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Supreme Court of Pakistan

1. *Presidential Reference No. 2 of 2022*

https://www.supremecourt.gov.pk/downloads_judgements/reference._2_2022.pdf

Present
Umar Ata Bandial, Ijaz ul Ahsan, Munib Akhtar, Yahya Afridi, Jamal Khan Mandokhail, JJ.

It is settled law that while disposal of public assets through a competitive process is the ordinary rule, it is not an invariable rule. The Constitution does not forbid the disposal of public assets other than through a competitive process so long as such disposal has the support of the law and is justified on rational grounds.

The President of Pakistan referred two questions for consideration and opinion of the Supreme Court: (i) Whether the earlier judgment of this Honorable Court reported as Abdul Haque Baloch v. Government of Balochistan (PLD 2013 SC 641) or the laws, public policy or Constitution of Pakistan prevent the Government of Balochistan and the Government of Pakistan from entering into the Implementation Agreement and the Definitive Agreements (with two international firms for the revival of Reko Diq mining project) or affect their validity? (ii) If enacted, would the proposed Foreign Investment (Protection and Promotion) Bill, 2022 be valid and constitutional?

The Supreme Court answered the Reference in the following terms that the parameters set out in Abdul Haque Baloch's case (PLD 2013 SC 641) and the reasons for the same have been duly addressed by the Federal and Provincial Governments. The process for the reconstitution of the Reko Diq project has been undertaken transparently and with due diligence. The Agreements are being signed by authorities duly authorized and competent to do so under the law. To ensure transparency and fairness, expert advice on the financial, technical, and legal issues involved has been sought from both local as well as independent international experts/consultants on the terms settled in the Agreements. The Agreements have been put in place after due deliberation and have not been found to be unconstitutional or illegal on the parameters and grounds spelled out in Abdul Haque Baloch's case ibid. Likewise, the rationale, basis, legality, and vires of the Foreign Investment (Protection and Promotion) Bill, 2022 as well as the amendments to its schedules and annexures and the amendments incorporated through SROs, provided the resolutions are passed by the Sindh and Balochistan Provincial Assemblies and the Bill is passed by the Parliament after following due process, shall be duly enacted as required under the Constitution. And such laws and regulatory measures do not in any manner violate the Constitution or the Law. (para 13)

2. *Muhammad Faisal Vawda v. Election Commission of Pakistan.*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._397_2022.pdf

Present
Umar Ata Bandial, Syed Mansoor Ali Shah, Ayesha A. Malik, JJ.

The Election Commission of Pakistan has no jurisdiction to inquire into and decide upon the matter of pre-election qualification and disqualification of a returned candidate.

The Election Commission of Pakistan (ECP) decided upon the matter of pre-election qualification and disqualification of the petitioner, in respect of his election as a member of the National Assembly as well as a member of the Senate. The ECP declared the petitioner disqualified for both elections on account of his filing a false affidavit as to his citizenship of a foreign country. Later, the Islamabad High Court found that the petitioner was disqualified pursuant to the case reported as Speaker, National Assembly of Pakistan, Islamabad and others v. Habib

Akram and others (PLD 2018 SC 678) for submitting a false affidavit.

Hon'ble Mr. Justice Umar Ata Bandial, speaking for the bench, observed that the ECP has no jurisdiction under Article 218(3) of the Constitution read with Section 8(c) or 9(1) of the Elections Act 2017 to inquire into and decide upon the matter of pre-election qualification and disqualification of a returned candidate. The consequences given in the case reported as Sami Ullah Baloch v. Abdul Karim (PLD 2018 SC 405) would follow. A formal declaration by a court of law was not required to disqualify the petitioner under Article 62(1)(f) of the Constitution, the impugned judgment has in its paras 11, 12 and 13, therefore, misconstrued both the Habib Akram case and the Sami Ullah Baloch case. (para 3)

3. *Commissioner Inland Revenue v. Sui Northern Gas Pipeline Limited*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1854_l_2022.pdf

Present
Qazi Faez Isa, Yahya Afridi, Jamal Khan Mandokhail, JJ.

Every judgment must inscribe the date when it is written, signed and pronounced. Judges who do not decide cases quickly and do not write judgments within a reasonable time may be guilty of misconduct.

The question before the court was whether the titled civil petitions for leave to appeal ('the petitions') were filed beyond the prescribed period of limitation. It was argued before the Court that the impugned judgments were kept reserved and were not written, signed and pronounced once they were heard. They further stated that the requisite notices informing about the pronouncement of the judgments were not issued and the judgments do not inscribe the date when they were written, signed and pronounced.

The Hon'ble Bench observed that a practice of not inscribing the date when the judgment was written, signed and pronounced has developed. Not inscribing the date when a judgment is written, signed and pronounced is connected with the belated writing of judgments. Judges who do not decide cases quickly and do not write judgments within a reasonable time may be guilty of misconduct. Having considered the Code, the Rules, the Constitution and precedents it is clear that every judgment must inscribe the date when it is written, signed and pronounced because this is what the law mandates. There may be serious consequences for parties if the challenge to a judgment is disallowed because it was incorrectly ascertained when it was signed or objection to belated filing could not be taken because the date of signing and pronouncement was incorrectly assumed to be later than when it was actually signed and pronounced. In addition to wasting the time of the court's personnel, valuable court time is also wasted in ascertaining when an impugned judgment may have been written, signed and pronounced, and then to determine whether it was assailed within the time prescribed for doing so. (para 12,16,18)

4. *Gull Din v. The State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1308_2022.pdf

Present
Qazi Faez Isa, Yahya Afridi, Jamal Khan Mandokhail, JJ.

Non-compliance with a directory rule would not entitle the accused to bail.

The question before the Court was whether the petitioner was entitled to bail due to the fact that rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001 ('the Rules'), which provides that the seized narcotics be dispatched for analysis

'not later than seventy-two hours of the seizure', was not complied with, as the same was sent after seventeen days.

Hon'ble Justice Qazi Faez Isa observed that: "a five-member Bench of this Court, in the case of Tallat Ishaq v. National Accountability Bureau (PLD 2019 Supreme Court 112) held that the non-compliance of a directory rule would not entitle the petitioner to bail. Though the Tallat Ishaq was a case under the National Accountability Bureau Ordinance, 1999, in our opinion, the stated principle enunciated therein would be equally applicable to cases under the narcotic laws when directory provisions are not complied with. Accordingly, the ground of non-compliance with rule 4(2) of the Rules will not on its own be a sufficient ground to entitle the petitioner to the concession of bail." (para 2)

5. *Javed Iqbal v. The State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.a._139_2022.pdf

Present

Sardar Tariq Masood, Amin-ud-Din Khan, Muhammad Ali Mazhar, JJ

The petitioner challenged the judgment of the High Court whereby his appeal was dismissed and his sentence of imprisonment for life under section 9(c) of the Control of Narcotics Substances Act, 1997 was maintained. The appeal was allowed by the Hon'ble Supreme Court and the conviction and sentence awarded by the trial Court and upheld by the High Court were set aside.

The prosecution has the responsibility of demonstrating that all steps in the handling of physical evidence, including recovery, packaging, safekeeping, and transmission to a laboratory, were properly executed

Hon'ble Mr. Justice Sardar Tariq Masood speaking for the bench observed that: "it is also shrouded in mystery as to where and in whose custody the sample parcel remained. So the safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend the benefit of the doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, the prosecution must establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused." (para 4)

Admissibility of judicial confession - the prosecution cannot fall back on the plea of an accused to prove its case

His lordship further made an important observation qua the admissibility of the judicial confession that: "the prosecution must prove its case against the accused beyond reasonable doubt irrespective of any plea raised by the accused in his defence. Failure of the prosecution to prove the case against the accused entitles the accused to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case. Where the prosecution succeeds in establishing its case against the accused beyond a reasonable doubt, then the stage arrives for consideration of the plea of the accused in defence and the question of burden of proof becomes relevant. Before, the case is established against the accused by the prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise. However, if the Court decides to convict the accused on the basis of his confessional statement or his plea under section 342, Cr.P.C. then it is not open to the Court to accept a part of the statement of the accused and reject another part for the purpose of convicting him for the offence." (para 8)

6. *Javed Iqbal v. The State*

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1251_2022.pdf

Present

Sardar Tariq Masood, Amin-Ud-Din Khan, Muhammad Ali Mazhar, JJ

The petitioner was granted post-arrest bail subject to his furnishing of surety bonds. The petitioner was, however, further directed to deposit Rs.3.5 million in the trial Court. The petitioner impugned this condition before the Hon'ble Supreme Court and the same was set aside by holding that the High Court had wrongly and without any legal backing imposed the condition of depositing cash amount besides the surety bonds.

