

CHAPTER 25

LAW

Doctoral Theses

261. AJAY KUMAR
Law Relating to Medical Negligence.
Supervisor : Dr. Kiran Gupta
Th 18030

Abstract

Deals with medical negligence within the constitutional framework of India, the various forums available for medical negligence and the larger issue of need for medical accountability. Deals with the historical development of law relating to medical negligence with the special reference to ancient Indian medical literature. The shift from criminal to tortious liability of acts constituting medical negligence, under the common law has also been briefly discussed. An attempt has been made at an in-depth analysis of definition of negligence with special reference to medical negligence and detailed case law rendered by English and Indian courts thereon has also been discussed incisively. Endeavours to study the basis on which the principle of vicarious liability is based. The control test as traditionally formulated is no more treated as an exclusive test for determining the master servant relationship. Examines the judicial pronouncements to study the general application of Respondent Superior (i.e. let the superior be responsible) theory to physicians. Describes the general provisions of IPC - which are applicable to determining liability of physicians in cases of medical negligence. The distinction between criminal negligence and criminal rashness has also been touched upon. Deals with the applicability of the consumer protection act 1986 to the medical professional, the consumer disputes redressal agencies which is a three tier structure for the redressal of consumer grievances. Deals with a field study in which a set of 19 questions relating to medical negligence were put to various persons belonging to three different strata of society viz, doctors, lawyers, general public who were chosen as respondents. On the basis of data collected from the survey, certain conclusion have been drawn up.

1. Introduction. 2. Negligence in torts. 3. Vicarious liability. 4. Criminal liability of medical professionals. 5. Proof of negligence. 6. Liability of Medical professional under the consumer Protection Act, 1986. 7. Field survey & tabled data. 8 Conclusion and suggestions. Bibliography.

262. MALIK (Pratap S)
Matrimonial Violence : Myths and Realities of Legal Redressal Mechanism.
 Supervisor : Prof. Poonam Saxena
 Th 18029

Abstract

Deals with working and problems of Domestic Violence Act 2005, the motivations and legal remedies to avoid its redundancy and other similar aspects of this law. Evaluates the impact of major legislations on the positions of the women trapped in domestic violence. Evaluates the working of the Domestic Violence Act 2005, with special reference to the psyche of litigants, lawyers, police protection officers and the Judges. Ascertaines the problem areas and challenges in the working of Domestic Violence Act and from the perspective of the litigants, lawyers, police, the Judges and other functionaries. Formulates the measures and steps to make the Domestic Violence Act 2005 implementable in the right spirit and for the betterment of women.

Contents

1. Position of women in socio-historic perspective. 2. The legal scenario and the dowry. 3. This research work. 4. The empirical research (The legal redressal mechanism). 5. Suggestions. Bibliography.

263. NEGAHI (Marjan)
Measures to Prevent Child Exploitation : A Comparative Study of Criminal Policy of India and Iran.
 Supervisor : Prof. S C Raina
 Th 18214

Abstract

Emphasises on the notion and definitions of child exploitation and its various modes and forms based on universal standard.

Effort has been made to develop a common understanding aiming at elimination of child exploitation. The scholar has attempted to analyze the criminal policy and preventive measures of the governments of India and Iran in the legal and legislative perspective. The facts have been supported by primary and secondary sources and material. Analyzes various forms of child exploitation in India and Iran and their existence and expansion in these two countries. The actions of governments against commercial child exploitation and the remedial steps taken in this direction too have been surveyed in the background of existing laws in the two countries including the laws which violate children's right.

Contents

1. Prologue. 2. Conceptualization and magnitude of the child exploitation. 3. Prevention of child exploitation in India and Iran. 4. Role of judiciary and other criminal justice agencies in prevention of child exploitation. 5. Analysis of data and questionnaire. 6. Summations and suggestions.

264. NERWAL (Partap Singh)
International Regulations of Persistent Organic Pollutants - Search for New Legal Options.
 Supervisor : Prof. Gurdip Singh
 Th 18027

Abstract

Traces the nature and characteristics of the Persistent Organic Pollutants. It consists of their introduction, emergence uses, positive and negative aspects for their use, their impact on the developed and developing countries and the need for their regulation. The international regulatory action of non-binding nature have been examined. It deals with provision in the Stockholm Declaration 1972, World Charter of Nature 1980, Rio Declaration 1992 and Agenda 21. The provisions of the Basel Convention on the trans-boundary movement of Hazardous Wastes, 1989 have been examined. It outlines the problems created by the transboundary movement of hazardous wastes particularly in view of the trade and economic issues arising out of such movement. The provision of the Stockholm Convention on the Persistent Organic have been examined in detail. The convention prohibits or restricts the production and use of 12 chemicals known as 'dirty dozens' and leaves it to the discretion of the states to include more such chemicals in the

list with the mutual consent. The dynamics of the relationship between the international trade and the environment in general and POPs in particular have been examined. The regulation of movement of hazardous wastes and appropriate technology transfer is essential to control the menace of POPs. Examines and understands the principles of liability for ensuring justice to victims who suffer injuries or death on account of harms caused by the toxic substances like POPs.

