

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 13th - 19th November 2023

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1. Delhi High Court Rules in Favour of Dr. Reddy's in Trademark Dispute

The Delhi High Court recently resolved a trademark dispute in favour of Dr. Reddy's Laboratories, granting an injunction against the use of "AZIWAKE," a mark used by a defendant. This decision came after the Court found a striking phonetic similarity with Dr. Reddy's trademark "AZIWOK," potentially leading to consumer confusion. The Court applied the 'initial interest test,' determining that an average consumer could easily mistake "AZIWAKE" for "AZIWOK," thereby satisfying the criteria for a likelihood of confusion.

Further, the Court challenged the assumption that the risk of confusion is minimised in pharmaceutical products because they are prescribed by doctors and dispensed by chemists. The Court clarified that expecting every professional to distinguish between closely named drugs is unrealistic, emphasising that confusion could occur at any level, from prescription to purchase. The decision also addressed procedural aspects, such as pre-institution mediation, noting that the urgency and genuineness of interim relief pleas can bypass this requirement.

In dismissing the defendant's argument that the common "AZI" prefix in pharmaceuticals negates infringement, the Court reaffirmed that the totality of the marks' phonetic similarity is the key factor. The balance of convenience favoured Dr. Reddy's, given its long-standing use of the "AZIWOK" mark since 2003 and the potential for brand dilution. Consequently, the Court granted an injunction against the use of "AZIWAKE" in relation to pharmaceutical products, with an exception for existing batches already in circulation.

This ruling not only highlights the complexities involved in trademark disputes, especially in the pharmaceutical industry but also underscores the need for careful consideration of phonetic similarities and the potential for consumer confusion in such cases.

2. Supreme Court Commutes Death Sentence, Citing Potential for Reformation

In a significant ruling, the Supreme Court of India commuted the death sentence of an individual involved in a heinous crime in Muzaffarnagar, Uttar Pradesh. The case, originating from a 2003

incident involving a fatal attack due to political rivalry, had previously led to the imposition of the death penalty by the Allahabad High Court. The Supreme Court, however, set aside this sentence, emphasising the possibility of reformation and the need to avoid an anomalous situation where different accused in the same case received varying sentences.

The convict, Madan, had previously been involved in another murder, a fact that initially influenced the decision to impose the death penalty. However, the Supreme Court underscored that past conduct is not always a decisive factor in such sentencing, especially when the possibility of reformation exists. In its decision, the Court drew upon various precedents, including the case of Rajendra Pralhadrao Wasnik v. State of Maharashtra, to justify its stance that past conduct should not invariably lead to the death penalty.

In lieu of the death penalty, the Supreme Court imposed a life sentence without remission for a fixed term of 20 years. This decision was based on the understanding that certain crimes, though falling short of the 'rarest of rare' category, warrant a punishment more severe than simple life imprisonment but less than the death penalty. This approach aligns with the 'middle path' principle established in previous judgments like Swamy Shraddananda and Murali Manohar Mishra.

3. Delhi Smog Towers Deemed Ineffective

The Delhi Pollution Control Committee (DPCC) recently reported to the National Green Tribunal (NGT) that the smog towers installed in Delhi are largely ineffective in curbing the city's air pollution. The DPCC highlighted that these towers only reduce air pollutants by 17% within a 100-metre radius, which is significantly insufficient given the vast area and severe pollution levels in Delhi.

In their submission, the DPCC quantified the inadequacy of the smog towers. They stated that to meet Delhi's requirements, over 40,000 such towers would be needed, given the city's sprawling area of 1,483 square kilometres. The DPCC pointed out the impracticality of this approach, considering the high costs involved – about 25 crores INR per tower for installation and additional monthly expenses ranging from 10 to 15 lakh INR.

The DPCC's submission came in response to the NGT's directions seeking actions against the deteriorating air quality in Delhi. The report specifically mentioned that the results from the experiment of two smog towers installed at Anand Vihar and Connaught Place were discouraging. It further suggested that the existing smog towers could be repurposed as museums to disseminate technical information about controlling air pollution, underscoring their ineffectiveness in practical application.

The NGT, in its observation, noted the unsatisfactory results from the efforts of various agencies in controlling air pollution in Delhi. Consequently, the Tribunal has directed these agencies to take more stringent measures to improve the air quality index in Delhi and the National Capital Region (NCR). The matter is listed for further hearing on November 20, where the concerned agencies are expected to submit a fresh action report detailing the steps taken to address this critical issue.

4. Supreme Court Examines Law Changes on Past Acquittals

The Supreme Court of India is poised to address a pivotal legal question: Can a change in law after an acquittal be a valid ground to revisit the acquittal or condone delays in filing appeals? This question arises from a special leave petition (SLP) challenging an order of the Kerala High Court, which admitted an appeal against an acquittal in a drug case and condoned a significant delay in filing the appeal.

The background of the case involves an individual acquitted under the NDPS (Narcotic Drugs and Psychotropic Substances Act, 1985) Act. This acquittal was initially based on the Mohanlal v. State of Punjab decision, which held that trials where the investigator is also the complainant are vitiated. However, this position was overruled in the later Supreme Court judgement of Mukesh Singh v. State Narcotic Branch, Delhi, which stated that the NDPS Act does not bar the complainant from being the investigator.

The Kerala High Court, referencing the change in legal position due to the Mukesh Singh judgement, admitted the appeal against the acquittal and condoned a delay of 1184 days. The Court reasoned that since the trial court's judgement was primarily based on the now-overruled Mohanlal decision, the appeal warranted a hearing on its merits.