Accused is not required to barter his freedom, and imposing any condition other than a submission of a surety bond would be against the law

Hon'ble Justice Sardar Tariq Masood, speaking for the bench, observed that: "an accused seeking bail, after submitting bail bond through sureties, desire transfer of his custody to his sureties who undertake his production as and when required by the Court and for that he has to make out a case in accordance with the law applicable thereto; he cannot be allowed or required to barter his freedom, and imposing any condition other than a submission of sureties would be against the dictum laid down by this Court." (para 5d).

His lordship further observed that: "in terms of section 499 of the Code the Court cannot require an undertaking from an accused person before granting bail to desist from the repetition of the offence with which he is charged, as a condition precedent to the grant of bail; such a condition cannot be incorporated in a bail or surety bond itself." (para 5a)

7. Meera Shafi v. Ali Zafar

https://www.supremecourt.gov.pk/downloads_judgements/c.p.1795_2022.pdf

Present

Qazi Faez Isa and **Syed Mansoor Ali Shah**, JJ

The word "attendance" in Order 18 Rule 4 CPC includes "virtual attendance"

The question before the Court was "whether the evidence of a witness who is not physically present in court can be recorded in a civil case by using the modern technology of video conferencing, within the existing legal framework."

Hon'ble Justice Syed Mansoor Ali Shah while speaking for the bench observed that the legislative intent must be viewed in its changing environment by treating the statute as a living organism. Considering the question as to extending the word "attendance" used in Rule 4 of Order 18 of the Code of Civil Procedure ("CPC") to "virtual attendance" in the light of the principle of updating construction, the Court went on to examine the legislative purpose and policy in requiring the attendance of a witness in court for recording his evidence, and whether extending the word "attendance" used in Rule 4 to "virtual attendance" would fulfill or defeat that purpose and policy. It was held, "[t]he "virtual attendance" of a witness in court through the medium of video conferencing enables the judge and other persons present in court to see the witness and hear what he says, and *vice versa*. Such attendance is thus, in effect, in open court, and his evidence is also recorded under the personal superintendence of the judge. . . The virtual attendance of a witness in court, thus, appears to be the species of the genus of "attendance" required under Rule 4 and fulfills the legislative purpose and policy in requiring the attendance of a witness in court for recording his evidence." The Court reached the conclusion that the word "attendance" used in Rule 4 could be extended to "virtual attendance", and the word "attendance" mentioned in this Rule did not mean only "physical attendance" but included "virtual attendance" made possible by the modern technology of video conferencing and that an order allowing virtual attendance of the witness fell within the scope of Section 151 of the CPC. It was also held that the oral evidence of a witness that may become available because of the modern technique of video conferencing fell within the scope of the provisions of Article

164 of the Qanun-e-Shahadat Order. (para 7, 9)

His Lordship found the prayer of the petitioner justified on the touchstone of the two conditions – (i) whether the evidence of the witness appears essential to the just decision of the case, and (ii) whether requiring physical attendance of the witness in court would incur unreasonable delay, expense or inconvenience – and allowed the petition.

8. Amjad Hussain v. Nazir Ahmad

https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._1609_l_2021.pdf

Present

Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

Scope of Order XXVI, Rule 6 of the Supreme Court Rules regarding change of Advocate in a review petition

The applications were filed under Order XXVI, Rule 6 of the Supreme Court Rules 1980 ("Rules"), seeking special leave of the Court for entertaining the review petitions drawn by an Advocate other than that who appeared at the hearing of the cases in which the judgment sought to be reviewed was made as well as seeking permission to be heard in support of the said review petitions.

Hon'ble Justice Syed Mansoor Ali Shah observed that: "order XXVI of the Rules requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not the equivalent of a petition for leave to appeal or an appeal where the case is argued for the first time. It is not the rehearing of the same matter. The scope of the review application is limited to the grounds mentioned in Order XXVI Rule 1 of the Rules. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way. It is also for the same reason that the review application is to be fixed before the same Bench that delivered the judgment or order sought to be reviewed, under Rule 8 of Order XXVI of the Rules. It is not hard to see that the same Advocate and the same Bench can best appreciate the grounds of review. A review argued by a new Advocate before a new Bench would inevitably amount to a rehearing of the main case and going beyond the scope of review under the law. It is true that the requirement of "sufficient ground" for granting the special leave is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. . . The practice of filing review applications by changing the counsel without justifiable reasons or unavoidable circumstances, by the parties as well as by the Advocates representing them is condemnable." (para 3)

9. Supreme Court Bar Association v. Federation of Pakistan

https://www.supremecourt.gov.pk/downloads_judgements/const.p._2_2022_14102022.pdf

Present

Umar Ata Bandial, Ijaz ul Ahsan, Mazhar Alam Khan Miankhel, **Munib Akhtar**, Jamal Khan Mandokhail, JJ.

The Hon'ble President of the Islamic Republic of Pakistan filed the reference under Article 186 of the Constitution of the Islamic Republic of Pakistan for the opinion of this Hon'ble Court regarding the interpretation of Article 63A of the Constitution in view of questions referred to in the reference.

The vote of any member (including a deemed member) of a Parliamentary Party

in a House that is cast contrary to any direction issued by the latter in terms of para (b) of clause (1) of Article 63A cannot be counted and must be disregarded.

Hon'ble Justice Munib Akhtar speaking for the majority observed that the fundamental right enshrined in Article 17(2) of the Constitution is intertwined with Article 63A of the Constitution and latter attains full meaning and effect only when it is applied in the shade of the former and takes colour from it. The elements and characteristics of the former must find expression in the latter. And this also leads directly to the strongly anti-defection manner in which this Article is to be applied. As Article 17(2), so Article 63A. It can only be properly understood and fully applied if it marches hand in hand with Article 17(2); the latter is to be mirrored in the former. And so, the internal and external aspects of the "healthy" operating of political parties must find place and expression in Article 63A. This happens only if two pathways exist within it, one dealing with the internal aspect and the other with the external aspect. This is the holistic understanding that makes Article 63A conform to the provision to which it is an adjunct, Article 17(2), and whereby the necessary balance is achieved on the constitutional plane. To consider Article 63A to be wholly bound by its text alone is to look only at one pathway, and is a stunted vision of the constitutional provisions. To realize that it enfolds within it a second pathway also is to gain a full measure of the soaring vision mandated by the true understanding of Article 17(2). This takes us to the obvious question: where does the second pathway lead? If the remedy provided by the first is the deseating of the member in default and a cleansing of the party from within, what is the remedy provided by the second? In our view, the answer is clear. Once it is understood that a holistic approach must be taken to Article 63A, the solution is self-evident. The vote of the member in default is to be disregarded. It is only in this way that the external aspect of the "healthy" operating of political parties will be maintained. The balance among the political parties will not be disturbed. They will continue to compete and vie for political power in the manner required by Article 17(2). In this context, it is important also to keep in mind that the second pathway opens and becomes applicable immediately and automatically once the member in default has cast his vote against the direction of the parliamentary party. No other act, resolution or direction is required. The second pathway self-activates. (para 91-93)

10. Yasir Aftab v. Irfan Gull

https://www.supremecourt.gov.pk/downloads_judgements/c.a._2797_2022.pdf

Present

Ijaz Ul Ahsan, **Munib Akhtar**, Sayyed Mazahar Ali Akbar Naqvi, JJ

The appellant filed his nomination papers for the seat of councilor. The respondent sought rejection of the nomination papers on the ground that the appellant had not fully disclosed/declared his assets. The objection was concurrently rejected by the Returning Officer and the appellate authority. The respondents filed a writ petition against concurrent dismissal. The same was allowed and the nomination papers of the appellant were rejected on the ground that the appellant had intentionally and willfully concealed his assets.

Rule 18(3) (ii) of the Sindh Local Councils (Election) Rules, 2015 requires a two-step exercise to be carried out by the Returning Officer. In the first stage, he must determine whether the defect objected to is of a substantial nature. If the answer is negative, he is bound not to reject the nomination papers. If the defect is of substantial nature, then the nomination papers stand rejected.

