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Synopsis of Contents

Supreme Court of Pakistan

- In the criminal law context, the most crucial factors to determine the question whether a particular transaction is benami in character, are: (i) who is in actual possession, or control of possession, of the property, and (ii) who receives the profits arising out of the property

- In a case where there is no sufficient incriminating material to believe his involvement in the offence and justify his detention pending trial, depriving the accused of his liberty and freedom even for a single day is unconscionable and below human dignity

Supreme Court of Pakistan

1. *MQM (Pakistan) v. Pakistan*

https://www.supremecourt.gov.pk/downloads_judgements/const.p._24_2017.pdf

Present: Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Ijaz ul Ahsan and Mr. Justice Mazhar Alam Khan Miankhel

The petitioners had invoked the original jurisdiction of the apex Court of the country under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), challenging the constitutionality of the various provisions of the several provincial enactments of the Province of Sindh that impinged upon the domain and functions of the local governments. The challenge was made on the touchstone of Article 140A of the Constitution, which provides that each Province shall by law establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments, besides claiming infringement of the rights of the people as envisaged in the Objectives Resolution, made part of the Constitution by Article 2A, and of the fundamental rights guaranteed under Articles 9, 14, 17 and 25 of the Constitution.

Article 140A of the Constitution confers primacy upon the authority vesting in an elected local government relating to its essential functions, over the powers relating to such functions conferred on provincial government or any agency thereof by law.

Hon'ble Chief Justice Gulzar Ahmed, speaking for the court, discussed in detail various provisions of the Constitution, principles of constitutional construction, doctrines of excessive delegation and structured discretion, and domain and functions of the local governments.

The Court disposed of the petition by holding that "To the extent of conflict in the exercise of their respective powers and functions by the elected local government and the statutory authorities or on account of legal provisions having overriding effect, Article 140A of the Constitution confers primacy upon the authority vesting in an elected local government over the powers conferred by law on the provincial government or agency thereof", and by directing the provincial government of Sindh to bring all those laws that override and conflict with the domain and functions of an elected local government, in accord with the mandate of Article 140A of the Constitution. **(Para 46((iii) & (iv))**

Sections 74 and 75(1) of the Sindh Local Government Act 2013 were declared ultra vires the Constitution and struck down

The Court also held that "Sections 74 and 75(1) of the [Sindh Local Government] Act of 2013 are against the principle enshrined in the Objectives Resolution and the fundamental rights enacted in Articles 9, 14 and 25 of the Constitution and are also contrary to and in direct conflict with Article 140A of the Constitution and thus, declared [them] ultra vires and struck [them] down." **(Para 46(vi))**

2. *Justice Qazi Faez Isa v. The President of Pakistan*

https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._296_2020_29012022.pdf
https://www.supremecourt.gov.pk/downloads_judgements/c.r.p._296_2020_04022022.pdf

Present: Mr. Justice Umar Ata Bandial, Mr. Justice Maqbool Baqar, Mr. Justice Manzoor Ahmad Malik, Mr. Justice Mazhar Alam Khan Miankhel, Mr. Justice Sajjad Ali Shah, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Munib Akhtar, Mr. Justice Yahya Afridi, Mr. Justice Qazi Muhammad Amin Ahmed and Mr. Justice Amin-ud-Din Khan

The petitioners had invoked the review jurisdiction of the Court, for reviewing its order dated 19.06.2020 (short order reported in PLD 2020 SC 346 and detailed reasons reported in PLD 2021 SC 1) and recalling certain directions made therein. The Court allowed the review petitions and recalled the

impugned directions by a 6-4 majority. Besides the one minority order made by four Hon'ble Judges dismissing the review petitions, the majority of six Hon'ble Judges made two separate short orders: the one by five Hon'ble Judges and the second by one Hon'ble Judge. Likewise, three separate detailed reasons were issued: the one authored Hon'ble Justice Umar Ata Bandial for the minority of four Hon'ble Judges; the second by Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan, and agreed to by Hon'ble Justice Manzoor Ahmad Malik, who had retired when the detailed reasons were released; and the third by Hon'ble Justice Yahya Afridi.

In the course of deciding the review petitions, the Hon'ble Judges took up and decided certain questions of law. Summary of some of them is given here:

While hearing a review petition under Article 188 of the Constitution against the judgment of the Court, i.e., the majority judgment, there is no difference in judicial powers of the members of the Review Bench, who have earlier delivered the majority or minority opinions.

Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan held: "As the judgment of the Court is considered to be the judgment of all the members of that Bench, irrespective of its being majority judgment or unanimous judgment, there can be no difference in judicial powers of the members who earlier delivered the majority or minority judgment while hearing the review petition, under Article 188 of the Constitution, against the judgment of the Court, i.e., the majority judgment. This is because the judgment of the Court is under review and not the view of the majority judges. There is nothing in the Constitution or the Supreme Court Rules 1980 that restricts the judicial power of dissenting Judges in review jurisdiction in comparison to that of the Judges who delivered the majority judgment. The dissenting Judges, subject to their availability, being necessary members of the review Bench possess the same judicial power as that of the other members of the Bench. The Judge whose opinion remained the minority view in the main case is as empowered to review the judgment of the Court, as can a Judge who delivered the majority opinion. This is because under the review jurisdiction the judges enjoy the flexibility to change their view, they might continue to hold or reverse their earlier view and thus subscribe to either the earlier majority or minority view. Adjudication is a deliberative process and the power of review, within its limited scope, allows the judge to reconsider his earlier opinion. Hence, there can be no fetters on the exercise of his judicial power as that would offend the fundamental constitutional value of independence of the judiciary." **(Para 10)**

Contra view - A dissenting Judge (or any other Judge not part of the original Bench) sitting in a review Bench must exercise and maintain restraint and quietude.

Hon'ble Justice Umar Ata Bandial, speaking for himself and for **Hon'ble Justices Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed**, referred to previous decision of a six-member bench (Justice Qazi Faez Isa v. The President of Pakistan PLD 2021 SC 639) and observed that the "decision… emphasised the restraint and quietude that must be exercised and maintained by a dissenting Judge (or any other Judge not part of the original Bench) sitting in a review Bench…as review jurisdiction is not akin to appellate jurisdiction. Therefore, any disagreement with the decision of the Majority that falls short of the test of review should not qualify to set aside a judgment that is otherwise based on correct factual and legal premises." **(Para 8)**

Supreme Court ordinarily issues such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, under Article 187, which are consequential or

incidental to the matter adjudicated upon by the Court or to the relief prayed for by the parties.

Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan held: "No doubt, this Court has been conferred, under Article 187(1) of the Constitution, very vast power to issue 'such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it', but the Court ordinarily issues such directions, orders or decrees, under Article 187, which are consequential or incidental to the matter adjudicated upon by the Court or to the relief prayed for by the parties… The question that needs consideration, in the present case, however is whether the Court can issue any direction, order or decree against a person, under this Article, in contravention of provisions of some law. After deep deliberation, we find that the Court cannot do so. The main reason for our reaching this conclusion is that as per Article 4 of the Constitution, to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every person, and no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law…Article 4 of the Constitution is the bedrock of the rule of law, and antithesis to the rule of men, in our country. It is a restraint on the executive and judicial organs of the State to abide by the rule of law. No person, authority, tribunal or court exercising executive or judicial powers can take any action against any person in contravention of any law. There is no exception to this principle, which equally applies to this Court exercising its judicial powers, including the power under Article 187(1) of the Constitution. Under the said Article, the Court can pass any order to do complete justice between the parties; however, it cannot make an order inconsistent with the fundamental rights or in contravention of any constitutional provision or any relevant statutory law." **(Paras 33, 34)**

Differently articulated view - When the Supreme Court acts under the provisions of Article 184(3) and 187, it can issue directions which travel beyond the pleas/pleadings of the parties.

Hon'ble Justice Umar Ata Bandial, speaking for himself and for **Hon'ble Justices Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed**, observed: "There is no cavil with the petitioners' proposition that Courts only have that jurisdiction which is conferred on them by the Constitution and the law. However, whilst deciding Const. P. No.17 of 2019, filed by the learned petitioner, the Court exercised its original jurisdiction conferred under Article 184(3) of the Constitution and its complete justice power under Article 187 thereof. It is by now well-settled that when this Court acts under these provisions it can issue directions which travel beyond the pleas/ pleadings of the parties…. It is also trite law that in its original jurisdiction the Court can mould the relief 'in accordance with the facts and the circumstances that come to light during the proceedings.'..Therefore, in light of these oft-confirmed principles defining the extent of the Court's original jurisdiction and its complete justice power, the claim of the petitioners that this Court only has the power to grant the relief sought in a petition is devoid of force." **(Para 19)**

Nothing is there in any law or in the Judges' Code of Conduct to hold a Judge liable for the conduct of his spouse and children, without there being any evidence to connect him with such conduct.

Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan observed: "So far as the submission of the contesting respondents is concerned, that the public servants, including the Judges, are answerable to their disciplinary authorities for the unaccounted for assets of their spouses and children. Nothing is there in any law or in the Judges' Code of Conduct which

could possibly be stretched to hold a Judge liable for the conduct of his spouse and children, or for that matter of anybody else, without there being any evidence to connect him with, and hold him responsible for such conduct. Needless to remind the salutary principle of law that everybody is responsible for his own deeds or misdeeds, acts and omissions, and nobody incurs any liability on account of any wrong committed by any other person." **(Para 40)**

Contra view - Judges, like other public servants, are expected to make reasonable efforts to keep themselves informed about the financial affairs of their spouses and other dependent family members, and accountable for the unexplained assets of their spouses and other dependent family members.

Hon'ble Justice Umar Ata Bandial, speaking for himself and for **Hon'ble Justices Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed**, held: "[T]he present case is concerned with the financial affairs of the spouse of a Judge of the Supreme Court. A necessary corollary which flows from the nature of Judges' work and the unique position they occupy in society is that they, like other public servants, are expected to make reasonable efforts to keep themselves informed about the financial affairs of their spouse and other family members who are either dependent on them or with whom they have financial dealings… This obligation on Judges to be aware of and/or accountable for the financial affairs of their family members can also be found in the laws of Pakistan that govern the realm of unaccounted/unexplained wealth of public servants… The fiduciary obligations cast upon public office holders/public servants are also enshrined since long in the Federal and Provincial laws of the country. These make public servants liable for the unexplained assets of their family members… [T]he legal tests and standards applied to other holders of public office/public servants under these laws can be utilised by the SJC to evaluate the conduct of Judges… [A]lthough Judges may be protected from the ordinary processes of law, they are not subject to separate or lower legal standards of accountability compared to other public servants. They are answerable at the bare minimum against the same benchmarks applied to ordinary public servants. This includes being accountable for the unexplained assets of their spouses and family members." **(Paras 20, 21, 22, 23, 24)**

Referring the matter of an alleged misconduct of a superior court judge by the Supreme Court to the Supreme Judicial Council for exercise of its suo motu power infringes the independence of the Council and is against the spirit of the provisions of Articles 209 and 211 of the Constitution.

Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan held: "Another aspect of referring the matter to the Council by this Court for exercise of its suo motu power is that it infringes the independence of the Council. Provisions of Articles 209 and 211 of the Constitution ensure the independence of the Council: only the President of Pakistan, acting in accordance with the constitutional procedure prescribed under Article 209 read with Article 48(1), can direct the Council to inquire into the matter of alleged misconduct or incapacity of Judges of the constitutional courts, and the proceedings before the Council cannot be called in question in any court including this Court as provided in Article 211 of the Constitution except when the Council acts with mala fide (in fact or in law), without jurisdiction or coram non judice…To uphold the independence of judiciary and to protect the Judges of constitutional courts against unwarranted harassment and oppression, the Constitution has established and constituted the Council to proceed and inquire into the allegations of incapacity or misconduct against such Judges independent of any extraneous influence, on direction of the President or in exercise its suo motu powers…Therefore, asking the Council, by the impugned directions, to

conduct "proceedings" to decide whether or not it will inquire into the matter of alleged misconduct by…[the Judge] in exercise of its suo motu powers is also tantamount to interference into the independent functioning of the Council and, thus, against the spirit of the provisions of Articles 209 and 211 of the Constitution." **(Para 41)**

Hon'ble Justice Yahya Afridi also made the like observations and expressed the similar view. **(Paras 3-6)**

Contra view - Superior Courts, taking judicial notice of information, can forward the same for perusal and consideration of the Supreme Judicial Council when no such restriction exists in Article 209(5) itself.

Hon'ble Justice Umar Ata Bandial, speaking for himself and for **Hon'ble Justices Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed**, observed: "It is a basic rule of interpretation that words are generally to be given their ordinary and natural meaning except when such construction gives rise to absurdity or renders certain words meaningless... Unless the aforesaid exceptional consequences follow, the basic rule must be adhered to. The term 'any' in Article 209(5) is of significance in the present context**…** It may be noticed from the above-stated meaning that 'any' is a comprehensive term. Since the legislature itself consciously chose to keep the source of information in Article 209 open ended, it will be contrary to the spirit of the provision to hold otherwise and prevent the Superior Courts from taking judicial notice of information and/or from forwarding the same for perusal and consideration of the SJC when no such restriction exists in Article 209(5) itself. **…** With regards to the case of Muhammad Ikram Chaudhry (supra), that is authority for the proposition that if a person has a grievance against a particular Judge the appropriate forum for redressal is the SJC (and not the Supreme Court) and that neither the Supreme Court nor the High Court can record even a tentative finding that a Superior Court Judge has committed misconduct. There can be no cavil with this ruling of the Court. However, in the instant case no adverse finding has been recorded against the learned petitioner and no direction has been issued to the SJC to take any action against him on the basis of the information forwarded by the FBR (refer to para 37 for a detailed discussion on this topic). Therefore, in the absence of such a finding and/or direction to the SJC, the principle laid down in the Muhammad Ikram Chaudhry case (supra) has not been contravened." **(Paras 57, 58)**

Simultaneous proceedings in the same matter by two different forums would create an anomalous and embarrassing situation.

Hon'ble Justices Maqbool Baqar, Mazhar Alam Khan Miankhel, Syed Mansoor Ali Shah and Amin-ud-Din Khan observed: "The impugned directions also create an anomalous situation as they provide that the proceedings before the Council, as contemplated thereby, shall not be effected by the filing or pendency of any appeal under the ITO against the order/report of the Tax Commissioner, or against any order made or decision taken at any appellate stage. If in the event the Council, on the basis of the report submitted by the Chairman FBR in pursuance of the impugned directions, recommends removal of …[the Judge], but subsequently [his spouse] succeeds in her challenge to the order of the Tax Commissioner, and the said order is found not sustainable, the time for the retrieval may have passed as by then…[the Judge] may have reached the age of superannuation. The injury inflicted upon...[the Judge] and the damage suffered by this institution will thus be irretrievable. In a reverse scenario where the Council may not agree with the findings of the Tax Commissioner, but such findings are upheld by the forums, including this Court, before which the Tax Commissioner's findings are amenable to correction, an anomalous and embarrassing situation may occur." **(Para 39)**

Contra view - Proceedings based on the same factual matrix and pending in

different legal fora may arrive at divergent outcomes because the jurisdiction, object and authority of each forum may be distinct under the Constitution and the applicable law.

Hon'ble Justice Umar Ata Bandial, speaking for himself and for **Hon'ble Justices Sajjad Ali Shah, Munib Akhtar and Qazi Muhammad Amin Ahmed**, observed: "It is also trite law that proceedings based on the same factual matrix and pending in different legal fora may arrive at divergent outcomes because the jurisdiction, object and authority of each forum may be distinct under the Constitution and the applicable law. A common example of this can be seen in the concurrent initiation of criminal and disciplinary proceedings in relation to service matters…Therefore, the fate of the CIR's findings, if any on the sources of funds used for purchasing the London Properties, in the appellate tax fora will have no bearing on how the SJC evaluates such information, in the shape of Chairman FBR's Report, for its own purpose and jurisdiction." **(Para 61)**

3. *Province of Sindh v. Mir Shahzad Hussain Talpur*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._407_k_2019.pdf

Present: Mr. Justice Qazi Faez Isa and Mr. Justice Amin-ud-Din Khan

While hearing a petition for leave to appeal against a judgment of the Sindh Service Tribunal, the Court found that in selecting and appointing the respondent, Mir Shahzad Hussain Talpur, as Special Auditor without recommendation of the Sindh Public Service Commission, Mir Ijaz-ul-Haq Talpur, the Secretary of the Cooperative Department, Government of Sindh, had acted illegally and in the appointment notification, shielded himself in the anonymous cloak of the competent authority, which concealed his connection with the respondent.

Merely mentioning the term, the competent authority, without disclosing the designation and name of the person who is the competent authority is utterly meaningless and serves to obfuscate illegalities.

Hon'ble Justice Qazi Faez Isa, speaking for the Court, observed: "Whenever the Constitution grants power to an individual it mentions the person's position/designation, for instance, the President, the Prime Minister, the Chief Justice, the Governor, et cetera. The same also holds true with regard to Federal and provincial laws, including the cited laws, and to the governments' rules of business. It is an individual who holds a particular position and by virtue of such position exercises power. Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed. In this case, the Secretary was not authorized to appoint the respondent but managed to do so by donning the competent authority cloak." **(Para 15)**

Using the term, the competent authority, in legal matters without disclosing such person's designation and name is against public policy and public interest.

His lordship further observed: "[T]he use of vague and imprecise language, such as, the competent authority, in legal matters is an anathema and oftentimes results in avoidable disputes, which unnecessarily consume time and public resources. The use of accurate and precise language helps avoid disputes. Using the term the competent authority but without disclosing such person's designation and name is against public policy and also against the public interest since it facilitates illegalities to be committed and protects those committing them. Every functionary of the government, and everyone else paid out of the public exchequer, serves the people of Pakistan; positions of trust cannot be misused to appoint one's own or to illegally exercise power." **(Para 16)**

Direction issued to Governments and other authorities to disclose the designation and name of the competent authority in notifications, orders, office memorandums, instructions, letters, etc.

The Court held that there is a need to put a stop to the use of the illusive and elusive term – the competent authority - without disclosure of the competent authority's designation and name. Therefore, it required the Federal Government, Provincial Governments, Registrars of the Supreme Court and all High Courts, and through the Registrars of the High Courts all the District and Sessions Courts, to issue the requisite orders/directions that they and their respective functionaries, semi-government and statutory organizations whenever issuing notifications, orders, office memorandums, instructions, letters and other communications must disclose the designation and the name of the person issuing the same to ensure that it is by one who is legally authorized to do so. **(Para 17)**

4. *Nazar Hussain v. Iqbal Ahmad Qadri*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._2832_2018.pdf

Present: Mr. Justice Qazi Faez Isa and Mr. Justice Amin-ud-Din Khan

Before the Court was a petition for leave to appeal against the concurrent findings of the three courts below. The three courts had dismissed the suit of the petitioners filed for specific performance of an agreement to sell regarding a plot allotted to the respondent, a Government employee, in the Federal Government Employees Housing Foundation Housing Scheme, by holding that the execution of the agreement was not proved in accordance with law. The Court maintained the concurrent findings, and while dismissing the petition, observed that the very agreement was opposed to public policy.

An agreement to sell a plot allotted to a Government employee, in favour of a non-Government employee who cannot get such plot directly under the Housing Scheme, is opposed to public policy.

Hon'ble Justice Qazi Faez Isa, speaking for the Court, observed: "In our opinion the agreement was also opposed to public policy as the respondent No. 2's Housing Scheme was meant to provide land to eligible Federal Government employees. The very purpose of the Housing Scheme is negated if the petitioners, who were not Federal Government employees, can benefit therefrom. And, to do so by putting forward an eligible Federal Government employee to obtain a plot which they are not otherwise entitled to. Those not eligible and entitled to get such plots could also not do indirectly what they could not do directly, by for instance financ[ing] the purchase of a plot which would not go to the Federal Government employee." **(Para 6)**

5. *Commissioner Inland Revenue v. Muhammad Mustafa Gigi*

https://www.supremecourt.gov.pk/downloads_judgements/c.p._490_k_2020.pdf

Present: Mr. Justice Qazi Faez Isa and Mr. Justice Amin-ud-Din Khan

There were five hundred and eighty-one petitions for leave to appeal against the judgments delivered by a Division Bench of the High Court of Sindh. The respondents had challenged before the Sindh High Court the constitutionality of the Income Support Levy Act 2013 ("the Act") and the legality of the recovery of the Levy under the Act. The High Court allowed the challenge, held the Income Support Levy not to be a tax or taxation, and declared the Act unconstitutional as having been wrongly introduced and enacted as a Money Bill only in the National Assembly, without sending it to the Senate for voting. The apex Court upheld the decision of the High Court and dismissed the petitions, with the observation that examination of the Act makes it abundantly clear that the Income Support Levy neither come within the definition of

tax nor taxation, besides highlighting certain other constitutional shortcomings in the Act.

Enacting the Income Support Levy Act 2013, a non-Money Bill, by sheathing it within the Finance Act 2013 was a most novel method of enacting legislation. Resort to such unconventional devices in enacting legislation is against public interest.

Hon'ble Justice Qazi Faez Isa, speaking for the Court, observed: "[T]he Finance Act, 2013, which enacted the Income Support Levy Act, 2013, did so by sheathing the Act within the Finance Act, 2013. This was a most novel method of enacting legislation. The Constitution prescribes the Legislative Procedure to be employed. It is best not to resort to unconventional devices in enacting legislation, as these invariably are against public interest. Adopting this unusual method would suggest that those who had introduced the Act themselves had reservations that it constituted a Money Bill. The Legislative Procedure set out in the Constitution must be abided by. The legislative procedure to enact a Money Bill is different from the procedure with regard to ordinary legislation. [A Money Bill can only originate in the National Assembly and is not transmitted to the Senate for voting. While a] Non-money ordinary legislation is introduced in the National Assembly or in the Senate, and after its approval by the House in which it was introduced, it is sent to the other House which may pass it or propose amendments to it. [Since the Act did not constitute a Money Bill, it had to be transmitted to the Senate to vote on the Act. But as this was not done, the Act never became law.]" **(Paras 10, 13, 19)**

Rights of the peoples of the four Provinces of Pakistan are not to be trespassed or curtailed by sidestepping the Senate in enacting a non-Money Bill legislation.

His lordship further observed: "The framers of the Constitution gave equal representation in the Senate to each province. This balance was struck in the aftermath of the break-up of Pakistan. The Constitution was made with remarkable unanimity by the elected representatives of the peoples of Pakistan after the 1971 debacle. Therefore, it is all the more imperative to ensure that the rights of the peoples of the four provinces are not trespassed or curtailed by sidestepping the Senate in enacting (non Money Bill) legislation…Federal legislation is made for the entire country, but the Senate was kept away from voting on the Act which was wrapped in the Finance Act, 2013, and where it evidently did not belong." **(Paras 21, 22)**

Involvement of people through their elected representatives in lawmaking and governance strengthens the Federation.

