterfuge. The principle of doubtful penalisation is a well settled rule of construction of penal statutes which means that if two views and reasonable constructions can be put on a provision, the court must lean in favour of construction which exempts the subject from penalty rather than one which imposes penalty]
5. **Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari** (2019) 5 SCC 90, [Section 15 continued to apply to the defaults under section 15A(a) as it stood subsequent to the amendment in 2002 until the amendment in 2014. Sections 15A(a) to 15HA have to be harmoniously read along with section 15J in such a manner as to avoid any inconsistency; the provision of one section cannot nullify the another unless it is impossible to reconcile the two. The insertion of an ‘explanation’ in section 15J would reflect that the legislative intent was not to curtail the discretion of AO by prescribing the minimum mandatory penalty in section 15A(a).

It was clarified that conditions specified in Section 15J are not exhaustive and are merely illustrative in nature, and, hence, are not required to be mandatorily fulfilled for the imposition of a penalty by the Adjudicating Officer]

6. *(Siddharth Chaturvedi v. Securities and Exchange Board of India was confirmed; SEBI v. Roofit Industries Ltd. was overruled)*
7. **Siddharth Chaturvedi v. Securities and Exchange Board of India** (2016) 12 SCC 119, [The Court observed that the interpretation of sections 15A(a) and 15J adopted by the Court in **SEBI v. Roofit Industries Ltd. (2016) 12 SCC 125** was incorrect and referred the matter to larger bench]
8. **P.G. Electroplast v. Securities and Exchange Board of India** Order Delivered on 30.08.2016 (SAT, Mumbai), [The penalty imposed by SEBI of debarment from the market for a long period of one decade is highly disproportionate]
9. **Samrat Holdings Ltd. v. Securities and Exchange Board of India** Order Delivered on 01.01.2001 (SAT, Mumbai), [The findings should serve as the basis for penalty. It should not serve only to absolve the entity from the reach of penalty]
10. **Excel Crop Care Ltd. v. Competition Commission of India** (2017) 8 SCC 47, [The punishment to be enforced on enterprises engaged in anti-competitive methods should be assessed on the base of 'relevant turnover' of the business and not the 'total turnover']
11. **State of Himachal Pradesh v. Nirmala Devi** (2017) 7 SCC 262, [The cardinal principle of sentencing policy is that the sentence imposed on the offender should reflect the crime committed and be proportional to the gravity of the offence]
12. **Bharjatiya Steel Industries v. Commissioner, Sales Tax, Uttar Pradesh** (2008) 11 SCC 617, [Levy of Penalty, ordinarily, requires proof of mens rea unless there exist any statutory interdict]
13. **Chairman, SEBI v. Shriram Mutual Fund** (2006) 5 SCC 361, [Penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulation is established" and that "intention of the parties committing such violation" i.e. mens rea was wholly irrelevant]
14. **Swedish Match AB v. Securities and Exchange Board of India** (2004) 11 SCC 641, [Failure to comply with a statute may attract penalty but only because a statute attracts penalty for failure to comply with statutory provisions, the same in all situation would not call for a strict construction. A statute ordinarily must be literally construed. Such a literal construction would not be denied only because the consequence to comply with the same may lead to a penalty]
15. **Suprintendent and Remambrancer of Legal Affairs to Government of West Bengal v. Abani Maity** (1989) 4 SCC 85, [Ordinarily the word "liable" has been held as conveying not an absolute obligation or penalty but as merely importing a possibility of attracting such obligation or penalty even where it is used with the words "shall be." But a statute is not to be interpreted merely from the lexicographer's angle. Exposition ex visceribus actus is a long recognized rule of construction. Words in a statute often take their meaning from the context of the statute as a whole; they are not to be construed in isolation]
16. **Hindustan Steel Ltd. v. State of Orissa** (1969) 2 SCC 627, [Even if a minimum penalty is prescribed, the authority can refuse to impose penalty in cases wherein there is a technical or venial breach of provisions, after considering the specific circumstances]