Hon'ble Justice Munib Akhtar speaking for the bench held that Rule 18(3) (ii) of the Sindh Local Councils (Election) Rules, 2015 requires a two-step exercise to be carried out by the Returning Officer. In the first stage, he must determine whether the defect objected to is of a substantial nature. If the answer is

negative, that concludes the exercise and he is bound not to reject the nomination papers. If the answer is in the affirmative, then the matter moves to the second stage. He must consider whether, in his discretion (exercised in a lawful manner), to overrule the objection to the defect though it be of a substantial nature, as long as it can be remedied forthwith. If he exercises his discretion in favor of the candidate and the defect is remedied forthwith the nomination papers stand accepted. If he refuses to exercise his discretion, then of course the nomination papers stand rejected. But whatever his action the Returning Officer must record his reasons appropriately and accordingly, in relation (as the case may be) to both stages of the exercise. The High Court is to consider whether, in the facts and circumstances of the case, the appellant was entitled to the benefit of Rule 18(3) (ii) of the Sindh Local Councils (Election) Rules, 2015. The appeal was allowed and the matter was remanded to the High Court, accordingly. (para 9, 12)

11. M/s Pakistan WAPDA Foundation v. The Collector of Customs.

https://www.supremecourt.gov.pk/downloads_judgements/c.a._458_2017.pdf

Present
Qazi Faez Isa, **Yahya Afridi**, Jamal Khan Mandokhail, JJ.

Reclamation of used transformer oil amounts to 'manufacture' within the contemplation of the Central Excises Act 1944 though not under the Sales Tax Act 1990

The Pakistan WAPDA Foundation ("appellant") was served with a show cause notice asserting that it was reprocessing waste transformer oil into useable transformer oil (to be used by WAPDA) without paying central excise duty and sales tax leviable thereon. Notably the appellant and WAPDA were admittedly separate legal juristic entities legally distinct from each other.

The question before the Court was whether in the facts and circumstances of the case reclamation of used transformer oil carried out by the appellant for WAPDA amounted to 'manufacture' within the contemplation of the Central Excises Act 1944 and the Sales Tax Act 1990?

The Court observed, "the Central Excises Act has enlarged the scope of the word manufacture to among other things 'recondition' or 'repair' which may otherwise not be covered by the word 'manufacture' in its ordinary dictionary meaning. Thus, it is but apparent that indeed the appellant's activity of carrying out the process of reclamation of transformer oil would constitute 'manufacture' within the contemplation of section 2(25) of the Central Excises Act." However, the Court held that the appellant was not a manufacturer of transformer oil. "[W]hen the appellant did not have title over waste transformer oil and was reclaiming the same for WAPDA under a contract, it cannot be described as the real 'manufacturer', while the capacity of WAPDA, the real owner of the waste as well as of reclaimed transformer oil, can hardly be described otherwise. . . The appellant only provided the services to WAPDA for reclamation of transformer oil. No doubt, reclamation of transformer oil is a manufacturing process within the meaning of the term 'manufacture', as provided in section 2(25) of the Central Excises Act and the manufacturing of transformer oil is also an 'excisable good' under the Central Excises Act. However, excise duty on this 'excisable good' is to be paid by the manufacturer, not by the service provider. As the appellant is not a 'manufacturer', it is not liable to pay the excise duty on reclaimed transformer oil, an 'excisable good'." Further, the Court said, the services provided by the appellant for reclaiming transformer oil may have come within the purview of excisable services provided under heading 9809.0000 in the table of services provided in the First Schedule of the Central Excises Act.

"However, no definite finding can be rendered on this issue by this Court, and that too at this stage, when the same was not put to the appellant to respond to in the Show Cause Notice."
Taking note of the difference between the definitions of the word 'manufacture' in the Sales Tax Act and the Central Excises Act, the Court came to the conclusion that the process of reclamation of transformer oil by the appellant did not fall within the meaning of 'manufacture' as provided in section 2(16) of the Sales Tax Act and therefore the appellant was not a 'manufacturer' as defined in section 2(17) of the Sales Tax Act. "As the appellant is not a manufacturer, it does not get caught up in the activity of making a 'taxable supply' as per section 2(41) for only a supply of taxable goods by an importer, manufacturer, wholesaler (including dealer), distributor or retailer falls within 'taxable supply' under that section. The appellant, not belonging to any of the said capacities, therefore, cannot be charged to sales tax under section 3 of the Sales Tax Act."

12. Naeem Qadir Sheikh v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1086_l_2022.pdf

Present
Umar Ata Bandial, C.J. and **Sayyed Mazahar Ali Akbar Naqvi, J**

The petitioner invoked the appellate jurisdiction of the apex court of the country under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 and assailed the order passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant pre-arrest bail. Besides others, the main ground agitated by the petitioner was that his co-accused had already been granted bail by the court of competent jurisdiction, therefore, following the rule of consistency, he also deserved the same treatment to be meted out.

While granting pre-arrest bail, the merits of the case can be touched upon by the Court.

Hon'ble Justice Sayyed Mazahar Ali Akbar Naqvi speaking for the bench observed that: "when it is admitted fact that the role ascribed to the accused/petitioner cannot be distinguished from the co-accused who has been granted post-arrest bail by the court of competent jurisdiction, any order by the Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail is entirely on a different footing, would be only limited upto the arrest of the petitioner because of the reason that soon after the arrest he would become entitled to the concession of post-arrest bail on the plea of consistency." (para 6)
His lordship further made an important observation that: "it is now established that while granting pre-arrest bail, the merits of the case can be touched upon by the Court." And allowed the pre-arrest bail of the petitioner/accused. (para 6,7)

13. Mst. Asiya v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1267_2022.pdf

Present
Ijaz Ul Ahsan, Munib Akhtar, **Sayyed Mazahar Ali Akbar Naqvi**, JJ

The petitioner invoked the appellate jurisdiction of the Court and assailed the order passed by the learned Single Judge of the Lahore High Court, Lahore, with a prayer to grant post-arrest bail.

Three ingredients are essential to dub any person as conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment.

Hon'ble Justice **Sayyed Mazahar Ali Akbar Naqvi** speaking for the bench observed that: "the only allegation against the petitioner is that the whole occurrence was committed by the accused on her instigation/abetment. However, no specific date, time and place where the conspiracy was hatched has been mentioned in the said statement. A perusal of Section 107 PPC reveals that three ingredients are essential to dub any person as a conspirator i.e. (i) instigation, (ii) engagement with co-accused, and (iii) intentional aid qua the act or omission for the purpose of completion of abetment. All three ingredients of Section 107 PPC are prima facie missing in the case… This Court in a number of cases has held that in absence of any concrete material the Call Data Record is not a conclusive piece of evidence to ascertain the guilt or otherwise of an accused." And allowed the post-arrest bail of the petitioner/accused. (para 5)

14. ICC (Pvt.) Ltd. v. Ministry of Energy

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3136_2022.pdf

Present

Sardar Tariq Masood, Amin-ud-Din Khan **and Jamal Khan Mandokhail**

The petitioner filed the civil petition against the order of the learned High Court passed in a constitutional petition filed against the encashment of his bank guarantee by the respondents. The petitioner contended that the consent for the extensions of the bid validity period was conditional and subject to an increase in the prices of the items earlier offered through its bid and the procuring agency was under a legal obligation to undertake an exercise to ascertain the exponential increase in the prices between the period of submission and the date of submission of the bid; however, without following the provisions of the Public Procurement Rules 2016, the act of encashment of the bank guarantee by the respondents was illegal.

After execution of the contract and during the performance of the work, if the bidder claims an increase in the prices it has a remedy under Rule 1613 of the Rules

Hon'ble Mr. Jamal Khan Mandokhail speaking for the bench observed that: "[A]s per the Rules if any bidder is declared successful, it is bound to perform its obligations in terms of its commitment made in the already submitted bid. However, after execution of the contract and during the performance of the work, if the bidder claims an increase in the prices it has a remedy under Rule 1613 of the Rules. The petitioner's claim is premised on the issue of increase in the prices during the extended bid validity period, without having formally entered into the agreement, furnishing the performance guarantee, or commencing the work as required by the procuring agency. Under such circumstances, the petitioner's request for an increase in the prices made at the time of issuance of the NOA could not be justified. The petitioner's conduct compelled the procuring agency to request the respondent No.4 for encashment of the bid security as provided under the Rules. The learned judges of the High Court after having gone through the record and relevant provisions of the Rules reached the correct conclusion by upholding the decision of the respondent No.2. The learned counsel for the petitioner has not been able to show any point of law of public importance, warranting interference in the judgment impugned." And, the petition was dismissed. (para 5)

15. Government of KPK v. Nargis Jamal

https://www.supremecourt.gov.pk/downloads_judgements/c.a._19_2022.pdf
2022 SCMR 2114

Present

Sardar Tariq Masood, Amin-ud-Din Khan and **Muhammad Ali Mazhar**, JJ

The respondent was departmentally proceeded against on the charge of traveling

abroad several times without prior approval of the competent authority and a major penalty of compulsory retirement was imposed on her. The Service Tribunal modified the penalty to that of reduction to lower substantive posts from BPS-19 to BPS-18 for a period of four years.