His lordship further observed: "Laws are made for the people. Therefore, their participation through their representatives in the making of laws is not only essential but a stipulated constitutional requirement. It is fair to state that when people through their elected representatives are involved in lawmaking, then such laws are wholeheartedly accepted. Representative democracy helps to unite the people, engenders goodwill, and empowers them. When the people are involved in governance, this strengthens the Federation." **(Para 22)**

6. Noor Jehan v. Saleem Shahadat

https://www.supremecourt.gov.pk/downloads_judgements/c.a._601_2019.pdf

Present: Mr. Justice Maqbool Baqar and Mr. Justice Qazi Muhammad Amin Ahmed

The Court heard an appeal filed against a judgment of the Lahore High Court, whereby the Lahore High Court had allowed the second appeal of the respondents and set aside the concurrent judgments of the two courts below dismissing the suit of the respondents for specific performance of an agreement for sale of an immoveable property.

After making a detailed examination of the evidence of the parties on the disputed facts and circumstances of the case, the Court

concluded that the respondent had failed to tender the sale consideration amount to the appellants, as per the terms of the agreement; therefore, he was not entitled to the discretionary relief of specific performance. The Court allowed the appeal and set aside the impugned judgment. The Court, however, rejected the contention of the appellants that the "token receipt" produced by the respondent to prove the agreement was not a legally constituted agreement to sell.

A document titled 'token receipt' that contains all the necessary ingredients of a 'sale agreement' is a valid and lawfully enforceable contract.

Hon'ble Justice Maqbool Baqar, speaking for the Court, held: "The document titled 'token receipt' contains all the necessary ingredients essential for it to qualify as a valid and lawfully enforceable contract. The document unambiguously contains the identity of the seller and the purchaser. The Property to be sold has been described accurately in a well-defined manner. It spells out the agreed sale consideration amount, and stipulates the manner of payment thereof. The parties who executed the document are at consensus in idem. The document clearly manifests the intention of the appellants to sell and that of the respondent to purchase the subject property. Nothing crucial was left to be settled which could have adversely affected the validity of the contract…The 'token receipt' was [thus] in itself a complete, and a lawfully enforceable, agreement to sell." **(Para 12)**

7. Province of Punjab v. Zia ul Hassan

https://www.supremecourt.gov.pk/downloads_judgements/c.a._401_2015.pdf

Present: Mr. Justice Ijaz Ul Ahsan, Mr. Justice Yahya Afridi and Mr. Justice Jamal Khan Mandokhail

The Court heard an appeal that involved the matter of land acquisition under the Punjab Acquisition of Land (Housing) Ordinance, 1973. While dismissing the appeal and maintaining the impugned judgment in favour of the landowners against the land acquiring department, the Court held that the acquired land cannot be used for any purpose other than the one specified in the notification issued for acquisition of the land.

The acquired land cannot be used for any purpose other than the one specified in the notification issued for acquisition of the land.

Hon'ble Justice Ijaz Ul Ahsan, speaking for the Court, observed: "The Notification is specific in its purpose and object and any interpretation of the Notification which is not in line with its terms would be violative of the law. The purpose for which the land has been transferred to the Education Department is entirely different from that which is mentioned in the Notification. A notification issued by the Government essentially reveals its intention. One of the purposes of publishing a notification is so that those who may be affected by it can know the intention of the Government as mentioned in the notification itself. Essentially, a notification is a means used by the Government to communicate with the general public regarding *inter alia*, any projects et cetera that it might prospectively undertake. The intent behind the notification or, the purpose for issuing the same must be mentioned because, as noted above, the rights of different stakeholders are involved. This is one of the reasons that there are various safeguards provided in the Act of 1973 such as Section 6 which requires, by using the words "Shall", the publication of a notice to make the intention of the Government to possess a certain piece of land clear…If the said intention of the Government or the area sought to be acquired changes after the Notification under Section 4 has been issued; a fresh notification or an addendum to the earlier notification can be issued to enable the parties affect by it to avail remedies provided by the law. Further, the acquisition of the land does not ipso facto mean that the Appellant-Department could use the acquired land for any purpose that it considered appropriate. The acquiring

agency/ department/ entity is restricted in its use of the land to the purpose mentioned in the notification and for no other purpose." **(Paras 14, 15)**

8. *Hanif Khan v. Saddiq Khan*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._997_2010.pdf

Present: Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar and Mr. Justice Sayyed Mazahar Alt Akbar Naqvi

The appeal heard by the Court was filed against a judgment of the Lahore High Court, wherein the Lahore High Court had held that the Civil Courts of Pakistan have no jurisdiction to entertain a suit relating to an immoveable property situated in a foreign country. The Supreme Court maintained the impugned judgment and dismissed the appeal.

Civil Courts of Pakistan have no jurisdiction to entertain a suit for the determination of any right or interest in respect of an immoveable property that is situated in a foreign country.

Hon'ble Justice Ijaz Ul Ahsan, speaking for the Court, held: "It is clear and obvious to us from a plain reading of the plaint and Sections 16 and 20 of the Code of Civil Procedure, 1908 ("CPC") that the Civil Courts of Pakistan had no jurisdiction in the matter…It is clear and obvious from the record that the subject matter of the suit was situated in USA…Section 16 of the CPC clearly stipulates that all suits in respect of immovable property shall be filed in the Court within the local limits of whose jurisdiction the property in question is situated. The only exception to this rule is suits filed under Section 16(c). There is nothing on the record to establish that the suit in question was related to redemption of a mortgage or charge regarding the property in question. We are therefore in no manner of doubt that the even according to the averments made in the plaint the suit of the Appellants did not fall within the parameters of Section 16 of the CPC…The language of Section 16(d) clearly provides that, for the determination of any right or interest in respect of immovable property, a suit must be filed in a Court within the territorial jurisdiction of which the property situated." **(Paras 7, 8)**

9. *Sindh Irrigation & Drainage Authority v. Govt. of Sindh and others*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._10_k_2019.pdf

Present: Mr. Justice Gulzar Ahmed, CJ, Mr. Justice Ijaz Ul Ahsan and Mr. Justice Sayyed Mazahar Au Akbar Naqv1

Through their appeals before the Supreme Court, the appellants had challenged a judgement of the Sindh Service Tribunal, whereby that Tribunal had dismissed their application made under Section 12(2) of the Code of Civil Procedure, 1908 ("CPC") for setting aside an order passed by the Tribunal on service appeals of the respondents. The appellants' contention for the relief prayed for was that the claim of respondents to be employees of the Irrigation Department of the Government of Sindh was fraudulent, that the respondents were not Civil servants but were employees of the Sindh Irrigation and Drainage Authority ("SIDA"), an autonomous authority, therefore, the order passed by the Tribunal was without jurisdiction. The Court accepted their contentions, and set aside the impugned judgment of the Sind Service Tribunal.

A public servant may be a person who is employed in the public sector. However, not all public servants are civil servants. Employees of the Sindh Irrigation and Drainage Authority are not civil servants.

Hon'ble Justice Ijaz Ul Ahsan, speaking for the Court, held: "A bare perusal of the…provisions of the [Sindh Water Management] Ordinance, 2002 makes is clear that the SIDA is a separate legal entity which, as per the provisions of the Ordinance, 2002, is different from the Irrigation Department of the Government of Sindh…A

Department of the Government generally operates under the control of the Government. This essentially means that the autonomy of a department is limited insofar as its operations and management are concerned. An Authority on the other hand is generally autonomous. It can regulate its internal affairs and formulate policies after seeking approval from the governing body of the Authority in question…SIDA is an autonomous body, which operates as an Authority, managed by a Board of Management … Respondents [Employees of SIDA]…[are] public servants for a limited purpose[as] spelt out in Section 106 [of the Ordinance, 2002]… [Section 2(1)(b) of the Sindh Civil servants Act, 1973] defines a civil servant. It is clear from the record placed before us that the Respondents do not fall within… [that] definition. They were not employed by the Provincial or Federal Public Service Commission neither is there any notification or any other document on the record that confers on them the status of civil servants. A public servant may be a person who is employed in the public sector. However, not all public servants are civil servants…" **(Paras 8, 9, 10)**

The Sindh Service Tribunal has the jurisdiction to entertain an application under section 12(2) of the Code of Civil Procedure, 1908.

His lordship further held: **"**The learned Service Tribunal dismissed the application of the Appellant-Authority as not maintainable vide the Impugned Judgment, holding that the Service Tribunal did not have powers to decide an application under Section 12(2) of the CPC. We are unable to agree with this finding of the learned Service Tribunal. Section 5 of the Sindh Service Tribunals Act, 1973 categorically provides that the Service Tribunal shall have all powers available to a Civil Court…[T]he Service Tribunal has all the powers which are available to the Civil Court. This is further evidenced by the fact that the word "including" is in Section 5(2) which shows that the Tribunal's powers are broad and have not been limited by the Act. It has the same powers as available to a Civil Court. Deciding an application under Section 12(2) is a power vested with the Civil Court. **(Paras 14, 15)**

10. Tahir Naqash v. The State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._916_l_2021.pdf

Present: Mr. Justice Syed Mansoor Ali Shah and Mr. Justice Amin-ud-Din Khan

The Court heard a petition for leave to appeal against an order of the Lahore High Court, whereby that High Court had upheld the orders passed by the two courts below regarding addition of offences of blasphemy to the charge framed against the petitioners, who belonged to a religious minority – *Ahmadi* community. The allegations against the petitioners were that they being *Ahmadi/Qadiani* had styled their place of worship as a mosque, displayed *sha'air-e-Islam* on the walls inside their place of worship and maintained copies of the Holy Qur'an inside their place of worship.

The Court held these allegations do not constitute the offence of blasphemy - defiling or desecrating the Holy Quran or the sacred name of the Holy Prophet. The Court, therefore, granted the leave sought for, converted the petition into appeal and allowed the same by setting aside orders of all the three courts below.

All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental rights under the Constitution including equality of status, freedom of thought, expression, belief, faith and worship.

Hon'ble Justice Syed Mansoor Ali Shah, speaking for the Court, referred to preamble and several Articles of the Constitution of Pakistan guaranteeing fundamental rights to all minorities in Pakistan, and observed: "All citizens of Pakistan, whether Muslim or non-Muslim, are guaranteed fundamental rights under the Constitution including equality of status, freedom of thought, expression, belief, faith, worship subject to law and public morality. The Constitution emphasizes that only when we honour these values can we,

the people of Pakistan, prosper and attain the rightful and honoured place amongst the nations of the World and make full contribution towards peace, progress and happiness of the humanity." **(Para 9)**

To deprive a non-Muslim (minority) from holding his religious beliefs, to obstruct him from professing and practicing his religion is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic.

His lordship further observed: "To deprive a non-Muslim (minority) of our country from holding his religious beliefs, to obstruct him from professing and practicing his religion within the four walls of his place of worship is against the grain of our democratic Constitution and repugnant to the spirit and character of our Islamic Republic. It also deeply bruises and disfigures human dignity and the right to privacy of a non-Muslim minority, who like all other citizens of this country enjoy the same rights and protections under the Constitution. Bigoted behaviour towards our minorities paints the entire nation in poor colour, labelling us as intolerant, dogmatic and rigid. It is time to embrace our constitutional values and live up to our rich Islamic teachings and traditions of equality and tolerance." **(Para 10)**

Laws in a constitutional democracy objectify public interest, are solicitous of individual liberties and interfere with them as little as possible.