The accused has challenged this decision in the Supreme Court, arguing that a subsequent change in law should not be a basis for condoning delay or disturbing an acquittal finding. The Supreme Court, upon hearing the preliminary arguments, issued notice and stayed further proceedings, giving six weeks for a response.

5. Gurgaon District Commission Rules Against Bridgestone India

The District Consumer Disputes Redressal Commission in Gurgaon, Haryana, has ordered Bridgestone India Pvt. Ltd. to replace the tyres and compensate a car owner for the substandard quality of tyres that wore out prematurely. This decision was made by a bench comprising President Sanjeev Jindal, Member Jyoti Siwach, and Member Khushwinder Kaur.

Case Background:

Mr. Kailash Kumar Sawalka, the complainant, bought an i20 car from Orion Automobiles Pvt. Ltd., Gurgaon, for Rs. 5,94,513 on August 11, 2017. He complained that the tyres, which had covered a mileage of only 32,880 kilometres, were of low quality and wore out much earlier than expected, posing a safety risk. The car was sent for inspection to the seller and then to M/S Mahadev, a dealer in Gurgaon. The dealer, however, refused to replace the tyres.

Lack of Response from Manufacturer: Bridgestone India Pvt. Ltd., the tyre manufacturer, did not respond positively to the complainant's report about the inspection, leading him to file a complaint with the District Commission.

Commission's Findings and Orders:

Ex-Parte Proceedings: Bridgestone India Pvt. Ltd. did not appear before the District Commission, leading to ex-parte proceedings.

Verification of Claims: The Commission verified the complainant's claims through the Retail Invoice and found no reason to doubt the allegations of subpar quality and premature wear.

Directive to Manufacturer: Bridgestone India was directed to replace the tyres on the complainant's vehicle.

Compensation: The Commission ordered Bridgestone India to compensate the complainant with Rs. 5,000 for mental harassment and Rs. 3,300 for litigation expenses.

6. Case of the Week

Currie v Misa

The case of Currie v Misa, decided in 1875 by the House of Lords, is a landmark judgement in English Law that centrally addresses the concept of consideration in contract law. Consideration, a critical element for a valid contract, implies something in return, either a detriment suffered by one party or a gain incurred by the other.

In this case, Mr. Currie, owner of a banking firm, and Mr. Misa were involved in transactions concerning bills of exchange initially issued in good credit by Lizardi & Co. However, as Lizardi & Co. subsequently faced financial difficulties and stopped paying their debts, a dispute arose over the enforceability of a draft order Mr. Currie had issued to Mr. Misa. The central issues revolved around whether the cheque was payable, if an existing debt constituted valid consideration for a negotiable instrument, and if credit could be considered as holding the value of the cheque.

The House of Lords concluded that a valid contract must have valid consideration, which could be a gain for one party or a loss for the other. In this case, it was determined that the bills of exchange were sufficient consideration on the part of Lizardi & Co. The principle of "benefit gained and detriment suffered" was established, emphasising the importance of mutual consideration in contracts. The decision favoured Mr. Currie, with Mr. Misa being held responsible for the debt.

7. Repeated PYQ

Discuss the United Nations Declaration on the establishment of a New International Economic Order along with the Charter of Economic Rights and Duties of States.

The United Nations Declaration on the Establishment of a New International Economic Order (NIEO) and the Charter of Economic Rights and Duties of States are pivotal documents in the context of international economic law and relations. Their significance emanates from the historical context in which they were adopted and the principles they enunciate, which sought to address global inequalities and establish a more equitable international economic system.

NIEO

The NIEO was adopted by the United Nations General Assembly in 1974, at a time when newly independent states were emerging from colonial rule. These states, many of which were part of the

Non-Aligned Movement, sought to assert their economic sovereignty and address the economic disparities between developed and developing nations.

Key Principles

The NIEO was grounded in a number of principles aimed at restructuring global economic relations:

- **Equity:** Emphasising fairer relations between developed and developing countries.
- **Sovereignty over Natural Resources:** Asserting the right of states to freely exploit their natural resources.
- **Technology Transfer and Cooperation:** Advocating for more accessible technology transfer from developed to developing countries.
- **Trade Benefits for Developing Countries:** Seeking better terms of trade and more significant benefits for developing countries.

Critiques and Impact

The NIEO faced resistance from developed countries and has been critiqued for its potentially protectionist implications. However, its aspirational goals highlighted the global economic disparities and contributed to ongoing debates about fair and equitable economic relationships among states.

Charter of Economic Rights and Duties of States

Adopted in 1974, the Charter of Economic Rights and Duties of States represents a codification of principles that underpin international economic relations, echoing many of the themes of the NIEO.

Key Provisions

- **Economic Sovereignty:** The Charter reinforces the principle of economic sovereignty, emphasising the right of states to regulate and control their economic activities.
- **Responsibility of States:** It imposes duties on states to respect the economic rights of others and to cooperate internationally.
- **Regulation of Multinational Corporations:** The Charter addresses the conduct of multinational corporations, seeking to align their activities with the development goals and sovereignty of host states.
- **International Economic Cooperation:** It advocates for international economic cooperation, especially in supporting the development efforts of poorer nations.

Critiques and Relevance

Like the NIEO, the Charter has been subject to criticism, particularly regarding its approach to property rights and its perceived challenge to free-market principles. Despite these critiques, the Charter contributes significantly to the discourse on the rights and responsibilities of states in the global economy.