Service Tribunal not to modify punishment unless found to be unreasonable or contrary to law

Hon'ble Justice Muhammad Ali Mazhar speaking for the bench observed that the travel history of the respondent was not disputed, and she had failed to offer any justification or produce any document sanctioning her overseas visits. The Court was of the view that the Service Tribunal, without any analytical justification, modified the punishment of compulsory retirement to reduction to lower substantive post. "The punishment of compulsory retirement was imposed after due process of law and conducting a proper inquiry into the charges of misconduct. It was the province and dominion of the competent authority to award punishment in case the allegations of misconduct are proved in the inquiry. There is no hard and fast rule that the competent authority in all circumstances is bound to adhere to the recommendations of the inquiry committee or inquiry officer but what carries great weight is the assiduousness and onerous duty of the competent authority to scrutinize and gauge the inquiry proceedings and inquiry report with the proper application of mind for a fine sense of judgment and if charges of misconduct are proved and ample opportunity of defence was afforded to the accused during the inquiry, then obviously, keeping in mind all attending circumstances including the gravity or severity of the proven charges, the competent authority may impose the punishment in accordance with the law. In our sagacity, the competent authority has already taken a very lenient view against the respondent and instead of preferring dismissal from service, the punishment of compulsory retirement was imposed." (para 5)

His lordship further observed that the Service Tribunal enjoyed powers to modify any order passed by the departmental authorities, however, such power was to be exercised carefully, judiciously and after recording cogent reasons in appropriate cases keeping in view and considering the specific facts and circumstances of each case. The appeal was allowed, the impugned judgment of the Service Tribunal was set-aside, and the punishment of compulsory retirement awarded to the respondent was restored. (para 10)

16. Federation of Pakistan v. Jahanzeb

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3157_2022.pdf
2022 SCMR 2020

Present
Sardar Tariq Masood, Amin-ud-Din Khan and **Muhammad Ali Mazhar**, JJ

The respondents were allowed proforma promotion after retirement. However, they claimed the entitlement to move over from an earlier date i.e. 01.12.2000 on the notion that they had reached the maximum stage of the pay scale on 01.12.1999. Their request was forwarded to the Ministry concerned and, thereafter, a Move-Over Committee was constituted and after discussion, the Committee decided that the respondents were not entitled to the grant of move-over. The respondents filed departmental representations which were rejected; thereafter they approached the Service Tribunal where their appeals were allowed.

Move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is treated to be an extension of the existing Basic Pay Scale of the post held by the employee

Hon'ble Justice Muhammad Ali Mazhar observed that "a move-over cannot be construed as promotion to the post of higher Basic Pay Scale, but the higher pay scale is

treated to be an extension of the existing Basic Pay Scale of the post held by the employee. Though the Government Policy for extending move-over was discontinued which has also been mentioned by the learned Tribunal with the cutoff date as 01.07.2002, but the fact remains that the respondents were not claiming their move-over after its discontinuation or revision of the policy but they were pursuing the entitlement of proforma promotion accrued in the next higher grade before the cut-off date. If an employee was not promoted and meanwhile reached to the maximum stage of his pay scale then obviously, he could be stagnant in his earlier pay scale due to attainment of maximum stage, therefore, as per erstwhile move-over Policy, the modus of move-over was devised to cope with such situations . . . If a person is not considered due to any administrative slip-up, error or delay when the right to be considered for promotion is matured and without such consideration, he reaches to the age of superannuation before the promotion, then obviously the avenue or pathway of proforma promotion comes into field for his rescue. If he lost his promotion on account of any administrative oversight or delay in the meeting of DPC or Selection Board despite having fitness, eligibility and seniority, then in all fairness, he has a legitimate expectation for proforma promotion with consequential benefits. The provision for proforma promotion is not alien or unfamiliar to the civil servant service structure but it is already embedded in Fundamental Rule 17, wherein it is lucidly enumerated that the appointing authority may, if satisfied that a civil servant who was entitled to be promoted from a particular date was, for no fault of his own, wrongfully prevented from rendering service to the Federation in the higher post, direct that such civil servant shall be paid the arrears of pay and allowances of such higher post through proforma promotion or upgradation arising from the antedated fixation of his seniority. We often noted that unjustified delay in proforma promotion cases trigger severe hardship and difficulty for the civil servants and also creates multiplicity of litigation. It would be in the fitness of things that the competent authority should fix a timeline with strict observance for the designated committees of proforma promotions in order to ensure rational decisions on the matters expeditiously with its swift implementation, rather than dragging or procrastinating all such issues inordinately or without any rhyme or reasons which ultimately compels the retired employees to knock the doors of Courts of law for their withheld legitimate rights which could otherwise be granted to them in terms of applicable rules of service without protracted litigation or Court's intervention." (para 5,6)

17. Capital Development Authority v. Ahmed Murtaza

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3709_2022.pdf

Present

Syed Mansoor Ali Shah and **Ayesha A. Malik, JJ**

Respondent No. 1 filed a suit for specific performance of the contract against Respondent No. 2 for completion of the sale of the disputed plot. The suit was decreed with the consent of the parties. The present petitioner (CDA) filed a petition under Section 12(2) of the CPC against the said consent decree, which was allowed and the said consent decree was set-aside. Being dissatisfied, Respondent No. 1 challenged this in a constitutional petition which was accepted. Hence, the CDA challenged the judgment rendered by the High Court on the grounds that the subject plot was a non-transferable property and could not be conveyed or transferred to any person or entity other than the family of the original allottee.

A party is bound by the matter already decided between the parties by the competent court

Hon'ble Mrs. Justice Ayesha A. Malik speaking for the bench observed that: "the matter in issue was decided on its merits in

the Ahmed Murtaza case (supra) which judgment, the CDA challenged only to withdraw the matter from this Court in order to seek some other appropriate remedy. Consequently, the CDA is bound by the findings recorded in the Ahmed Murtaza case (supra) with reference to the transfer of the disputed plot in favour of Respondent No.2……. we also note that the order of transfer dated 11.03.2003 clearly provides that CDA transferred the disputed plot from the names of eleven persons to the name of Respondent No.2. We asked the CDA who these eleven persons were and we were informed that prior to the transfer in favour of Respondent No.2, the disputed plot had been transferred in the names of persons mentioned in its letter No.CDA/EM27(1223)/83/1059-6-1075 dated 11.03.2003. The counsel also admitted that these eleven persons were not specifically family members of Dr. Major (Retd.) Bilqees Muhammad Din. Apparently, persons listed at Sr. Nos.1 to 3 are related to Dr. Major (Retd.) Bilqees Muhammad Din, however, admittedly none of the others are related to her. Hence, it transpires that CP No.3709 of 2022 - 7 - CDA allowed the transfer of the disputed plot to non-family members, from time to time and only raised a dispute with reference to the transfer in favour of Respondent No.2 and Respondent No.1." (para 6-7)

Frivolous litigation impairs expeditious justice and offends Article 37(d) of the Principles of Policy under the Constitution

Her Lordship further observed that this is a classic example of a litigant wasting the time of this Court by filing frivolous litigation given that this matter already stands decided by the High Court in the Ahmed Murtaza case (supra). Such frivolous litigation also impairs expeditious justice and offends Article 37(d) of the Principles of Policy under the Constitution. Court time can be well spent on handling genuine cases as opposed to pursuing cases that are vexatious and meritless on their face and which have already been decided between the parties. Consequently, the Court imposed Rs. 500,000/- as cost on the Petitioner (para 11, 13).

Foreign Superior Courts

Supreme Court of UK

1. *R v Maughan*

https://www.supremecourt.uk/cases/docs/uksc-2020-0103-judgment.pdf
[2022] UKSC 13

Before
Lord Hodge (Deputy President), Lord Hamblen, Lord Burrows, Sir Declan Morgan, Lord Lloyd-Jones

"Proceedings" does not include the investigative process prior to charge

The issue before the Supreme Court of UK was whether the term "proceedings" should be confined to court proceedings in the context of considering reductions to defendants' sentences when they plead guilty to a crime at an early stage and whether a sentence may be reduced where the defendant is caught "red handed".

Owen Maughan and John Maughan were charged together and separately with a series of offences committed in 2016. They pleaded guilty to these offences when they were formally charged. Both men had previous convictions and the pre-sentence report stated that they both presented a high likelihood of reoffending. Both men were sentenced to imprisonment for fourteen years (seven years in custody and seven years on licence). Their sentences were somewhat reduced because they had pleaded guilty at an early stage. However, they were not afforded the maximum discount on their sentences because they did not co-operate with the police on arrest and because, for certain of the offences, they were either caught "red handed" or the evidence against them was overwhelming. Both appealed their sentences to the Court of Appeal (Northern

Ireland) on the basis that they were manifestly excessive (Owen Maughan) and wrong in principle (John Maughan). The Court dismissed both appeals. Owen Maughan appealed to the Supreme Court.