His lordship further observed: "[L]aws in a constitutional democracy objectify public interest and are solicitous of individual liberties and interfere with them as little as possible. Thus, the rule of interpretation has been evolved according to which a penal statute [that interferes with individual liberties] should be strictly construed in favour of the accused. The degree of strictness depends upon the severity of the statute. It would nevertheless be appropriate to clarify that when it is said that all penal statues are to be construed strictly, it only means that the court must see that the act charged is an offence within the plain meaning of the words used and must not strain or stretch the words. In other words, the rule of strict construction requires that the language of the statute should not be so construed so as to include acts within it which do not fall within the reasonable interpretation of the statute. The rule of strict construction, however, must yield to the paramount rule that every statute is to be expounded according to the express or manifest intention of the Legislature. The acts charged in the present case do not attract Sections 295-B and 295-C PPC either by the plain reading of the words of these two provisions or by their construction through the lens of the express or manifest intention of the Legislature behind them." **(Para 15)**

11. Syed Khursheed Ahmed Shah v. The State

https://www.supremecourt.gov.pk/downloads_judgements/c.p._4387_2021_24012022.pdf

Present: Mr. Justice Umar Ata Bandial and Mr. Justice Syed Mansoor Ali Shah

The petitioner had, in this case, sought leave to appeal against an order of the High Court of Sindh passed on his constitutional petition filed under Article 199 of the Constitution, whereby the post arrest bail has been denied to him in a NAB Reference pending his trial in the Accountability Court, for the alleged offence of corruption and corrupt practices punishable under the National Accountability Ordinance 1999 ("NAB Ordinance"). On making a tentative assessment of the incriminating material available on record, the Court found that there was no sufficient incriminating material to provide reasonable grounds for believing that the petitioner was guilty of the alleged offence. With this finding, the Court granted the petitioner post arrest bail pending his trial. In the course of deciding the petition, the Court enunciated the following principles of law:

The constitutional standard of "reasonable grounds" for depriving a person from his fundamental right to liberty and protection against arbitrary detention is to be read in all laws dealing or interfering with his liberty.

Hon'ble Justice Syed Mansoor Ali Shah, speaking for the Court, held: "We are only to make a tentative assessment of the material available on record to decide whether there is, or is not, available on record such incriminating material which provides reasonable grounds for believing that the petitioner (accused) is guilty of the alleged offence. This standard of making tentative assessment of the material available on record for deciding the question of detaining an accused in prison, or releasing him on bail, during his trial for the alleged offence under the NAB Ordinance is not borrowed from Section 497 CrPC rather…it emanates from the fundamental rights to liberty, dignity, fair trial and protection against arbitrary detention guaranteed by the Constitution and from the operational scheme of the NAB Ordinance. Needless to mention that this constitutional standard of "reasonable grounds" for depriving a person from his said fundamental rights is to be read in all laws dealing or interfering with his liberty." **(Para 5)**

In the criminal law context, the most crucial factors to determine the question whether a particular transaction is benami in character, are: (i) who is in actual possession, or control of possession, of the property, and (ii) who receives the profits arising out of the property.

His lordship further held: "[W]e find that there is no sufficient incriminating material to show that the properties held by the persons who are not the family members of the petitioner, but are alleged to be his benamidar, are actually of the petitioner. Although, as held by the constitutional courts of the country that a number of factors are to be considered to determine the question whether a particular transaction is benami in character yet perhaps the most crucial factors, in the criminal law context are: (i) who is in actual possession, or control of possession, of the property, and (ii) who receives the profits arising out of the property. The NAB has failed to deal with these factors nor has pointed out to us, any material, which could reasonably show that the properties alleged to be held by the petitioner, in name of other persons, as his benamidar, are in his actual or constructive possession and/or he receives the profits of those properties." **(Para 6)**

In a case where there is no sufficient incriminating material to believe his involvement in the offence and justify his detention pending trial, depriving the accused of his liberty and freedom even for a single day is unconscionable and below human dignity.

His lordship further observed: "The petitioner was arrested in the present case on 18.09.2019 and facing trial on an interim reference. Since his arrest a period of more than two years has lapsed but the NAB is yet to file the final reference, thus, the conclusion of the trial is not in sight for no fault of the petitioner. Such a long delay does constitute "inordinate and unconscionable delay", as held in Talat Ishaq v. NAB (PLD 2019 SC 112), justifying the release on bail of the petitioner pending his trial even on this ground as well…Even otherwise, in a case where the NAB has been unable to show sufficient incriminating material to the Court to justify the detention of the accused, depriving the accused of his liberty and freedom even for a single day is, to say the least, unconscionable and below human dignity." **(Para 8)**

12. Khyber Medical University v. Aimal Khan

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3429_2021.pdf

Present: Mr. Justice Sardar Tariq Masood, Mr. Justice Mazhar Alam Khan Miankhel and Mr. Justice Syed Mansoor Ali Shah

In this case, the High Court had, on a constitution petition of the respondent, reduced the penalty imposed upon him for his being involved in use of unfair means in an examination by the administrative committees of the University under Regulation 32(c) of the Khyber Medical University Examination Regulations 2017, from three years disqualification to one year by taking a 'lenient view', without referring to any law that could justify such reduction. The Supreme Court, on petition of the University, set aside the judgement of the high court while observing that "Regulation 32(c), made by the University under its delegated legislative power, is a law within the scope of the term "law" as used in Article 4 of the Constitution; it fixes a penalty of three years and allows no discretion to the decision-making authority for it to be reduced. There is thus no scope, in the relevant law, to grant relief of reducing the disqualification period to the respondent…on the ground of compassion or hardship. The reduction of the disqualification-period by the High Court, in contravention of the relevant law, is an example of judicial overreach or judicial overstepping, where law is ignored or modified by the court to give way to personal emotions and sense of compassion. Such exercise of judicial power is not permissible." **(Para 8)**

***A good judge intelligently balances law and equity to ensure that justice is tempered with mercy but never at the expense of overriding the letter of the law*.**

Hon'ble Justice Syed Mansoor Ali Shah, speaking for the Court, observed: "Our constitutional democracy is run by laws and not by men. Judges are to decide disputes before them in accordance with the Constitution and the law, not on the basis of their whims, likes and dislikes or personal feelings. A good judge intelligently balances law and equity to ensure that justice is tempered with mercy but never at the expense of overriding the letter of the law. Compassion, which may be said to be a shade of, and have nexus to, the rules of equity cannot be given precedence and superseding effect over the clear mandate of law. Compassion and hardship, therefore, may be considered by courts for providing relief to an aggrieved person, but only when there is scope in the relevant law to do so, not in breach of the law." **(Para 8)**

It is not the constitutional mandate of the courts to run and manage public or private institutions or to micro-manage them or to interfere in their internal policy and administrative matters.

His lordship further observed: "It is not the constitutional mandate of the courts to run and manage public or private institutions or to micro-manage them or to interfere in their policy and administrative internal matters. Courts neither enjoy such jurisdiction nor possess the requisite technical expertise in this regard. Courts should step in only when there arise justiciable disputes or causes of action between the parties involving violation of the Constitution or the law." **(Para 7)**

13. Federation of Pakistan Chamber of Commerce v. Province of Sindh

https://www.supremecourt.gov.pk/downloads_judgements/c.p._5620_2021.pdf

Present: Mr. Justice Umar Ata Bandial, Mr. Justice Syed Mansoor Ali Shah and Mr. Justice Qazi Muhammad Amin Ahmed

The case stemmed from a notification issued by the Government of Sindh, Labour and Human Resource Department, under Section 4(1) read with Section 6(1)(a) of the Sindh Minimum Wages Act, 2015 raising the minimum rates of wages, in disregard of the recommendation of the Minimum Wages Board, for unskilled adult and juvenile workers employed in all industrial/ commercial establishments in the Province of Sindh to Rs.25,000/- per month with effect from 01.07.2021.

The Provincial Government can revise the minimum rates of wages under the Sindh Minimum Wages Act, 2015 only on the recommendation of the Minimum Wages Board.

The Court considered the question, whether the Government could itself revise the minimum rates of wages or could it be done only on the recommendation of the Minimum Wages Board, and in view of the relevant provisions of the Sindh Minimum Wages Act, 2015, answered that the Government can revise the minimum rates of wages only on the recommendation of the Minimum Wages Board.

Hon'ble Justice Syed Mansoor Ali Shah, speaking for the Court, held: "The [Sindh Minimum Wages] Act makes the [Provincial] Government responsible for fixing the minimum rates of wages in certain industrial undertakings. It is the Government that takes cognizance of the circumstances necessitating fixation of the minimum rates of wages and sets the ball rolling by either referring the question of fixation of the minimum rates of wages to the Board under Section 4 of the Act or directing the Board under Section 5 of the Act to make recommendations on the said rates of wages and then the Government accepts the recommendations of the Board with or without exceptions or modifications or sends it back for reconsideration. Once the Board submits its recommendations to the Government, the Government cannot but act in a manner prescribed under Section 6 of the Act...Taking into consideration the provisions of the Act and the objective behind it, we are of the view that the Government travelled beyond its authority to encroach upon the mandate of the Board and issued the Notification without lawful authority." **(Paras 7, 8)**

14. Hassan Aziz v. Meraj ud Din

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3011_2021.pdf

Present: Mr. Justice Umar Ata Bandial, CJ, Mr. Justice Munib Akhtar and Mr. Justice Qazi Muhammad Amin Ahmed

In this case, the question of law raised for the consideration of the Supreme Court was: are the great grandchildren within the meaning of "children" for the purposes of section 4 of the Muslim Family Laws Ordinance, 1961 ("Ordinance")? The said section provides that "[i]n the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stirpes receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive."

Hon'ble Justice Munib Akhtar, speaking for the Court, answered the question in negative.

The "great grandchildren" of a propositus do not come within the meaning and scope of the word "children" used in section 4 of the Muslim Family Laws Ordinance, 1961 and therefore do not have any share in the property left behind by the propositus on the basis of this section.

His lordship observed: "[I]t is a fundamental principle of the law of Muslim inheritance that the legal heirs of a person are only determined at the moment of death and not before. This rule is clearly reflected in s. 4 by use of the words 'opening of succession'. The point is then reinforced by the immediately succeeding words, 'the children of [the predeceased] son or daughter, if any, living at the time the succession opens'... s. 4 applied only to those grandchildren as are alive at the time of death of the propositus…It is of course well known that under the rules of Muslim inheritance the legal heirs of a predeceased son or daughter do not inherit from the parent of the predeceased. Section 4 carves out a carefully constructed exception from this rule…It is also to be kept in mind that some of the rules of Muslim inheritance can apply across generations, which is encapsulated in the phrases "how high so ever" and "how low so

ever" used in the standard treatises. Any possibility of s. 4 having such an effect…is carefully excluded by use of the words emphasized above, i.e., "living at the time the succession opens". Read as a whole, the purpose and intent behind s. 4 is clear. The exception created by it is limited and circumscribed. It applies only to those grandchildren as are living at the time of the death of the propositus. An extended meaning cannot be given to the section in terms as urged by learned counsel for the leave petitioners. They, being the great grandchildren, did not have any share in the property left behind by the propositus on the basis of s. 4." **(Para 6)**

15. *Government of the Punjab v. Defence Rays Golf and Country Club*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._649_2019.pdf

Present: Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar and Mr. Justice Sayyed Mazahar Ali Naqvi

The Lahore High Court had declared section 7 of the Punjab Finance Act, 2011 as ultra vires the Constitution, by holding that double taxation is not constitutionally permissible. Section 7 provided for levying "education cess" on clubs, which was, in essence, the sales tax on services provided by the clubs. The other law referred to for holding the "education cess" charged under section 7 as double taxation was the Punjab Sales Tax Ordinance, 2000 (later repealed and replaced by the Punjab Sales Tax on Services Act, 2012).

Government of the Punjab, feeling aggrieved, had appealed the decision of the High Court in the Supreme Court., which was accepted and the judgment of the High Court, set aside.

Although the rule is that there is a presumption against double taxation and burden is cast on the State to show that it has been resorted to, double taxation as such is not beyond the scope of the legislative power of the relevant legislature if the levy in question is otherwise properly within its domain.