SESSION 7: E-COURT SERVICES: SCOPE & USAGE

1.	Reiling D. Court Information Technology: Hypes, Hopes and Dreams . In: Kramer X., Biard A., Hoevenaars J., Themeli E. (eds) <i>New Pathways to Civil Justice in Europe</i> . Springer, 2021	659
2.	Richard Susskind, Architecture from <i>ONLINE COURTS AND THE FUTURE OF JUSTICE</i> , Oxford University Press, 2019, Page 111-119	674
3.	Justice R. C. Chavan, E-Courts Project: Citizen at the Center of Court Processes , in <i>CRIES IN WILDERNESS</i> (2014) pp. 28- 33	683

4.	Atul Kaushik, (2016), <i>Bringing the 'E' to Judicial Efficiency: Implementing the e-Courts System in India, State of the Indian Judiciary</i> : A report by DAKSH, Section-1, 25-40	689
5.	Abhishek Singhvi, <i>Beating the Backlog - Reforms in Administration of Justice in India</i> in Judicial Review Process, Powers and Problems 46-59 (Salman Khurshid, Sidharth Luthra, Lokendra Malik & Shruti Bedi, Cambridge University Press ed., 2020)	707
6.	Justice Roshan Dalvi, <i>The Business of Court Management</i> , 16 (3) Nyaya Deep 13-35 (2015)	722
7.	Justice P. Sathasivam, <i>Effective District Administration and Court Management</i> , (2014) 1 SCC J-25	746
8.	<i>The Woolf Report</i> , 3 Int'l J.L. & Info. Tech. 144 (1995)	759
9.	Richard Susskind, <i>The Future of Courts</i> , 6(5) Remote Courts 1-16 (2020)	771

Additional Readings (Suggestive)

1. National Council of Applied Economic Research, *Information & Communication Technology in the Indian Judiciary: Evaluation of the eCourts Project Phase -II*, (2021)
Available at: <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2021/03/2021031717.pdf> /, <https://ecommitteesci.gov.in/publication/ncaer-evaluation-of-the-ecourts-project-phase-ii/>
2. *Memorandum of Understanding between CSC e-Governance Services India Limited and Department of Justice, Ministry of Law & Justice on Common Service Centers.*
3. *Policy and Action Plan Document Phase II of the eCourts Project*, e-Committee Supreme Court of India. Available at: https://ecourts.gov.in/ecourts_home/static/manuals/PolicyActionPlanDocument-PhaseII-approved-08012014-indexed_Sign.pdf

Rules

1. *Model Rules for Video Conferencing for Courts*, e-Committee, Supreme Court of India. <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2020/08/2020082629.pdf>
2. *Model Rules for Live-streaming and recording of Court Proceedings*, e-Committee, Supreme Court of India. <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2021/06/2022091599.pdf>
3. *Model Rules for E-Filing - Rules for On-Line Electronic Filing (E-Filing) Framed under Article 225 and 227 of the Constitution of India*, e-Committee, Supreme Court of India.

Manuals

1. *E-Filing Procedure for High Courts & District Courts in India*, e-Committee Supreme Court of India.
2. *National Service and Tracking of Electronic Processes (NSTEP)-Android OS APP*, e- Committee Supreme Court of India.
3. *eCourts Digital Payment*, e-Committee Supreme Court of India. <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2020/08/2020082769.pdf>
4. *E-Filing, from Case Management through CIS 3.0, Case Information system 3.0*, e- Committee, Supreme Court of India.

SESSION 8: EVOLVING JURISPRUDENCE UNDER RTI ACT, 2005

1.	Deva Prasad M, <i>Definition of 'Information' Under The Right To Information Act, 2005: A Case Law Analysis</i> , in RIGHT TO INFORMATION AND GOOD GOVERNANCE, pp. 492-500, NLSIU, Book Series-III, (2016)	790
2.	Sindhu Venkata Reddy, <i>Disclosure of Information in Custody of Financial Institutions: Reserve Bank of India v. Jayantilal N Mistry</i> , in RIGHT TO INFORMATION AND GOOD GOVERNANCE, NLSIU, Book Series-III, (2016)	800