The Supreme Court held that "proceedings" does not include the investigative process prior to charge or the issue of a summons. The Court of Appeal in Northern Ireland is therefore entitled to adopt a sentencing policy which treats as relevant to the sentencing discount the failure to admit wrongdoing during interview. Such a policy is typical of those applied from time to time in all three United Kingdom jurisdictions over many years. In addition to saving time, costs, and promoting the interests of victims and witnesses, early guilty pleas promote public confidence in the justice system. In summary, the Court of Appeal in Northern Ireland made no error of law.

The Supreme Court explained that a reduction in discount where the offender has been caught red handed has long been recognised as a feature of sentencing practice throughout the United Kingdom. The purpose of the discount is to encourage guilty pleas to obtain the utilitarian benefits of saving time, cost, and providing reassurance for witnesses and victims. However, where the prosecution case is overwhelming, the offender may be left with little realistic choice but to plead guilty. Such an offender might not deserve the same level of encouragement to plead guilty.

2. R v Minister for the Cabinet Office

https://www.supremecourt.uk/cases/docs/uksc-2020-0129-judgment.pdf
[2022] UKSC 11

Before
Lord Reed, President Lord Sales Lord Hamblen **Lord Stephens** Dame Siobhan Keegan

Modernisation of electoral procedures—validity of pilot schemes

In August 2018, the Cabinet Office invited local authorities to take part in voter ID pilot schemes. Under these schemes, voters would not be allowed to vote in polling booths unless they had a form of ID on them, such as a driver's licence. Later on, the Cabinet Office announced that a number of local authorities had chosen to take part. The Minister for the Cabinet Office then made orders under section 10 of the Representation of the People Act 2000 (the "2000 Act") to allow for voter ID pilot schemes in these areas.

Mr Neil Coughlan challenged these orders by way of judicial review. His claim was dismissed by the High Court and the Court of Appeal. He went to the Supreme Court, seeking a declaration that these orders are unlawful for being ultra vires section 10 of the 2000 Act.

The Supreme Court dismissed the appeal and found that the Pilot Orders were not made ultra vires. Section 10 of the 2000 Act is titled "Pilot schemes for local elections in England and Wales". Section 10(1) enables the Minister for the Cabinet Office by secondary legislation "to make such provision for and in connection with the implementation of a scheme as he considers appropriate". However, that power to make secondary legislation is limited to a scheme within the meaning of section 10(2). Section 10(2)(a) provides for schemes as regards "… how voting at the elections is to take place".

Having regard to the relevant principles of statutory interpretation, the legislative framework for local government elections, and the content of the pilot schemes in question, the Court finds that the pilot schemes were schemes within the meaning of section 10(2)(a) of the Act, and in particular, that they were schemes as regards "… how voting at the elections is to take place".

In respect of the second issue, the Court found that the pilot schemes were authorised for a lawful purpose under section 10(1) of the 2000 Act. The Court found that the

purpose of section 10 is to facilitate pilot schemes to enable the gathering of information to assist in the modernisation of electoral procedures in the public interest. The Pilot Orders were made to promote that object, and accordingly, were authorised for a lawful purpose.

Supreme Court of USA

3. *Dobbs v. Jackson Women's Health Organization*

Cite as: 597 U. S. ____ (2022)
https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

Coram

Alito J., Thomas J., Gorsuch J., Kavanaugh J., Barrett J., Breyer J., Sotomayor J., and Kagan J.

Constitutional right to abortion---leaving the issue for individual states to decide

In 'Roe v. Wade', the Court struck down laws that made abortion illegal in several states, and ruled that abortion would be allowed up to what was around 28 weeks (7 months). The judgment was based on the 'right to privacy' clause mentioned in the US Constitution. The Court held that the fetus is not a person and thereby does not have constitutional rights of its own. Women were granted a right to abortion and a liberal approach was taken by Court. In 2018, the State of Mississippi banned most abortions after 15 weeks throwing a direct challenge to the 1973 judgment. So, this law was challenged saying that it was unconstitutional and violated the Supreme Court's decision in Roe v. Wade.

The United States Supreme Court overturned by a 6-3 majority 'Roe v. Wade', the Court's landmark 1973 judgment that made abortion a constitutional right. The Court also overturned Planned Parenthood v. Casey, a 1992 case that upheld Roe's case. The Court observed that the State has the obligation to protect life and should give protection to fetus also. The USA Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision. Some rights not mentioned in the Constitution can be given to the citizens but such rights must be 'deeply rooted in the Nation's history and tradition'. Since there is no federal law protecting the right to abortion in the US, the overturning of 'Roe' leaves abortion laws entirely up to the states.

Constitutional Court of South Africa

4. *United Democratic Movement v. Lebashe Investment Group (PTY) Limited*

http://www.saflii.org/za/cases/ZACC/2022/34.html
[2022] ZACC 34

Coram:

Zondo ACJ, Madlanga J, Madondo AJ, Majiedt J, Mhlantla J, Rogers AJ, Theron J, Tlaletsi AJ and Tshiqi J

Balancing between the Right to speak and the obligation not to harm or injure someone else's name or reputation

The United Democratic Movement UDM and its leader, Mr Holomisa, sent a letter to the President of the Republic of South Africa, which contained allegations that the respondents had conducted themselves unlawfully in various ways in relation to the Public Investment Corporation (PIC). The letter requested the President to cause these allegations against the respondents to be investigated through the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the Judicial Commission). The letter was also published on the UDM's website and Mr Holomisa's social media platforms.

The respondents contended that the statements were defamatory and applied to the High Court for an interim interdict preventing the applicants from publishing such statements, pending the determination

of an action for damages against the applicants. The High Court granted the interim interdict, interdicting the applicants from repeating certain remarks they had made publicly about the respondents. The Court further ordered the applicants to remove the letter and all information relating thereto. Aggrieved by the order of the High Court, the applicants applied for leave to appeal to the Supreme Court of Appeal. Leave was granted and later on it was held that it was unnecessary for it to make a determination about whether the allegations are indeed defamatory and whether the applicants were justified in making them. Aggrieved by this decision, the applicants sought leave to appeal to the Constitutional Court.

The Constitutional Court observed that in democratic societies, the law of defamation lies at the intersection of freedom of speech and the protection of reputation or a good name. The law does not allow the unjustified savaging of an individual's reputation. The right of freedom of expression must sometimes yield to the individual's right not to be defamed. In striving to achieve an equitable balance between the right to speak your mind and the obligation not to harm or injure someone else's name or reputation, the law has devised defences such as fair comment, and truth and in the public interest.

The Court found that the ordinary meaning of the impugned statement was that the respondents are thieves, fraudsters, corrupt and dishonest. It found that the statement is defamatory of the respondents and wrongful. The Court also found that the applicants had failed to disclose facts that would sustain a defence of truth and in the public interest. The Court held that when a public figure plainly defames members of the public while admitting that he or she does not know the truth of what he or she says, his or her right to freedom of expression may justifiably be limited. It found that the applicants had failed to discharge the onus which rested on them to lay a basis for the defence that the allegations were true and in the public interest. The publication of the letter on the internet, social media and conventional media sites was, in the circumstances of the present case, unwarranted.

SUPREME COURT OF CANADA

5. R. v. Lafrance

2022 SCC 32
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19445/index.do

Coram
Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

The Supreme Court confirms an Alberta man's murder confession should not be used at trial because he did not have enough opportunity to get legal advice

In 2015, police suspected Nigel Lafrance of having been involved in a murder and got a search warrant for his home. On the morning of March 19, a team of armed police officers entered his home to search it. They asked Mr. Lafrance if he was willing to answer some questions and, when he agreed, they drove him to a police station and interviewed him for over three hours. Police took a blood sample, fingerprints, and Mr. Lafrance's cell phones and some clothing. He was not told he could contact a lawyer.

On April 7, the police arrested Mr. Lafrance for the murder. This time the police told him he could contact a lawyer, and Mr. Lafrance had a short phone call with Legal Aid, who told him he should "get a lawyer" to talk about his situation. The police then interviewed Mr. Lafrance for several hours. Mr. Lafrance asked if he could call his father, to help him get a lawyer. The police refused his request, since he had already called Legal

Aid, and the police pushed for more answers. Mr. Lafrance eventually confessed to the murder.

Before the trial, Mr. Lafrance argued that his confession and some other evidence taken during the date of his first encounter with police should not be used at his trial. He said he should have been allowed to talk to a lawyer on March 19 and he should have been given a second chance at contacting a lawyer during the April 7 interview. Section 10(b) of the *Canadian Charter of Rights and Freedoms* guarantees that "everyone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right".