Hon'ble Justice Munib Akhtar, speaking for the Court, held: "We are unable to agree with the basic proposition that found favor with the learned High Court and…forms the core basis on which the matter was decided, that double taxation is impermissible under the Constitution. That, with respect, is not so. Double taxation is not beyond the scope of the relevant legislature, if in substance the levy in question is otherwise properly within its domain. The correct rule is that there is a very strong presumption against double taxation and a heavy burden is cast on the State to show that it has been resorted to. However, if the language of the statute is otherwise clear then the levy cannot be declared unconstitutional on such basis…… It is..to be noted that subsection (1) of s. 7 contained an express non obstante clause, and the charging provision (sub-section (3)) further reinforced this by itself containing another non obstante clause. These provisions strongly confirm the legislative intent and serve to negate any conclusion that the levy could be struck down as amounting to double taxation.." **(Para 5)**

16. *Fawad Ahmad v. Commissioner Inland Revenue*

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1521_2018.pdf

Present: Mr. Justice Umar Ata Bandial, Mr. Justice Sajjad Ali Shah and Mr. Justice Munib Akhtar

The dispute in the case had arisen under the Income Tax Ordinance, 2001 ("Ordinance"), and related to the levy of tax on the income that was in the form of transfer of shareholding as dividend in specie. Both the taxpayers and the department had filed the cross appeals against a judgment of the Lahore High Court. One of the contentions of the taxpayer-appellants before the Supreme Court was, that the dividend in specie is not income. The Court rejected this contention

by holding that "dividend in specie received by the taxpayer-appellants was income".

The term "income" has the widest possible connotation within the four corners of the Income tax Ordinance 2001; dividend in specie received by the taxpayer-appellants falls within the scope of the term "income".

Hon'ble Justice Munib Akhtar, speaking for the Court, observed: "It is well established that the term "income" has the widest possible connotation even within the four corners of the Ordinance and income tax law; its constitutional meaning (i.e., in terms of entry No. 47 of the Federal Legislative List) is broader still. The definition in s. 2(29) [of the Ordinance] is inclusive and not exclusive. The concept of income (in the context of its statutory meaning) is well known. As was said by the Privy Council in Maharaj Kumar Gopal Saran Narain Singh v Commissioner of Income Tax [1935] 3 ITR 237, [1935] UKPC 29, 'anything which can properly be described as income, is taxable under the Act unless expressly exempted'. And as it has been put in the leading treatise on the subject, Kanga and Palkhiwala's The Law and Practice of Income Tax (10th ed., 2014, pg. 193): 'The categories of income are never closed. It would be impossible to define income precisely without excluding some species of it.' The undue focus by learned counsel on the term 'amount' and thereby, in effect, limiting the meaning of income to only money terms runs against the grain of a hundred years of jurisprudence. It cannot be countenanced. That the dividend in specie received by the taxpayer-appellants was income is clear even on a bare perusal of the facts and circumstances of the case….It should be kept in mind that the definition of 'dividend' in s. 2(19) [of the Ordinance] is also inclusive and not exclusive. A dividend in specie clearly falls within the scope (if nothing else) of clause (a) of the expanded meaning. What we have therefore is a term with an expanded meaning ('dividend') nested within another term which has a (much) wider meaning ('income')." **(Para 9)**

17. Muhammad Farooq v. Javed Khan

https://www.supremecourt.gov.pk/downloads_judgements/c.a._1191_2014.pdf

Present: Mr. Justice Qazi Faez Isa and Mr. Justice Yahya Afridi

In this case, the Supreme Court dealt with and decided several questions of law arising in the context of a mistake of fact occurred concerning a contract of sale of immoveable property. Summary of some of which is given hereunder:

In order to render an agreement, void for a mistake of fact under section 20 of the Contract Act 1872, both the parties must be labouring under the same mistake of fact, and the mistaken fact must be fundamental, going to the root of the contract.

Hon'ble Justice Yahya Afridi, speaking for the Court, held: "In order to render an agreement, void under section 20 of the Contract Act 1872, both the parties must be labouring under the same mistake of fact. Where one party knows the facts but refrains from communicating the same to the other party, section 20 of the Contract Act, 1872 is not attracted. Therefore, it is important to note that a unilateral mistake does not enable a party to avoid the contract. The mistake must be a bilateral one, where both parties are mistaken about the same vital fact…The mistaken fact must [also] be fundamental, going to the root of the contract, which would render execution of the contract wholly or partially unenforceable, and must not be a minor mistake of fact." **(Paras 12, 16)**

Conditions precedent for granting restitution to a claimant under the doctrine of "unjust enrichment" stated.

His lordship held: "In essence, the underlying principle for grant of restitution to a claimant is the "unjust enrichment" of the opposing party. In order to positively avail restitution, the claimant is to fulfil the four condition precedents: firstly, that the opposing party has been enriched by the receipt of a benefit; secondly, that this enrichment is at the expense of the claimant;

thirdly, that the retention of the enrichment is unjust; and finally, there is no defence or bar to the claim." **(Para 14)**

18. Rabia Gula v. Muhammad Janan

https://www.supremecourt.gov.pk/downloads_judgements/c.a._139_p_2013.pdf

Present: Mr. Justice Qazi Faez Isa and Mr. Justice Yahya Afridi

In this case, the Supreme Court while deciding upon the contested claims of the parties over the inheritance of their predecessor, explained the scope of the provisions of section 18 of the Limitation Act 1908 and their effect on the limitation period prescribed in the Schedule to that Act.

Section 18 of the Limitation Act 1908 postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to sue.

Hon'ble Justice Yahya Afridi, speaking for the Court, observed: "In essence, this provision postpones the commencement of the limitation period in cases where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the 'person injuriously affected'. Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule..to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the Articles of the Schedule, begin to run from the time different from that specified therein." **(Para 8.3)**

When despite obtaining knowledge of his right to sue, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heirs.

His lordship further observed: "[W]hen despite obtaining knowledge of such fraud and his right to sue, as mentioned in section 18, the injuriously affected person does not institute the suit within the prescribed limitation period, no fresh period of limitation can be available to his legal heir(s) or any other person who derives his right to sue from or through him (the injuriously affected person); for once the limitation period begins to run, it does not stop as per section 9 of the Limitation Act…Further, the definition of the term 'plaintiff', as given in section 2(8) of the Limitation Act also has the effect of barring the fresh start of the limitation period for the legal heir(s) or any other person, who derives his right to sue from or through such injuriously affected person, as it provides that 'plaintiff' includes any person from or through whom a plaintiff derives his right to sue." **(Para 8.5)**

19. Salamat Ali v. Muhammad Din

https://www.supremecourt.gov.pk/downloads_judgements/c.a._849_2015.pdf

Present: Mr. Justice Ijaz ul Ahsan, Mr. Justice Yahya Afridi and Mr. Justice Jamal Khan Mandokhail

In this case, the Supreme Court while deciding upon the contested claims of the petitioners concerning the inheritance of their predecessor, explained the scope of the applicability of the law of limitation to suits involving the claim of inheritance. The Court also explained the applicability of different evidential standards to different kinds of proceedings.

The law of limitation is relevant and applicable to inheritance cases where third party interest has been created in the property. Exception provided in section 18 of the Limitation Act 1908 of postponing the commencement of the period of limitation is not applicable against a bona fide purchaser.

Hon'ble Justice Yahya Afridi, speaking for the Court, observed: "[T]he law of limitation would be relevant in inheritance cases, where third party interest has been created in the property, as is in the present case…[T]he exception provided in section 18 of the Limitation Act 1908 ("Limitation Act"), according to which the benefit of postponing the commencement of the period of limitation provided to an injuriously affected person is not applicable against a bona fide purchaser…The umbrella concession qua the commencement of period of limitation, under section 18 of the Limitation Act, has an express exception, that is, when the disputed property is purchased by a third person in good faith and for valuable consideration (bone fide purchaser), the benefit of section 18 to the owner would then not be available against such third person…[A] wrong [inheritance] mutation is a mere "apprehended or threatened denial" of right, not necessitating for the person aggrieved thereby to institute the suit. The position is, however, different when the co-sharer in possession of the joint property, on the basis of a wrong inheritance mutation, sells the joint property, or any part thereof exceeding his share, claiming him to be the exclusive owner thereof and transfers possession of the sold land to a third person, the purchaser. In such a circumstance, the co-sharer by his said act "actually denies" the rights of the other co-sharer, who is only in constructive possession of the same, and ousts him from such constructive possession also by transferring the possession of the sold land to a third person, the purchaser. In such circumstances, the right to sue accrues to the aggrieved co-sharer from the date of such sale, and transfer of actual possession of the sold land to the third person, the purchaser." **(Paras 18, 20, 22, 27)**

The evidential standard of 'preponderance of probability' is applicable in civil cases, while the standard of 'proof beyond reasonable doubt' in criminal cases, and the in-between standard of 'clear and convincing proof' in civil cases involving allegations of a criminal nature.

His lordship further observed: "The conceptual analysis of this clause [clause (4) of Article 2 of the Qanun-e-Shahadat, 1984] shows that in order to prove a fact asserted by a party, it does not require a perfect proof of facts, as it is very rare to have an absolute certainty on facts. This provision sets the standard of a 'prudent man' for determining the probative effect of evidence under the 'circumstances of the particular case'. The judicial consensus that has evolved over time is that the standard of 'preponderance of probability' is applicable in civil cases, the standard of 'proof beyond reasonable doubt' in criminal cases, and the in-between standard of 'clear and convincing proof' in civil cases involving allegations of a criminal nature. All these three standards are, in fact, three different degrees of probability, which cannot be expressed in mathematical terms, and are to be evaluated 'under the circumstances of the particular case', as provided in clause (4) of Article 2 of the Qanun-e-Shahadat, 1984." **(Para 12)**

20. Kashif Iqbal v. State

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1255_2021.pdf

Present: Mr. Justice Maqbool Baqar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi and Mr. Justice Jamal Khan Mandokhail

While allowing a petition for leave to appeal filed for grant of pre arrest bail in a case where the co-accused of the petitioner had already been granted post arrest bail, the Court emphasized the point that in cases where the accused would be entitled to the grant of post arrest bail after his arrest on the plea of consistency, no useful purpose is served by declining him the relief of pre-arrest bail.

If the accused would be entitled to grant of post arrest bail on the plea of consistency, no useful purpose is served by declining him the relief of pre-arrest bail.

Hon'ble Justice Sayyed Mazahar Ali Akbar Naqvi, speaking for the Court, observed: "It is an admitted fact that the co-accused of the petitioner has been granted post-arrest bail by the court of competent jurisdiction which remains unchallenged by the complainant. Any order by this Court on any technical ground that the consideration for pre-arrest bail and post-arrest bail are entirely on different footing, would be only limited upto the arrest of the petitioner because of the reason that soon after his arrest he would become entitled for the concession of postarrest bail on the plea of consistency. In the case reported as Muhammad Ramzan Vs. Zafarullah (1986 SCMR 1380), the respondent was allowed pre-arrest bail by the learned High Court while the other similarly placed co-accused were granted bail after arrest. The complainant did not challenge the grant of bail after arrest to the similarly placed co-accused and sought cancellation of pre-arrest bail granted to the respondent before this Court by filing a criminal petition but this Court dismissed the petition for cancellation of bail by holding that 'no useful purpose would be served if the bail of Zafar Ullah Khan respondent is cancelled on any technical ground because after arrest he would again be allowed bail on the ground that similarly placed other accused are already on bail.' Keeping in view all the facts and circumstances, the case of the petitioner squarely falls within the purview of Section 497(2) Cr.P.C. entitling for further inquiry into his guilt." **(Para 5)**

21. Naeem Khan v. Muqadas Khan

https://www.supremecourt.gov.pk/downloads_judgements/c.a._908_2015.pdf

Present: Mr. Justice Munib Akhtar and Mr. Justice Muhammad Ali Mazhar

In this case, the Supreme Court heard an appeal by leave against the concurrent judgements of the courts below, whereby the suit of the petitioners challenging certain mutations had been dismissed. A plea as to one of the appellants being a pardanashin lady was raised before the apex Court, for the first time.