Contents

1. Persistent organic pollutants : Nature and characteristics. 2. International soft law regulations of chemicals and pesticides. 3. International regulations of control the hazardous waste movements. 4, The stockholm convention on the persistent organic pollutants, 2001. 5. International trade and the POPs.6. Principles of liability and toxic torts. 7. Conclusions and suggestions. Bibliography.

265. RAVINDER KUMAR
Right to Freedom of Conscience with Special Reference to Religious conversion.
 Supervisor : Dr. Kamala Sankaran
 Th 18209

Abstract

India remains a deeply religious country and spiritually continues to be an integral part of the social order. India's secular Constitution and constitutionally sanctioned legislation are, therefore, sensitive enough to and adequately reconciled with this ground reality. The social paradigms and legal parameters of this sensitivity and reconciliation make India's religion-state relations quite unique and a study of these relations indeed fascinating. Makes a thorough study of the multidimensional effect and aspects of the right to freedom of religion guaranteed under Article 25. Discusses broadly the concept of freedom of analysing the constitutional provision and regulation of the same in Indian perspective. Discusses the concept of religious conversion and religious view on freedom of conscience and conversion. Analyses the indirect and direct legislation dealing with conversion and freedom of conscience. Tries to explore the reasons of conversion in India and the impact of conversion on the socio-economic condition of convert.

1. Introduction. 2. Freedom of religion and Indian constitution. 3. State regulation of freedom of religion. 4. Conversion - Meaning and process. 5. Freedom of religion and conversion under personal laws. 6. Anti-conversion laws - An analyses. 7. Religious conversion - causes. 7. Impact of religious conversion. 9. Conclusions and suggestions. Bibliography.

266. SANJAY KUMAR
Trips and Its Effect on Pharmaceutical Industry with Special Emphasis on India.
 Supervisor : Prof. J L Kaul
 Th 18028

Abstract

This study broadly provides effect of TRIPS, especially consequential change in patent law on the Indian Pharmaceutical Industry. It also brings out the current industry trends and business segment potential identifies the facilitators and imperatives to capture the emerging opportunities and recognize the challenges involved. The study also comprehensively and critically examines the various relevant provisions of TRIPS to undertand the impact thereof on Indian Patent System taking into account the amendments made. It also develops argument that the impact of the introduction of a stronger patent regime on the domestic pharmaceutical industry of a developing country including India can have different effects depending on the strength of the scientific and technological capabilities of the domestic industrial system at the time of regime transition. It also review the experience of Italy and Japan, then introduced product patents in the past.

Contents

1. Agreement on trade related aspect of intellectual property rights (TRIPS) : An introduction. 2. The evolution of TRIPS. 3. Analysis of relevant provisions of TRIPS. 4. TRIPS affecting the Indian patent law. 5. The Indian pharmaceutical industry : An overview. 6. Conclusion and recommendations.

267. VIJAY KUMAR HIMANSHU
Law of Patenting of Biotechnological Invention and its Effect on Food Security, Public Health and Environment.
 Supervisor : Prof. Ashwini Kr. Bansal
 Th 18026

Surveys the definition and meaning of products and processes of biotechnology given by various experts/authors, institution and those contained in national and international treaty and covenants. The pure biological component of the biotechnology, such as plants, animal varieties, cells, germ lines, DNA and gene have been studied and commented upon. Examines the stages of development of the Biotechnology. Comprehensively highlights the molecular and biological perspective of the biotechnology and aptly outlines the scope and nature of Biotechnology patent. Discusses in brief the components of biotechnology ranging from plant and animal variety to the bioinformatics, and their eligibility for Patent. Discusses evolutionary and doctrinal perspective for biotechnology patent. The doctrinal perspective are based on substantialist and functionalist theory in which comodification, amount of effort and technology invested by the inventor, forms the basis for grant of biotechnology patent. Traces the evolution of bio-technology Patent and elaborates the Patent jurisprudence in context of classical and modern developments of the Biotechnology landscape. The regulation of Biotechnology Patent at the international, regional and national level has been elaborately discussed. The institutions of importance at international level are, World Intellectual Property Organisation (WIPO) and World Trade Organisation (WTO). Discusses the substantive laws of Biotechnology Patent in India and compares them with the nations who have well developed precedent on biotechnology patent. The substantive provisions as prerequisites for grant of patent, such as: a) patentable subject matter b) novelty c) non-obviousness and d) Specification/written description are elaborately studied. The procedure for the grant of patent starting from filing of the patent application to grant of Patent as covered in the Patent Act, 1970, its comprehensively covered. Attempts to assess the impact of the grant of proprietary right on agro-biodiversity and extension of plant utility patents on food security. Describes that the genetic resources of plant, animals and micro-organisms are the source material for the research and experimentation in the field of biotechnology, particularly for manufacturing the medicines and drugs. Surveys the genetic resources in terms of geographical spread and the resource which qualify for the intellectual protection.

Contents

1. Introduction. 2. Concept, meaning and scope of biotechnology

patent. 3. The historical and doctrinal perspective of biotechnology patent. 4. Legal and regulatory framework of biotechnology patent. 5. Laws of biotechnology patent. 6. Biotechnology patent and food security. 7. Biotechnology patent and public health. 8. Biotechnology patent and environment. 9. Conclusions and suggestions. Bibliography.

M.Phil Dissertations

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277. DINESH KUMAR
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