The trial judge refused Mr. Lafrance's request, and the evidence was used at his trial. The judge found that because the police had not actually "detained" Mr. Lafrance during the March 19 interview, they did not need to let him contact a lawyer on that day. Also, the police were not required to give him a second chance at talking to a lawyer during the April 7 interview. A jury convicted Mr. Lafrance of murder.

Mr. Lafrance appealed the conviction to Alberta's Court of Appeal. A majority of judges in that court sided with Mr. Lafrance. They ordered a new trial to be held without the confession and without some of the other evidence the police had obtained. The Crown appealed to the Supreme Court of Canada.

The Supreme Court agreed with the Court of Appeal: Mr. Lafrance is entitled to a new trial.

Mr. Lafrance's section 10(b) *Charter* right to counsel was violated

Writing for a majority of the judges of the Supreme Court, Justice Russell Brown found that the police violated Mr. Lafrance's right to counsel on both dates. Given the "power imbalance" between police and a person detained by police, and because legal advice helps "cure" that imbalance, "these were serious breaches", he wrote.

Whether police actually "detained" someone depends on three questions. First, how did the person perceive or understand the encounter with the police — did the person feel forced to comply with police instructions? Second, what did the police actually do, and how and where did they do it? Third, how would another person of a similar age, size, racial background and level of experience or sophistication have felt during the encounter?

In this case, the Supreme Court found that the police did in fact detain Mr. Lafrance after searching his home on March 19. Any reasonable person in Mr. Lafrance's shoes would have understood that they were being singled out for investigation. Several factors support this conclusion: the police's show of force in entering the home, waking Mr. Lafrance up and ordering him to leave; a long ride with police officers to the station; and a lengthy police interview in a secure area. As well, Mr. Lafrance was 19 years old, is indigenous, had a lack of experience with police, and was unfamiliar with his legal rights. He would not have felt free to remain silent or free to leave.

The right to counsel guaranteed by the *Charter* includes not only informing a detained person of their right to talk to a lawyer, but also giving them time and an opportunity to actually get legal advice. A single consultation with a lawyer is usually enough. However, sometimes the police must provide the detained person with another chance to talk to a lawyer, especially if the

person did not understand their rights or the advice they received.

In this case, the police violated Mr. Lafrance's right to counsel on March 19 because they actually detained him but did not tell him he could talk to a lawyer. The police again violated his right to counsel on April 7. After his first call to Legal Aid, it was clear Mr. Lafrance did not understand his rights. The police should have given him another chance at talking to a lawyer to get legal advice.

Relying on the evidence would damage the reputation of the justice system

The police only obtained the confession and some other evidence after Mr. Lafrance's *Charter* rights were violated. The Supreme Court concluded that the confession and the other evidence should not be used at his trial. The seriousness of the *Charter* violations committed by the police, and the impact on Mr. Lafrance's rights, outweigh the public's interest in allowing the jury to hear that evidence. In these circumstances, Justice Brown concluded that allowing this evidence to be used at trial "would bring the administration of justice into disrepute".

6. Law Society of Saskatchewan v. Abrametz

2022 SCC 29
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19439/index.do

Coram

Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

The Supreme Court finds no abuse of process during lengthy disciplinary proceedings against a Saskatchewan lawyer.

Mr. Peter V. Abrametz, a member of the Law Society of Saskatchewan, had been practicing law in Prince Albert for 49 years. In 2012, the law society audited Mr. Abrametz's financial records, found irregularities and began disciplinary proceedings against him. The irregularities included making high-interest loans to vulnerable clients and issuing cheques to a fictitious person before endorsing and cashing them.

In 2013, the law society notified Mr. Abrametz that he would be suspended temporarily. However, Mr. Abrametz was allowed to continue practicing, subject to certain conditions. They included that Mr. Abrametz had to retain a lawyer to supervise his practice and its financial accounts, including withdrawals. He was also barred from accepting, endorsing and cashing cheques. The law society served Mr. Abrametz a second notice in 2014, but again he was allowed to continue to practice under similar conditions.

A year later, the Law Society issued a formal complaint against Mr. Abrametz and appointed a Hearing Committee. It wasn't until 2018 that the law society found him guilty of four charges of conduct unbecoming a lawyer. It disbarred him with no chance at applying to rejoin the law society for almost two years.

During the disciplinary proceedings, Mr. Abrametz argued that the law society took too long to investigate and decide his case. He said it amounted to an abuse of process.

The law society's Hearing Committee dismissed that argument but the Court of Appeal for Saskatchewan agreed with Mr. Abrametz. The law society then appealed to the Supreme Court of Canada.

The Supreme Court agreed with the Law Society.

There was no abuse of process

Writing for the majority of Supreme Court judges, Justice Malcolm Rowe said there is no basis to set aside the Hearing Committee's finding that there was no abuse of process. "The Court of Appeal departed from its proper role when it substituted its own findings of fact."

The test to determine whether delays amount to an abuse of process was set out in an earlier Supreme Court case. It has three steps. First, the delay must be unreasonable. This is determined by the context, including the nature and purpose of the proceedings, the length and causes of the delay and the complexity of the facts and issues in the case. Second, the delay must have caused the person harm. Examples include psychological or reputational harm, disruption to family life and loss of work. When these two requirements are met, courts must conduct a final test to determine if there was an abuse of process. This test is met when the delay is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.

In this case, Mr. Abrametz has not shown that the Hearing Committee was wrong in concluding that the delay was long but that it was not inordinate and that there was no significant prejudice to Mr. Abrametz. Therefore, the test was not met and the Court of Appeal should not have set aside the Hearing Committee's conclusions.

7. British Columbia (Attorney General) v. Council of Canadians with Disabilities

2022 SCC 27
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19424/index.do

Coram

Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

The Supreme Court rules that the Council of Canadians with Disabilities can challenge British Columbia's mental health laws.

In this case, the Supreme Court was asked to decide if the Council of Canadians with Disabilities (Council) qualifies for public interest standing in a lawsuit. Public interest standing allows individuals or organizations to bring a legal issue to court that is in the public interest even when they are not directly affected. This happens most often in cases concerning the *Canadian Charter of Rights and Freedoms*, where issues may broadly affect society as a whole. The Council is a not-for-profit organization working for the rights of people living with disabilities in Canada.

In 2016, the Council and two individuals challenged the constitutionality of British Columbia's mental health legislation. The law allows doctors to administer psychiatric treatment to patients with mental disabilities without their consent or the consent of someone else on their behalf. According to the Council and the two people who experienced such treatment without their consent, the law violates sections 7 and 15(1) of the *Charter*. Section 7 guarantees everyone the right to life, liberty and security of the person. Section 15(1) says everyone has the right to be treated equally without discrimination, including on the basis of mental or physical disability.

In 2017, the two individuals withdrew from the lawsuit, which left the Council to continue the case on its own. The Council sought public interest standing from British Columbia's Supreme Court. The Supreme Court of Canada had already established a test to qualify for public interest standing in a previous case. It consists of three requirements: (1) the case must raise a

serious issue the court can decide; (2) the party raising the issue must have a genuine interest in the matter; (3) the lawsuit must be a reasonable and effective way to bring the issue to court.

In this case, the trial judge said the Council failed to meet this test because the two individuals and the facts of their experiences were no longer part of the lawsuit. The Council appealed to British Columbia's Court of Appeal, which said the judge was mistaken in finding the case had no factual context.

The Supreme Court says the Council has public interest standing and can continue the lawsuit.

The Council meets the test for public interest standing.

Writing for a unanimous Supreme Court, Chief Justice Richard Wagner said the Council meets the three-part test for public interest standing. Firstly, it raises an important issue: the *Charter* rights of people with mental disabilities. Secondly, the Council has a genuine interest in the challenges faced by people with mental disabilities. Thirdly, its claim is a reasonable and effective way to bring the matter before the courts. The Chief Justice said a court's decision to grant or deny public interest standing is discretionary. Each factor in the three-part test must be duly considered and no factor takes priority over the others.

The Chief Justice said this case does not turn on individual facts and the Council could establish a sufficient factual context at trial. "A strict requirement for a directly affected co-plaintiff would pose obstacles to access to justice", the Chief Justice wrote. The Council raises important issues with the potential of affecting many people with mental health disabilities. The granting of public interest standing in this case "will promote access to justice for a disadvantaged group who has historically faced serious barriers to bringing such litigation before the courts", the Chief Justice wrote.

High Court of Australia

8. Hill v Zuda Pty Ltd

[2022] HCA 21
https://eresources.hcourt.gov.au/downloadPdf/2022/HCA/21

Coram

KIEFEL CJ, GAGELER, KEANE, GORDON, EDELMAN, STEWARD AND GLEESON JJ

Obiter dicta of intermediate appellate courts not binding

High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia concerning the operation of reg 6.17A of the Superannuation Industry (Supervision) Regulations 1994 (Cth). That regulation relevantly prescribed standards for how a member of a regulated superannuation fund is to give notice requiring the trustee of the fund to pay the member's benefits to a nominated person on or after the member's death. The primary issue in the appeal was whether reg 6.17A applied to a self managed superannuation fund ("SMSF").

