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BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2022 to 30-11-2022)

A Summary of Latest Judgments Delivered by the Constitutional Courts of Local and Foreign Jurisdictions on Crucial Legal Issues

Prepared & Published by the Research Centre Lahore High Court

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LATEST LEGISLATION/AMENDMENTS

SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Muhammad Saleem Baig, Chairman Pakistan Electronic Media Regulatory Authority (PEMRA), Islamabad v. M/s Labbaik (Pvt) Limited through Executive Admin Bol TV Quetta and others
Constitution Petition No.10 of 2020
Mr. Justice Umar Ata Bandial, CJ, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/const.p._10_2020.pdf

Facts: The petitioner through this Constitution Petition filed under Articles 186A and 187 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) sought transfer of cases filed against him and pending before different High Courts.

Issue: Whether inconvenience of the party is a reasonable ground to invoke jurisdiction of Supreme Court under Article 186A of the Constitution of the Islamic Republic of Pakistan, 1973 for transfer of case?

Analysis: The power under Article 186A of the Constitution is an extraordinary power, to be used only for meeting the ends of justice, being cases of extreme hardship and cannot be invoked in cases of convenience or inconvenience. … This Court has exercised this extraordinary power in exceptional circumstances, based on the compelling circumstances of the case. In a case reported as 1994 SCMR 1031, this Court held that for invoking Article 186 A of the Constitution, a strong case must be made out to advance cause of justice. Simpliciter inconvenience is not such a cause. … Hence, in order to invoke this safeguard, a party has to demonstrate with a degree of certainty that it would not get a fair and impartial hearing, hence, transfer is necessary.

Conclusion: The simpliciter inconvenience of the party is not a reasonable ground to invoke jurisdiction of Supreme Court under Article 186A of the Constitution of the Islamic Republic of Pakistan, 1973 for transfer of case rather it is to meet the ends of justice, being cases of extreme hardship.

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2. **Supreme Court of Pakistan**
Gull Din v. The State through P.G., Punjab and another
Criminal Petition No. 1308 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1308_2022.pdf

Facts: The petitioner through this criminal petition sought bail on the ground that rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001 ('the Rules'), was not complied with in sending the narcotics for analysis.

Issue: i) Whether the rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001 is directory or mandatory in nature?
ii) Whether the non-compliance of a rule, directory in nature is a sufficient ground

to entitle the accused to the concession of bail?

Analysis: i) This Court in a number of judgments has held that the said rule is directory, including in the cases of Tariq Mehmood v State (PLD 2009 Supreme Court 39), Gul Alam v State (2011 SCMR 624) and Muhammad Sarfraz v State (2017 SCMR 1874).

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

Conclusion: i) The rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001 is directory in nature.

ii) Non-compliance of a rule, directory in nature is not a sufficient ground to entitle the accused to the concession of bail.

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3. **Supreme Court of Pakistan**
Munir Hussain, etc. v. Riffat Shamim, etc.
C.M.A. No. 3492/ 2022 & CPLA No. 3842/ 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Yahya Afridi, Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3492_2022.pdf

Facts: The petitioners challenged the paternity of respondent No.2 through a declaratory suit filed under section 42 of the Specific Relief Act, 1877. On being aggrieved by the order of High Court in this regard, the petitioners filed civil petition for leave to appeal.

Issues: Whether challenging another's paternity/legitimacy is an assertion of one's own legal character in terms of section 42 of the Specific Relief Act, 1877?

Analysis: After considering the scope of the section 42 and precedents this Court held in Laila Qayyum's case that to challenge another's paternity/legitimacy was not an assertion of one's own legal character in terms of section 42. However, a person whose legal character, including paternity, was being denied such person could file a suit to claim it, but the instant case is not such a case. In Laila Qayyum's case the plaintiffs lacked legal character under section 42 of the Specific Relief Act, 1877, and the same principle is attracted in this case.

Conclusion: Challenging another's paternity/legitimacy is not an assertion of one's own legal character in terms of section 42 of the Specific Relief Act, 1877.