3.	Prasad Singh Salunke, <i>The Interplay Between SEBI and RTI: Balancing Regulatory Confidentiality and Transparency</i> , Published Oct 15, 2023	809
4.	Shailesh Gandhi, <i>Critical Analysis of Supreme Court Judgements on the RTI Act, 2005 - Wither Transparency?</i>	814
5.	Shailesh Gandhi & Pralhad Kachare, <i>Right to Information and Obligations of Public Authorities</i> in RTI ACT AUTHENTIC INTERPRETATION OF THE STATUTE, pp. 16-54, Vakils, Feffer & Simons Pvt. Ltd. (2016)	868

Suggestive List of Cases for Reference:

1. *Smt. Raj Kumar Agrawal & Ors v. Jaipur Stck Exchange, NSEIL, SEBI MOF*, 2007 SCC Online CIC 1816 (Para 29, 'Public Authority')
2. *KC Sharma v. Delhi Stock Exchange*, AIR 2005 SC 2884
3. *Bhoj Raj Sahu v. SEBI*, 2009 SCC OnLine CIC 6434
4. *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525
5. *CBSE v. Aditya Bandopadhyay & Ors*, 2011 (8) SCC 497, [Refer paras 20, 21, 22]
6. *Girish Ramchandra Deshpande v. Central Information Commissioner*, 2012 SLP (Civil) No. 27734 of 2012, [Refer para 14]
7. *Satyendra Kumar Pandit v. CPIO, SEBI, Mumbai*, [Appeal No. 4375 of 2021]

Additional Reading

1. **A Report on the Measures For Strengthening the Enforcement Mechanism of the Board and Incidental Issues**, *High Level Committee Under The Chairmanship Of Justice Anil R. Dave* (2020)
2. **Report on the Insolvency Law Committee**, *Ministry of Corporate Affairs, Government of India* (2018)
3. **Securities and Exchange Board Of India v. Rajkumar Nagpal**, *Civil Appeal No. 5247 of 2022 (Supreme Court)*
4. **State of Maharashtra v. 63 Moon Technologies Ltd.**, *Civil Appeal Nos. 2748-49 of 2022 (Supreme Court)*
5. **State Bank of India v. Krishidhan Seeds Pvt. Ltd.**, *Civil Appeal No. 910 of 2021 (Supreme Court)*
6. **PTC India Financial Services Ltd. v. Venkateswarlu Kari**, *Civil Appeal No. 5443 of 2019 (Supreme Court)*
7. **Securities and Exchange Board of India v. RT Agro Pvt. Ltd**, *Civil Appeal No. 2957 of 2022 (Supreme Court)*
8. **Reliance Industries Limited v. Securities and Exchange Board of India**, *Criminal Appeal No. 1167 of 2022 (Supreme Court)*
9. **Prakash Gupta v. Securities and Exchange Board of India**, *Criminal Appeal No 569 of 2021 (Supreme Court)*
10. **Rathi Graphic Technologies Limited Vs Rajkumar Rathi**, *Order Delivered on 13.06.2022 (NCLT, Allahabad)*
11. **DLF Ltd. v. Securities and Exchange Board of India**, *Order Delivered on 13.03.2015 (SAT, Mumbai)*
12. **Lalit Kumar Jain v. Union of India**, (2021) 9 SCC 321
13. **Internet and Mobile Association of India v. Reserve Bank of India**, (2020) 10 SCC 274
14. **Madras Bar Association v. Union of India**, *Writ Petition (Civil) No. 502 of 2021 (Supreme Court)*
15. **Rojer Mathew v. South Indian Bank Ltd.**, (2020) 6 SCC 1

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(Reading Material for Private Circulation Educational Purposes only)

16. **Madras Bar Association v. Union of India**, (2014) 10 SCC 1

17. **Union of India v. Madras Bar Association**, (2010) 11 SCC 1

18. **L. Chandrakumar v. Union of India**, AIR 1997 SC 1125

19. **S.P. Sampath Kumar v. Union of India**, AIR 1982 SC 149