Zuda Pty Ltd ("Zuda") was the trustee of an SMSF known as the Holly Superannuation Fund ("the Fund"). Mr Sodhy and Ms Murray were each a member of the Fund and a director of Zuda. The relevant trust deed for the Fund was amended in 2011 to insert a clause described as a "binding death benefit nomination", according to which, if either member of the Fund died, Zuda was required to distribute the whole of the deceased member's balance in the Fund to the surviving member. Mr Sodhy died on 22 November 2016. Ms Hill, the only child of Mr Sodhy, commenced a proceeding in the

Supreme Court of Western Australia, arguing that the binding death benefit nomination clause was of no force and effect on the basis that it did not comply with the standards prescribed by reg 6.17A.

The Supreme Court summarily dismissed the proceeding on the basis that reg 6.17A did not apply to the Fund as an SMSF. The Court of Appeal concluded that there was no error in that holding and so dismissed an appeal from the order for summary dismissal. In reaching that conclusion, the Court of Appeal adopted a construction of reg 6.17A expressed by the Full Court of the Supreme Court of South Australia, on the basis that it was bound to follow the "seriously considered dicta" of an intermediate appellate court unless convinced that the other court's reasoning was "plainly wrong". The High Court held that reg 6.17A, properly construed, did not apply to an SMSF. That construction was consistent with the extrinsic materials and the purposes of reg 6.17A. The Court of Appeal was therefore correct in its conclusion, although it ought to have reached that conclusion by construing reg 6.17A for itself. Intermediate appellate courts and trial judges are not bound to follow obiter dicta of other intermediate appellate courts, although they would ordinarily be expected to give great weight to them.

Federal Constitutional Court of Germany

9. In the proceedings on the constitutional complaints of ...

1 BvR 469/20 to 1 BvR 472/20
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2022/07/rs20220721_1bvr046920.html

Coram
Harbarth President, Baer, Britz, Ott, Christ, Radtke and Härtel JJ.

Mandatory measles vaccination is constitutional

The complainants challenged several provisions of the Protection Against Infection Act. The challenged provisions set out a mandate requiring that certain persons be vaccinated against measles and imposing an obligation to provide proof of such vaccination; the law also specified the consequences of non-compliance, such as the exclusion of children from certain childcare facilities or services. The requirement to be vaccinated against measles also applied if the only vaccines available were combination vaccines that also contained vaccine components against diseases other than measles. It was argued that challenged provisions affect the parents' fundamental right under Article 6(2) of the German Constitution, which protects the exercise of parental care in health matters, and – most notably – the children's right to physical integrity guaranteed by Article 2(2) of the German Constitution.

The Federal Constitutional Court recognized that measles vaccination requirement interfered with the parents' and children's rights. However, the Court held that the interferences with the fundamental right of parents under Article 6(2) and of children's physical integrity under Article 2(2) of the German Constitution are only justified on condition that relevant provision of the Protection Against Infection Act is interpreted in conformity with the Constitution. It was observed that the fundamental rights protected by Articles 6(2) and 2(2) of the German Constitution are interdependent in the present case. Based on a constitutionally sound interpretation, the Court concluded, the contested provisions adhere to the requirement that interferences be based on a statutory provision and satisfy the principle of proportionality under constitutional law. If only combination

vaccines are available – as is the case in Germany – constitutional law requires that relevant provision of the Protection Against Infection Act be interpreted to the effect that the obligation to provide proof of vaccination is only applicable if the available combination vaccines do not contain vaccine components other than those against measles, mumps, rubella or varicella. The legislature's decision to accord precedence to the protection of vulnerable persons from measles over the interests of the complainants is not objectionable under constitutional law. The obligations set out in the Protection Against Infection Act as well as the ban on entering the childcare facilities in question in case of non-compliance pursue a purpose that is constitutionally legitimate: they aim to protect persons that are vulnerable to health complications due to a measles infection from contracting the disease. The complaints were dismissed.

10. In the proceedings on the constitutional complaint of …

1 BvR 2103/16
https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2022/06/rk20220603_1bvr210316.html

Coram
Paulus, Christ and Härtel JJ.

Arbitration clause violates access to justice

In February 2009, the complainant, a professional athlete, took part in the world championships in her sport. She committed to complying with the anti-doping rules of the international sport federation that hosted the event and signed an arbitration agreement in favour of arbitration before the Court of Arbitration for Sport ("CAS") located in Lausanne, Switzerland. The disciplinary commission of the international federation banned the complainant for two years for illegal blood doping. She was also excluded from participating in the Winter Olympics 2010 by the German sports association. The complainant appealed the decision of the disciplinary commission to CAS. Under the operative rules of arbitration, neither party had the right to have the proceedings held in public. The CAS did not grant the complainant's request for a public hearing and dismissed her appeal.

The complainant then secured an expert opinion confirming that her blood parameters resulted from a hereditary anomaly of her blood. She filed a complaint with the Swiss Federal Supreme Court but it was dismissed. She filed another court action in Germany seeking declaration that the ban imposed on her was unlawful and also sought monetary compensation for the damages arising from her exclusion from various international competitions which ultimately came up before the Federal Constitutional Court. Meanwhile, the complainant also filed a complaint with the European Court of Human Rights ("ECtHR") against the rulings of the Swiss courts. The ECtHR held that the arbitration agreement did not violate the complainant's rights arising from Article 6 of the European Convention on Human Rights ("ECHR") as the CAS arbitration rules catered for all procedural guarantees required by Article 6 ECHR. Nonetheless the ECtHR did find that her procedural rights arising from Article 6 ECHR had been infringed by denying her an oral hearing in public.

The Federal Constitutional Court found that the mandatory arbitration clause of CAS violated the complainant's constitutional right of access to justice pursuant to Article 2(1) in conjunction with Article 20(3) of the German Constitution. The Court recognized that agreeing to arbitration is not inconsistent with the principle of access to justice. Rather, choosing arbitration to resolve a dispute is a corollary of the principle of freedom of

contracts, which the German Constitution guarantees in Articles 2(1) and 12(1). However, the Constitutional Court observed that private autonomy is not unlimited. The right to opt out of the state court system is qualified by the fundamental right of access to justice. According to the Court, the state permits its citizens to choose a private form of binding dispute settlement to the extent that such mechanism still provides for effective access to justice and lives up to the minimum standard of procedural safeguards. Whether or not this minimum standard is satisfied must be assessed when applying the laws governing the set-aside or the recognition and enforcement of awards, and the validity of an arbitration agreement. Moreover, in a case where there is an imbalance of power between the parties of the arbitration agreement, it is for the law to ensure that the fundamental rights of the weaker party are duly protected. The Court held that the principle of the rule of law also includes the principle of public proceedings. As a result of the violation of the complainant's fundamental right of access to justice and her rights arising from Article 6 ECHR, the Constitutional Court held that the arbitration agreement was null and void. The case was remanded to the higher regional court of Munich for further consideration.

EUROPEAN COURT OF HUMAN RIGHTS

11. H.F. and others v France

ECHR 282 (2022)
https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219333%22]}

Coram

Robert Spano, Jon Fridrik Kjølbro, Síofra O'Leary, Georges Ravarani, Ksenija Turković, Ganna Yudkivska, Krzysztof Wojtyczek, Yonko Grozev, Mārtiņš Mits, Stéphanie Mourou-Vikström, Arnfinn Bårdsen, Darian Pavli, Erik Wennerström, Lorraine Schembri Orland, Peeter Roosma, Mattias Guyomar, Ioannis Ktistakis, Judges, and Johan Callewaert, Deputy Grand Chamber Registrar.

France ordered to re-examine refusal to repatriate jihadi brides

The parents of two women petitioned the European Court of Human Rights ("ECtHR") after France refused to allow their daughters who had travelled to Syria with their partners to join Islamic State, and the children they gave birth to there, back into France. They are currently detained in Kurdish-run camps in north-east Syria. The families had argued that their prolonged detention in Syria exposed the women and children to inhumane and degrading treatment in breach of Article 3 of the European Convention on Human Rights ("ECHR"), violated their right to respect for family life under Article 8 of the ECHR, and entailed a violation of their right to enter national territory under Article 3 § 2 of Protocol No. 4 of the ECHR.