The apex Court repelled that plea on two counts: (i) that such plea was not taken in the plaint, memo of appeal or revision application nor even in the appeal before the Supreme Court, and (ii) that the appellant who claimed to be pardanashin did not appear as witness during trial and make her statement denying the transaction. An argument was advanced before the Supreme Court that the appellant did not appear in trial court for evidence due to being a pardanashin lady. The Court repelled this argument by observing that the appellant, who claimed to be a pardanashin lady, could have made the statement through video link or local commission.

Evidence of a pardanashin lady can be recorded, after her proper identification, through video link if the facility is available in the court premises or alternatively via video call. The law must not become stagnant or archaic while society moves forward.

Hon'ble Justice Muhammad Ali Mazhar, speaking for the Court, observed: "In this advanced era of computer age, the information technology is progressing and growing manifold with rapidity. Even under Article 164 of Qanun-e-Shahadat Order 1984, in such cases as the Court may consider appropriate, the Court may allow to produce any evidence that may have become available because of modern devices or techniques….In order to warrant the uninterrupted discharge of judicial functions, even in the Covid 19 pandemic, many Courts in our country made provisions by means of modern technologies to conduct hearings by video link and in same pattern, the evidence after proper identification can also be recorded through video link if the facility is available in the court premises or alternately via video call to ascertain whether the pardanashin lady endorsed her signature or thump impression by free will or she was compelled to do this under duress, coercion, fraud, emotional blackmailing or

misguidance or to deprive her right or interest in the property or divesting her share in the inheritance. The law must not become stagnant or archaic while society moves forward. It must be accessible, intelligible and must change with the times responding to the realism of modern day life which requires transfiguration of new ways and means and invention of up to date mechanisms for the purpose of providing access to justice with the aim to cut down the volume of litigation and pendency of cases." **(Para 15)**

22. Nasir Ali v. Muhammad Asghar

https://www.supremecourt.gov.pk/downloads_judgements/c.p._3958_2019.pdf

Present: Mr. Justice Sajjad Ali Shah, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi and Mr. Justice Muhammad Ali Mazhar

In this case, while hearing a petition for leave to appeal against the judgment of the Lahore High Court passed in a civil revision petition, the Supreme Court made certain observations as to applying the principles of *falsus in uno, falsus in omnibus* and *separating the grain from the chaff.*

Courts cannot plainly rely on the doctrine of falsus in uno, falsus in omnibus to get rid of its arduous duty of analyzing the evidence en masse thoroughly so as to separate the grain from the chaff, that is, the falsehood from the truth.

Hon'ble Justice Muhammad Ali Mazhar, speaking for the Court, observed: "The lawsuits are determined on preponderance or weighing the scale of probabilities in which Court has to see which party has succeeded to prove his case and discharged the onus of proof which can be scrutinized as a whole together with the contradictions, discrepancies or dearth of proof. It is the burdensome duty of the Court to detach the truth from the falsehood and endeavor should be made in terms of the well-known metaphor, "separate the grain from the chaff" which connotes and obligates the Court to scrutinize and evaluate the evidence recorded in the lis judiciously and cautiously in order to stand apart the falsehood from the truth and judge the quality and not the quantity of evidence…The credibility and trustworthiness of the witness mandates to be tested with reference to the quality of his evidence which must be free from suspicion or distrust and must impress the court as natural, truthful and so convincing. "Falsus in uno, falsus in omnibus" is a Latin term which means "false in one thing, false in everything" which is a legal principle in common law that a witness who testifies falsely about one matter is not at all credible to testify about any other matter. This doctrine simply encompasses and footholds the weightage of evidence which the court may acknowledge in a given set of circumstances or situation and is more or less or as good as a rule of caution or permissible inference which is essentially reliant on the Court to decide, however the Court cannot plainly relied on this doctrine to get rid of its arduous duty of analyzing the evidence en masse thoroughly so as to separate the falsehood from the truth." **(Paras 6, 7)**

Foreign Superior Courts

Supreme Court of UK

1. Bloomberg v. ZXC

[2022] UKSC 5
https://www.bailii.org/uk/cases/UKSC/2022/5.html

Before

Lord Reed, President, Lord Lloyd-Jones, Lord Sales, **Lord Hamblen and Lord Stephens**

Balancing exercise between the right to privacy and right to freedom of expression

The Respondent ("ZXC") was a US citizen who worked for a company which operated overseas. He and his employer were the subject of a criminal investigation by a UK Legal Enforcement Body (the "UKLEB").

During that investigation, the UKLEB sent a confidential Letter of Request (the "Letter") to the authorities of a foreign state seeking, among other things, information and documents relating to ZXC. The Letter expressly requested that its existence and contents remain confidential. The Appellant ("Bloomberg"), a well-known media company, obtained a copy of the Letter, on the basis of which it published an article reporting that information had been requested in respect of ZXC and detailing the matters in respect of which he was being investigated. After Bloomberg refused to remove the article from its website, and following an unsuccessful application for an interim injunction, ZXC brought a successful claim against Bloomberg for misuse of private information.

The first instance judge held that Bloomberg had published private information that was in principle protected by Article 8 of the European Convention on Human Rights (the "ECHR"); and that in balancing ZXC's rights against those of Bloomberg under Article 10 ECHR, the balance favoured ZXC. Bloomberg's appeal against that judgment was dismissed by the Court of Appeal. Bloomberg appealed to the Supreme Court.

The Supreme Court observed that misuse of private information is a distinct tort where liability is determined by applying a two-stage test. Stage one is whether the claimant objectively has a reasonable expectation of privacy in the relevant information considering all the circumstances of the case. If so, stage two is whether that expectation is outweighed by the publisher's right to freedom of expression. This involves a balancing exercise between the claimant's Article 8 ECHR right to privacy and the publisher's Article 10 ECHR right to freedom of expression, having due regard to section 12 of the Human Rights Act 1998.

The Supreme Court dismissed the appeal and held that the judge was right to treat the Letter's confidentiality as a relevant and important factor at both stage one and stage two but neither the judge nor the Court of Appeal held that the Letter's confidentiality itself rendered the information private or prevented Bloomberg from relying on the public interest on its disclosure. Whilst there is no necessary overlap between the distinct actions for misuse of private information and for breach of confidence, confidentiality and privacy will often overlap, and if information is confidential that is likely to support the reasonableness of an expectation of privacy.

The Court held that there was a general public interest in the observance of the duties of confidence and a specific public interest in maintaining the confidence of the Letter so as not to prejudice the criminal investigation. As was stated in the Letter, disclosure of its contents "will pose a material risk of prejudice to a criminal investigation". As a suspect in the investigation, the claimant also had a particular interest in avoiding prejudice to, and maintaining the fairness and integrity of, that investigation.

2. *R v. Secretary of State for the Home Department*

[2022] UKSC 3
https://www.bailii.org/uk/cases/UKSC/2022/3.html

Before
Lord Hodge, Deputy President, Lord Briggs, Lady Arden, Lord Stephens and Lady Rose

The appropriateness of imposing the fee is a question of policy which is for political determination, and not a matter for the court

The first claimant, O, was born in the United Kingdom in July 2007, attended school and had never left the UK. She had Nigerian citizenship, but from her tenth birthday she had satisfied the requirements to apply for registration as a British citizen under the British Nationality Act 1981. O applied to be registered as a British citizen but was unable to afford the full amount of the fee, which was £973 at that time. Because the full fee

was not paid, the Secretary of State refused to process O's application.

The Immigration Act 2014 empowered the Secretary of State to set the fees for applications to obtain British citizenship in subordinate legislation, having regard only to the matters listed in the 2014 Act. Those matters include not only the cost of processing the application but also the benefits that were likely to accrue from obtaining British citizenship and the costs of exercising other functions in relation to immigration and nationality. This appeal concerned whether subordinate legislation was ultra vires because it set the fee at which a child or young person could apply to be registered as a British citizen at a level which many young applicants have found to be unaffordable.

The Supreme Court dismissed the appeal by holding that, in the 2014 Act, Parliament authorised the subordinate legislation by which the Secretary of State has fixed the relevant application fee. The appropriateness of imposing the fee on children is a question of policy which is for political determination, and not a matter for the court.

3. PWR v. Director of Public Prosecutions

[2022] UKSC 2
https://www.supremecourt.uk/cases/docs/uksc-2020-0076-judgment.pdf

Coram
Lord Lloyd-Jones, **Lady Arden, Lord Hamblen, Lord Burrows and** Lady Rose

Strong presumption that criminal offences require mens rea—reasonable suspicion

Mr. Pwr attended a demonstration in London on 27 January 2018, the broad purpose of which was to protest against the perceived actions of the Turkish state in Afrin, a town in north-eastern Syria. During the demonstration, he was filmed waving a red flag which had the face of Abdullah Ocalan on it. Abdullah Ocalan is the founder of the Partiya Karkeren Kurdistane. an organisation proscribed under the Terrorism Act 2000 (the "2000 Act").

Mr. Pwr was removed from the protest and charged with an offence under section 13(1) ("section 13") of the 2000 Act. He was convicted by the Magistrates' Court. On appeal, the Crown Court dismissed Mr. Pwr's application of no case to answer, the basis of which was that (1) section 13 should be interpreted as requiring mens rea; and (2) to be compliant with Article 10 of the European Convention on Human Rights, section 13 must include an element of deliberate incitement to violence. The Divisional Court upheld the Crown Court's findings. Mr. Pwr approached the Supreme Court.

The Supreme Court unanimously dismissed the appeal. Lady Arden, Lord Hamblen and Lord Burrows delivered a joint judgment, with which Lord Lloyd-Jones and Lady Rose agreed.

Strict liability

Section 13(1) is a strict liability offence. A limited mental element is required under section 13(1) in that the defendant must know that he or she is wearing or carrying or displaying the relevant article. However, there is no extra mental element required over and above this.

There is a strong presumption that criminal offences require mens rea. In this case, the presumption is rebutted by necessary implication. First, the words arousing "reasonable suspicion" impose an objective standard and indicate that there is no requirement of mens rea. Second, to interpret section 13(1) as requiring mens rea would render incoherent what can otherwise be viewed as a calibrated and rational scheme of proscribed organisation offences in the 2000 Act. Third, a strict liability interpretation of the offence in section 13(1) is supported by the purpose (or mischief or policy) behind

the offence, which is concerned with the effect on other people rather than the intention or knowledge of the defendant.