The Grand Chamber of the ECtHR found that France's refusal to repatriate the women and children is in violation of the right of a person to enter the territory of the state of which they are a national. The ECtHR ruled that there are special features which enabled France's jurisdiction over the family members, including that their lives are at risk, that several requests for repatriation have been sent to the French authorities and that Kurdish forces have long called for their return home. It added that France has failed to properly examine the families' requests for repatriation. The ECtHR did not require France to repatriate the two families and did not issue a general obligation to bring home all its nationals. However, it found France to be in violation of the ECHR, adding that the French government would be expected to promptly re-examine the families' request to

be repatriated with the children they gave birth to in Syria and afford them appropriate safeguards against any arbitrariness.

12. Rabczewska v Poland

ECHR 284 (2022)
https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-219102%22]}

Coram

Péter Paczolay, President, Krzysztof Wojtyczek, Alena Poláčková, Gilberto Felici, Lorraine Schembri Orland, Ioannis Ktistakis, Ksenija Turković, Judges, and Renata Degener, Section Registrar

Polish pop star's blasphemy conviction breached her human rights

In 2009, Polish pop star Dorota Rabczewska gave a press interview in which she said that it was difficult to believe in the Bible as it was written by someone wasted from drinking wine and smoking weed. Consequently, two individuals complained that she had offended their religious feelings, a crime in Poland that can carry up to two years in prison. Prosecutors took up the case and Rabczewska was eventually found guilty by a Warsaw court in 2012 and fined 5,000 zloty (€1,160). Her subsequent appeals were rejected, including by Poland's highest court, which in 2015 dismissed a complaint by Rabczewska that the blasphemy law violated the constitutional rights to freedom of expression and equal treatment of non-believers. Meanwhile, the pop star, in 2013, also referred her case to the European Court of Human Rights ("ECtHR"), arguing that the decision to prosecute her under criminal law and to give her such a large fine – 50 times the statutory minimum – violated her right to freedom of expression under Article 10 of the European Convention on Human Rights ("ECHR").

The ECtHR found that while Rabczewska had made statements which could shock or disturb some people, they were protected under the ECHR as they did not incite to hatred or religious intolerance. The Court also found that Poland's domestic courts had failed to comprehensively assess the wider context of Rabczewska's remarks, which had been made in reply to questions about her private life, in a frivolous and colourful language intended to spark her young audience's interest. "The [Polish] courts failed to identify and carefully weigh the competing interests at stake, namely her right to freedom of expression, against the rights of others to have their religious feelings protected and religious peace preserved in the society," wrote the ECtHR. The ECtHR held, by 6 votes to 1, that there has been a violation of Article 10 of the ECHR. The Court held that Poland is to pay Rabczewska, within three months from the date on which the judgment becomes final € 10,000, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage; that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Supreme Court of India

13. State Bank of India v. Ajay Kumar Sood

MANU/SC/1040/2022
https://main.sci.gov.in/supremecourt/2021/5546/5546_2021_3_27_37306_Judgement_16-Aug-2022.pdf

Coram

Dr. D.Y. Chandrachud and A.S. Bopanna, JJ.

Judgment writing--- a layered exercise.

In this case the Supreme Court of India laid down guidelines for judgment writing. The Court observed that judgment is a brick in the consolidation of the fundamental precepts on which a legal order is based. Judgment writing is a critical instrument in fostering the rule of law and in curbing rule by the law. The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language. The judge must write to provide an easy-to-understand analysis of the issues of law and fact, which arise for decision. The format laid down by the Supreme Court includes providing headings and sub-headings, paragraph numbers, a table of contents for long judgements, digital signatures, properly inserted watermarks to enable access for the visually disabled who use screen readers (which get confused by improperly placed ones), and the "Issue, Rule, Application and Conclusion" (IRAC) structure. The confidence in the judicial process is predicated on the trust which its written word generates. If the meaning of the written word is lost in language, the ability of the adjudicator to retain the trust of the reader is severely eroded. Whether or not the writer of a judgment envisions it, the written product remains for the future, representing another incremental step in societal dialogue. A judgment showcasing a maze of incomprehensible language defeats the purpose of judicial writing. A judgment must make sense to those whose lives and affairs are affected by the outcome of the case, besides reflecting a commitment to protecting legal principle and imparting certainty to the law. Judgment writing is a layered exercise. In one layer, a judgment addresses the concerns and arguments of parties to a forensic contest. In another layer, a judgment addresses stake-holders beyond the conflict. It speaks to those in society who are impacted by the discourse. In the layered formulation of analysis, a judgment speaks to the present and to the future.

14. *Trimurthi Fragrances (P) Ltd. v. Government of N.C.T. of Delhi and Ors.*

MANU/SC/1196/2022
https://indiankanoon.org/doc/85806537/

Coram
Indira Banerjee, Surya Kant, M.M. Sundresh, Sudhanshu Dhulia and Hemant Gupta, JJ.

A majority verdict by a larger bench will prevail over even a unanimous decision by a bench of lesser strength

The Supreme Court of India while deciding a clutch of petitions that challenged certain provisions of the Delhi Sales Tax Act, and exceptions provided for tax exemption, ruled that a decision of 4:3 ruling by the court will prevail over a unanimous five-judge bench verdict. The court observed that in view of Article 145(5) of the Constitution, concurrence of a majority of the judges at the hearing will be considered as a judgment or opinion of the court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of judges constituting the majority. The numerical strength of the judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment.

15. *The State of Haryana v. Anand Kindo*

MANU/SC/1169/2022
https://indiankanoon.org/doc/146781461/

Coram
Sanjay Kishan Kaul, Abhay Shreeniwas Oka and Vikram Nath, JJ.

Fixed term sentences exceeding 14 Years can be an alternative to Death Sentence in certain cases

In this case, the Trial Court awarded death sentence to the accused who were 'trusted employees' of the deceased. An aged couple were killed by the accused while they were sleeping. The High Court refused to confirm the death sentence and imposed life sentence on them.

The Supreme Court observed that it was a pre-planned murder for gain and greed by somebody who was in a position of trust with the family. There is always an element of trust and faith in the person by a person who employs them as well as their family members at an advanced stage in a particular health condition of the employer. Work takes other family members elsewhere and with the joint family system having broken down, the role of such trusted help becomes even more significant. It is also the significance of the society where a wrong signal goes if a trusted person breaches that trust to kill the person who had employed them in such a gruesome manner. As stated by the trial Court, the society itself demands justice, apart from an utter element on deterrence which is in any aspect of conviction. The approach cannot be vindictive but lack of appropriate sentence leaves the cry of justice of the society un-addressed apart from the fact that other persons who may have the propensity to carry out the crime feel they will get away with the lighter sentence; in case they are caught. Battering two sleeping people beyond recognition who imposed trust in their employee certainly calls for something more than merely a life sentence under Section 302, IPC, even if death sentence is not to be imposed. The Supreme Court observed that fixed term sentences exceeding 14 years can be awarded in appropriate cases to strike a delicate balance between the victims' plea for justice and rehabilitative justice for the convicts. This fixed term sentence can only be by the High Court or this Court and not by the trial Court.

16. Selvakumar v. Manjula

2022 LiveLaw (SC) 786
https://www.livelaw.in/pdf_upload/786-selvakumar-v-manjula-19-sep-2022-436188.pdf

Coram
A.S. Bopanna, Pamidighantam Sri Narasimha, JJ.

For attracting the penal provisions of the Bonded Labour Enactment, the prosecution must establish that an accused has forced and compelled the victim to render bonded labour.

In this case, reversing the Trial Court judgment of acquittal, the Madras High Court convicted the accused under Sections 16 and 17 of the Bonded Labour System (Abolition) Act, 1976. It was found that there is sufficient evidence that 'Bonded Labourers' were working at the Rice Mill and also that, they have been denied their due wages. The High Court also concluded that the 'Bonded Labourers' were illtreated and prohibited from seeking alternative employment by use of force.

The Supreme Court observed that for attracting the penal provision of the Act, the prosecution must establish that an accused has forced and compelled the victim to render bonded labour. This force and compulsion must be at the instance of the accused and the prosecution must establish the same beyond reasonable doubt. There is an obligation on the prosecution to establish that the accused has advanced a bonded debt to the victim.

Supreme Court of Bangladesh

17. Sultana Zahid Parvin v. S.M. Fazlul Karim

http://www.supremecourt.gov.bd/resources/documents/1651024_C.A.Nos.234-238_of_18.pdf

Coram
Mr. J. Hasan Foez Siddique, J. Md. Nuruzzaman, **J. Borhanuddin,** J. M. Enayetur Rahim & J. Krishna Debnath.

The power of review cannot be confused with appellate power

In this case, a civil appeal was filed against the judgment passed by the same court in Civil Review Petition. The applicant sought regularization of their services.

The Court observed that it is well settled that a party is not entitled to seek a review of a judgment delivered by this Division merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by this Division is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. The power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudication. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

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