4. *Competition and Markets Authority v. Flynn Pharma Ltd and another*

[2022] UKSC 14
https://www.supremecourt.uk/cases/docs/uksc-2020-0113-judgment.pdf

Coram
Lord Hodge, Deputy President, Lord Sales, Lord Leggatt, Lord Stephens and **Lady Rose**

All public bodies should enjoy a protected costs position when they lose a case

The Supreme Court was considering if there is a starting point when considering what costs to award following an appeal before the Competition Appeal Tribunal ("CAT") from an infringement decision of the Competition and Markets Authority, and if so, what is it? In particular, was the Court of Appeal correct to decide that there is a starting point that no order for costs should be made against a regulator if it has been unsuccessful, except for a good reason, or is the starting point instead that an order for costs should be made against the regulator where it is unsuccessful? Since its early case law the CAT has in general applied as a starting point in appeals brought under the Competition Act 1998 that an unsuccessful party will pay the successful party's costs (known as "costs follow the event").
In the Supreme Court's judgment, there is no generally applicable principle that all public bodies should enjoy a protected costs position when they lose a case. The principle supported by the a line of cases is, rather, that an important factor to consider when determining costs awards is the risk that there will be a chilling effect on the conduct of the public body if costs orders are routinely made against it when it is unsuccessful even where it has acted reasonably. Whether there is a real risk of such a chilling effect depends on the facts and circumstances of the public body in question and the nature of the decision which it is defending – it cannot be assumed that there is a risk just because the respondent to the appeal is a body acting in the public interest.
The Supreme Court unanimously allowed the appeals.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

5. *Municipal Employees' Pension Fund v. Pandelani Midas Mudau*

[2022] ZASCA 46
https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/summary/38-judgments-2022/3778-municipal-employees-pension-fund-and-another-v-pandelani-midas-mudau-and-another-case-no-1159-2020-2022-zasca-46-8-april-2022

Coram: Dambuza, Van Der Merwe, Carelse Jja, Smith and Weiner Ajja

The rules can be amended to interfere with vested rights retroactively

The first appellant was a pension fund (the Fund) whose members were previously disadvantaged persons employed by local government authorities. The second appellant was the Fund's administrator. The first respondent was employed by the second respondent, being the Vhembe District Municipality and, as such, qualified to become a member of the Fund.

At the time, the Fund's rules indicated that a member who joined the fund after June 1998 would be entitled to withdraw benefits to a certain specified extent. The Fund was cautioned about the unsustainability of this arrangement, and the rules were altered retroactively in order to protect the Fund from members who sought to capitalise on the old rule. An application to have the rule altered was submitted on 22 July 2013 and approved on 1 April 2014. In the meantime, the first respondent had applied for his withdrawal benefits, which he discovered had been substantially reduced. Aggrieved, the first respondent approached the

Adjudicator, contending that the benefits ought to be calculated in terms of the original rule. The Adjudicator upheld the appealmaintaining that the first respondent's withdrawals should not be affected because the amended rule was not yet in place at the time of the withdrawal. The high court and the full bench dismissed the respective appeals as the high court was of the view that the Adjudicator did not commit a reviewable irregularity and the full bench was of the view that an amended rule could not be applied before it came into effect.

The Supreme Court of Appeal cautiously bore in mind the presumption against retroactive legislation but maintained that if the wording of a statute is unambiguous and the intention of the legislature was to interfere with vested rights retroactively, then such intention must be given effect to. The Court was satisfied that the amended rule was intended to operate retroactively.

HIGH COURT OF AUSTRALIA

6. *John Ruddick v. Commonwealth of Australia*

[2022] HCA 9
https://eresources.hcourt.gov.au/downloadPdf/2022/HCA/9

Coram:
Kiefel CJ, Gageler, Keane, Gordon, Edelman, Steward and Gleeson JJ

Law tightening rules around the use of similar political party names upheld

The plaintiff (Mr. Ruddick), being a member of the Liberal Democratic Party ("the LDP"), challenged the amendments to Commonwealth Electoral Act 1918 ("2021 Amendments") which constrained the political party applying for registration from using name, abbreviation or logo which had word in common with name or abbreviation of prior registered party without that party's consent. They had the effect that an application for the registration of a political party must be refused by the Australian Electoral Commission ("the AEC"), or that a registered political party must be deregistered, if its name or logo contains a word that is in the name of a prior registered political party, unless that party consents to the use of the word. The LDP had thereby become subject to deregistration on the objection of the Liberal Party of Australia because of its use of the word "liberal".

The plaintiff pleaded that the 2021 Amendments were invalid for two reasons. First, in an apparent reference to section 7 of the Constitution, the impugned provisions were inconsistent with the constitutional requirement of representative government "which requires Senators to be directly chosen by the people". Secondly, pleaded that the impugned provisions burdened communication on government or political matters and were contrary to the implied freedom of political communication in the Constitution.

The High Court dismissed both submissions and observed that apart from the content of the ballot paper, deregistration of the Liberal Democratic Party would not preclude any communication with the public, including communication using the name "Liberal Democratic Party". The only potential restraint on the quality of electoral choice by the public, or on communication on government or political matters to the public, is that, by section 169 of the Commonwealth Electoral Act, a candidate for election endorsed by the Liberal Democratic Party, such as Mr Ruddick, would be unable to have that party name printed adjacent to their name on the ballot paper. Yet, as the 2013 Election demonstrated, that would have the effect of reducing confusion and thus enhancing the quality of electoral choice by the public.

Even if it were accepted that there was some small constraint upon political communication and the quality of electoral choice by the inability of a candidate endorsed by the Liberal Democratic Party to use the word "liberal" on the ballot paper, the net effect would still be an enhancement of electoral choice and the quality of

communication on government or political matters to the public. Contrary to Mr Ruddick's submissions, the Liberal Democratic Party would not be precluded, or impaired in any real way, from using its name to communicate any message of political philosophy.

7. *Wells Fargo Trust Company, v. VB Leaseco Pty Ltd*

[2022] HCA 8
https://eresources.hcourt.gov.au/downloadPdf/2022/HCA/8

Coram
Kiefel CJ, Gageler, Keane, Edelman and Steward JJ

Interpretation of the obligation to "give possession" in the Cape Town Convention

Australia is a contracting state party to the Cape Town Convention on International Interests in Mobile Equipment 2001 (the "Convention") and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the "Aircraft Protocol"). The Convention and the Aircraft Protocol are given force and effect in Australian law under the International Interests in Mobile Equipment (Cape Town Convention) Act 2013.

A lessor of aircraft engines (being aircraft objects for the purposes of the Convention) required the lessee airline undergoing insolvency proceedings in Australia to redeliver those aircraft engines to a designated redelivery location in Florida pursuant to redelivery requirements under the relevant lease agreements. The administrators of the airline did not relocate the aircraft engines to Florida, but instead offered the lessor the opportunity to retrieve the aircraft engines from their then current location in Australia.

The High Court of Australia decided that providing the creditor lessor with an opportunity to take possession of an aircraft object, wherever it was then located, was sufficient for a debtor airline in insolvency to comply with the obligation to "give possession" under the Convention. Such obligation to "give possession" did not require the debtor airline, in the circumstances, to go further and redeliver the aircraft objects to the creditor lessor at a specified location in accordance with the contractual terms of the relevant lease agreements.

SUPREME COURT OF CANADA

8. *R v. Tim*

2022 SCC 12
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19299/index.do

Coram
Wagner CJ and Moldaver, Côté, Brown, Rowe, Kasirer and Jamal JJ

Conviction for drug and firearm offences upheld despite police error

On October 8, 2016, Sokha Tim hit a road sign on a busy street in Calgary, Alberta and kept driving. When police found him about one kilometre away, the officer asked to see his driver's license, vehicle registration and proof of insurance. While Mr. Tim searched for the documents, the officer saw him try to hide a zip-lock bag containing a single yellow pill. The officer correctly identified the pill as gabapentin, a prescription drug, but mistakenly believed it was a controlled substance. After the officer arrested Mr. Tim, he and another officer searched him and his car, and found illegal drugs, ammunition and a loaded handgun.

Mr. Tim was charged with drug and firearm offences. At trial, he said the police had no basis to arrest or search him because the officer was mistaken about the legal status of gabapentin. As a result, he argued the police had violated his rights under sections 8 and 9 of the Charter of Rights and Freedoms (Charter). Section 8 of the Charter protects people from "unreasonable search or seizure" and section 9 protects people from "arbitrary

detention". The trial judge dismissed his arguments and admitted the evidence.
Convicted on all chargers, Mr. Tim appealed to Alberta's Court of Appeal, which found no violation of his *Charter* rights. He then appealed to the Supreme Court of Canada. The Supreme Court dismissed the appeal.

Charter rights were violated, but the evidence could be admitted nonetheless

Writing for a majority of the judges of the Supreme Court, Justice Mahmud Jamal said police violated Mr. Tim's section 9 Charter right by arresting him based on a mistake about the legal status of gabapentin. "Allowing the police to arrest based on what they believe the law is — rather than based on what the law actually is — would dramatically expand police powers at the expense of civil liberties", he wrote. Justice Jamal also said because Mr. Tim's arrest was unlawful, the searches of him and his car that followed also violated his section 8 Charter right.
When evidence is obtained in a manner that violates an accused's Charter rights, courts must conduct an analysis to determine if the evidence could still be admitted, or whether its admission would harm or "bring the administration of justice into disrepute". In this case, Justice Jamal said the violations were less serious and only moderately impacted Mr. Tim's Charter-protected interests. On the other hand, the evidence was reliable and essential to the prosecution of serious offences. Weighing these considerations, Justice Jamal said the evidence could be admitted. As a result, the Court upheld Mr. Tim's convictions.

9. *R. v. Stairs*

2022 SCC 11
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19298/index.do

Coram
Wagner CJ and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

Police did not violate an Ontario man's privacy when they searched his home

On June 1, 2017, police in Oakville, Ontario responded to a report about a man hitting a woman in a car. The man was later identified as Matthew Stairs. Police found the car parked in the driveway with no one inside, so they knocked on the front door of the house. When no one answered, the officers entered through a side door. Inside, they found a woman with a bruised face. They found and arrested Mr. Stairs in the basement. Police then looked around the basement living room and found drugs (methamphetamine).
Mr. Stairs was charged with possession of drugs for the purpose of trafficking, and with assault and breach of probation. At trial, Mr. Stairs argued that police were not allowed to search his home and therefore the drug evidence could not be used against him. He invoked section 8 of the Charter, which protects people from "unreasonable search or seizure". Police testified they searched the basement living room to address their safety concerns.

Mr. Stairs was convicted of all charges. He appealed his drug conviction to Ontario's Court of Appeal, which found the police search had not violated his section 8 Charter right. He then appealed to the Supreme Court of Canada.
The Supreme Court dismissed the appeal.

The search did not violate Mr. Stairs' section 8 Charter right

Writing for a majority of the judges of the Supreme Court, Justices Moldaver and Jamal said the search of the basement living room did not violate Mr. Stairs' section 8 Charter right. Police had reason to suspect a safety risk, and that their concerns would be addressed by a quick scan of the room.

The judges said the search of the basement living room complied with section 8 of the Charter because: (1) Mr. Stairs' arrest was lawful; (2) the search was related to his arrest, was of the surrounding area only and was conducted for safety reasons; and (3) the search accounted for the increased privacy

interests in a home. As a result, the drug evidence could be admitted at trial.

"A fundamental and longstanding principle of a free society is that a person's home is their castle", the judges wrote. They added that this privacy interest must be balanced with valid law enforcement objectives. In other words, police can search a home for safety reasons if the search is conducted in a reasonable manner and accounts for the greater expectation of privacy in a person's home.

10. R. v. Vallières

2022 SCC 10
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19276/index.do

Coram
Wagner CJ and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

The Supreme Court upholds a fine of more than $9 million for a Quebec maple syrup thief

The robbery was discovered in July 2012 when the Fédération des producteurs acéricoles du Québec (Federation) did a routine inventory check at its warehouse in Saint-Louis-de-Blandford and found barrels containing water instead of maple syrup. The Federation controls the production of maple syrup in Quebec. The Quebec provincial police arrested 16 people, including Mr. Richard Vallières.

Mr. Vallières was found guilty of fraud, trafficking and theft. The stolen syrup was worth over $18 million. But during his trial in Quebec Superior Court, he said he sold the syrup for $10 million and made a personal profit of around $1 million.

The judge sentenced Mr. Vallières to eight years in prison and fined him over $9 million. The judge ordered this fine based on section 462.37(3) of the Criminal Code, which says a fine must be equal to the value of the stolen property when that property cannot be returned to its owner. This is called a "fine in lieu".

Mr. Vallières appealed to the Court of Appeal of Quebec. It reduced the fine to around $1 million, which was Mr. Vallières' profit.
The Crown then appealed to the Supreme Court of Canada, arguing the Court of Appeal should not have reduced the fine.
The Supreme Court sided with the Crown.
A court cannot limit the amount of a fine to the profit made by an offender
Writing for a unanimous Court, Chief Justice Wagner said the wording of section 462.37(3) of the *Criminal Code* is clear: Mr. Vallières must pay a fine equal to the value of the stolen syrup. This amounted to more than $9 million (in other words, $10 million for which he sold the syrup minus the amount he owed to the Federation under a separate court order). Mr. Vallières has 10 years to pay this fine or else he must serve six years in prison. Given the wording of section 462.37(3), a court does not have the discretion (power) to limit a fine to the profit made. So, the Court of Appeal was wrong in this case to reduce Mr. Vallières' fine to $1 million.

The Chief Justice explained that Parliament adopted section 462.37(3) for two reasons: not allowing an offender to profit from their crime and discouraging them from repeating the offence. This provision is severe because Parliament wanted to send a clear message that "crime does not pay".

In cases where more than one person had possession or control of the stolen property, a court can divide the value of that property among them in order to avoid the owner getting more money in return than they should. An offender must ask the court to divide the amount, and the court must be able to do so based on the evidence. In this case, the Chief Justice said Mr. Vallières had not proven at trial, or even on appeal, that the $10 million should be divided between him and the other thieves. As a result, the trial judge

had no choice but to order him to pay the full amount.

11. R v. Samaniego

2022 SCC 9
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19275/index.do

Coram
Wagner CJ and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

Conviction upheld despite an error by the trial judge

Mr. Samaniego and another man (his co-accused) went one evening to a nightclub in Toronto called Las Brisas. The security guard allowed the co-accused into the club, as they were good friends. However, the security guard did not allow Mr. Samaniego in because he had threatened him in the past. Later in the evening, the police were called about a gun at Las Brisas. They arrested Mr. Samaniego and the co-accused for possession of a loaded restricted firearm.

At trial, the Crown called the security guard as a witness. The security guard testified that Mr. Samaniego threatened him when he did not allow him into the club and showed him a gun tucked into his waistband. The guard also testified that the co-accused came out of the club to resolve the situation, took the gun away from Mr. Samaniego and then went back in, but later came out again, dropped the gun in front of the guard and picked it back up. The Crown's position was that both men had the gun at some point.

In defence, Mr. Samaniego's lawyer argued that only the co-accused had possession of the gun and that the security guard was lying to protect the co-accused because he was his friend.

During the trial, the judge made four rulings that limited the questions the security guard could be asked, including questions about who dropped the gun and who picked it up. The jury eventually convicted Mr. Samaniego.

Mr. Samaniego appealed his conviction to the Court of Appeal. He argued the trial judge's rulings were wrong. A majority of the Court of Appeal disagreed, finding that the trial judge's rulings were trial management decisions and did not affect the fairness of the trial. Mr. Samaniego then appealed to the Supreme Court of Canada.
The Supreme Court dismissed the appeal.

The accused had a fair trial despite an error in one of the trial judge's rulings

Writing for the majority, Justice Moldaver said one of the four rulings was wrong in part. It was the ruling that limited the questions Mr. Samaniego's lawyer could ask the security guard about who dropped the gun and who picked it up. Justice Moldaver said that ruling was both a trial management ruling and an evidentiary ruling. As he explained, judges can make rulings to ensure that trials are well run. These are known as "trial management rulings". "Evidentiary rulings" relate to the admissibility of evidence, requiring the judge to apply the rules of evidence. Sometimes these two types of rulings overlap.

During the preliminary inquiry, the security guard had told a different story at first about who dropped the gun and who picked it up. He later changed his story and repeated the same account he had told police and at the trial. Mr. Samaniego's lawyer was wanting to show the guard had said one thing at the preliminary inquiry and another at the trial. This was not true, and the trial management part of this ruling was to prevent that.

As to the security guard saying different things during the preliminary inquiry, the trial judge should have allowed Mr. Samaniego's lawyer to question him about it. That evidentiary part of the ruling was wrong. The fact the guard eventually changed his story did not erase his first version of events.

This was an inconsistency that the lawyer could ask him about.

Although the ruling was wrong in part, the error caused no harm to Mr. Samaniego. His lawyer was still able to challenge the security guard's credibility. As a result, the majority judges ruled Mr. Samaniego had a fair trial and they upheld his conviction.

12. Anderson v. Alberta

2022 SCC 6
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19244/index.do

Coram
Wagner CJ and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

The Supreme Court rules that an Alberta First Nation could qualify to have its legal fees paid in advance by the government despite having funds of its own

The question in this case was whether an Alberta First Nation qualifies for "advance costs". Advance costs means a party's legal fees are paid in advance by the government in order to allow the case to continue when it is a matter of public interest.

The case involved the Beaver Lake Cree Nation (Beaver Lake) of northeastern Alberta whose members are beneficiaries of Treaty No. 6, which means they have the right to hunt and fish on their traditional lands. More than a decade ago, Beaver Lake sued the governments of Canada and Alberta for damages due to industrial development on those lands, including oil and gas wells. Since then, there have been many preliminary court proceedings, and the case has yet to go to trial. But Beaver Lake has already paid $3 million in legal fees and says it cannot afford to pay more. As a result, it asked the Court of Queen's Bench of Alberta to award it advance costs.
The Court of Queen's Bench accepted the request and ordered Canada and Alberta to each contribute $300,000 annually to Beaver Lake's legal costs until the trial is over. This was the same amount as Beaver Lake would also contribute annually. The Court of Appeal of Alberta reversed that order because Beaver Lake had not proven it could not afford the ongoing litigation. Beaver Lake then appealed to the Supreme Court of Canada.

The Supreme Court ruled that Beaver Lake could qualify for advance costs should it not be able to pay its legal fees.

A First Nation could qualify for advance costs despite having funds of its own, if it cannot afford to pay its legal fees nonetheless

Writing for a unanimous Court, Justices Karakatsanis and Brown explained that advance costs are rarely awarded. However, a party that has funds of its own could still qualify for advance costs if it satisfies the test for "impecuniosity". Impecuniosity means not having enough money to pay. It is one of the three requirements for advance costs set out by the Supreme Court in 2003 in *British Columbia (Minister of Forests) v. Okanagan Indian Band*. The other two requirements are not disputed by the parties in this case.
The Supreme Court said the test for impecuniosity is not easily met. An applicant must demonstrate that it cannot afford to pay its legal fees given its other pressing needs and that the case would therefore not continue. A court's analysis must be based on the evidence. The court must be able to: (1) identify the applicant's pressing needs; (2) determine what resources are required to meet those needs; (3) assess the applicant's financial resources; and (4) identify the estimated costs of the litigation. The Supreme Court said that in cases such as this one, pressing needs must be understood in the spirit of reconciliation and from the perspective of a First Nation, because it would have its own spending priorities.

The judges of the Supreme Court concluded there was not enough evidence on the record before the Court of Queen's Bench of Alberta to decide Beaver Lake's application for advance costs. As such, the judges decided to send the case back to that court for a new hearing.

13. A.E. etc. v. Her Majesty The Queen

2022 SCC 4
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/19186/1/document.do

Coram
Wagner CJ and **Moldaver**, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

Fraud, for the purpose of vitiating consent, has two elements: dishonestyand deprivation

A 17-year-old complainant, a troubled young woman who wrestled with anxiety, alcohol and thoughts of suicide, went with the respondents to a residence and engaged in sexual activity. During the course of the sexual acts, the complainant was assaulted and abused. The intercourse was videotaped without the complainant's knowledge. The complainant testified that she did not consent to the activities, but the respondents maintained that she did consent. The trial judge acquitted respondents of sexual assault on account of complainant's broad advance consent. The Crown filed an appeal. The Court of Appeal held that the surreptitious video recording vitiated consent. Fraud, for the purpose of vitiating consent, has two elements: (1) dishonesty, which can include the non-disclosure of important facts; and (2) deprivation, or risk of deprivation, in the form of serious bodily harm which results from the dishonesty. The videotaping sexual acts without the consent of the other individual is a violation of a person's dignity and privacy. The video recording satisfied the first branch of the test. The psychological harm was included under the category of serious bodily harm based on the serious psychological impacts a video recording could cause the complainant. The Court, therefore, found the complainant's consent was vitiated by fraud. On these errors, the Court of Appeal found the verdict of acquittal on the sexual assault with a weapon could not stand. The Supreme Court dismissed the appeals and upheld convictions of respondents for sexual assault.

14. Her Majesty The Queen v. Daniel Brunelle

2022 SCC 5
https://decisions.scc-csc.ca/scc-csc/scc-csc/en/19243/1/document.do

Coram
Wagner CJ and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ

Grounds for appellate interference

The accused claimed that he acted in self defence. In R. v. Khill, 2021 SCC 37, three components must be present for this defence to be successful: (1) the catalyst; (2) the motive; and (3) the response. The trial judge rejected the theory of self defence. In her view, the second criterion for this defence was not met. In light of her assessment of the evidence, she found rather that the accused had acted out of vengeance. She therefore convicted him of aggravated assault. The majority of the Court of Appeal allowed the accused's appeal, set aside the guilty verdicts and ordered a new trial on the ground that the trial judge had erred in analyzing the second criterion for self defence. The decision of Court of Appeal was challenged before Supreme Court.
The Supreme Court held that the majority of the Court of Appeal failed to consider the trial judge's privileged position in assessing the evidence. The majority faulted the trial judge for failing to consider certain evidence, but it did so without clearly identifying a palpable and overriding error in her analysis. The mere fact that the trial judge did not discuss a certain point or certain evidence in depth is not sufficient grounds for appellate

interference. The majority could not simply substitute its opinion for that of the trial judge with respect to the assessment of the credibility of witnesses. In the absence of a reviewable error, it should have shown deference. A verdict may be considered unreasonable where it is based on illogical or irrational reasoning, such as where the trial judge makes a finding that is essential to the verdict but incompatible with evidence that is un-contradicted and not rejected by the judge. Here, the inference drawn by the trial judge from the evidence was not incompatible with the evidence adduced. On the contrary, her approach was coherent and supported by evidence that was neither contradicted nor rejected. There were no grounds for intervention. The decision of Court of Appeal was set aside and that of trial judge was restored.

High Court of Delhi

15. Kinri Dhir v. Veer Singh

https://images.assettype.com/barandbench/2022-04/fab32365-5120-4963-ad1f-9bae6d247f3f/Kinri_Dhir_v_Veer_Singh.pdf

Coram
Mr. Justice Yashwant Varma

Judicial bias need not be proven in fact, only needs to be tested from ordinary person's viewpoint

The petitioner preferred a petition seeking transfer of proceedings pending before the Court of the Principal Judge Family Court. The Court ordered transfer of the case. The Court observed that bias is not an issue which is required to be proved as existing in fact. What is important to consider is whether the facts could give rise to an apprehension of bias. That apprehension can neither be founded on imagination nor can it rest merely on the fact that an adverse decision was rendered. The apprehension would have to be tested from the viewpoint of an ordinary person and whether the material would legitimately give rise to a doubt of whether the judge or the adjudicator would have the ability to decide impartially and fairly. Neutrality is one of the fundamental attributes of the justice system which requires the judge to consider and weigh each utterance, every word forming part of the decision, ensuring that it embodies and conveys a sense of fairness and neutrality having informed the decision-making process. An action may be misconceived, ill-advised or even wholly unsustainable in law, that would also not justify the making of scathing remarks which may convey the impression that the judge let extraneous considerations cloud the overarching and fundamental requirement of being impartial and unprejudiced.

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