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4. **Supreme Court of Pakistan**
Meera Shafi V. Ali Zafar
Civil Petition No. 1795 of 2022
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Mansoor Ali Shah.
https://www.supremecourt.gov.pk/downloads_judgements/c.p.1795_2022.pdf

Facts: Through the present petition for leave to appeal, petitioner has impugned judgment of High Court dismissing her Civil Revision having been preferred against order of trial court dismissing her application for recording her remaining cross-examination from Canada through a video link.

Issues: i) Whether the word "attendance" used in Order 18 Rule 4 of the CPC can be extended to "virtual attendance"?
ii) Whether the evidence of a witness who is not physically present in court can be recorded in a civil case by using the modern technology of video conferencing, within the existing legal framework?

Analysis: i) Rule 4 of Order 18 of CPC provides that the evidence of the witnesses in attendance shall be taken orally in open court in the presence and under the personal direction and superintendence of the judge. The "virtual attendance" of a witness in court through the medium of video conferencing enables the judge and other persons present in court to see the witness and hear what he says, and vice versa. Such an attendance is thus in open court, and his evidence is also recorded under the personal superintendence of the judge. The judge under whose superintendence the evidence through video conferencing is recorded can satisfy himself about the free will of the witness present on screen as he does about the witness present physically in court by questioning him in this regard and ensuring that he is not under the immediate influence of any other person. The identity of the witness can also be verified by the judge through appropriate means. The witness can be confronted on screen with documents produced or sought to be produced in court by any of the parties or the scanned copies of such documents can be sent to him through modern means of communication. The virtual attendance of a witness in court, thus, appears to be the species of the genus of "attendance" required under Rule 4 ibid and fulfills the legislative purpose and policy in requiring the attendance of a witness in court for recording his evidence.
ii) There is no such provision in Order XVI of the CPC relating to 'summoning and attendance of witnesses'. The CPC is silent on the matter of evidence recording through video conferencing and there is no express provision either allowing or prohibiting such procedure of recording evidence. The courts are to act upon the principle that every procedure is to be understood as permissible till it is shown to be prohibited by law. The inherent powers of the civil courts saved by Section 151 are to be exercised where the situation is not covered by any provision of the CPC. When in the circumstances of a case, requiring physical attendance of a witness in court will incur an unnecessary amount of delay, expense or inconvenience, the order of the court allowing virtual attendance of a witness through video conferencing is for the ends of justice and to prevent abuse of the process of the court. The standard of unreasonable "delay or

expense" for relaxing adherence to certain general rules of the law of evidence has been provided in Articles 46, 47 and 71 of the QSO, while Section s 503 and 512 of the Code of Criminal Procedure 1898 add the ground of unreasonable "inconvenience" to the said two grounds for creating exceptions to some general rules of recording the evidence of witnesses. An order allowing virtual attendance of the witness in such circumstances thus squarely falls within the scope of Section 151 of the CPC. Article 164 of the QSO provides that in such cases as the court may consider appropriate, the court may allow production of any evidence that may have become available because of modern devices or techniques. The QSO is mainly a procedural law; its provisions are therefore to be construed liberally, not restrictively, to advance the remedy. As per Article 2(1) (c) of the QSO, unless there is anything repugnant in the subject or context, the term "evidence" used in the QSO is to include: (i) all statements which the Court permits or requires be made before it by witnesses, in relation to matters of fact under inquiry such statements are called oral evidence; and (ii) all documents produced for the inspection of the Court such documents are called documentary evidence. The oral evidence of a witness that may become available because of the modern technique of video conferencing, does fall within the scope of the provisions of Article 164 of the QSO. Although the powers conferred by Section 151 of the CPC and Article 164 of the QSO are discretionary, the courts are to exercise them judiciously, not arbitrarily or mechanically.

Conclusion: i) The word "attendance" used in Order 18 Rule 4 of the CPC can be extended to"virtual attendance", and the word "attendance" mentioned therein does not mean only "physical attendance" but includes "virtual attendance" made possible by the modern technology of video conferencing.

ii) Evidence of a witness who is not physically present in court can be recorded in a civil case by using the modern technology of video conferencing.

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5. **Supreme Court of Pakistan**
Federation of Pakistan through Secretary M/o Communications, Islamabad & another v. Shuja Sharif & others
Civil Petition No.303 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._303_2019.pdf

Facts: The respondents No.1 to 9 had filed a Writ Petition in the High Court and entreated a declaration that the ban on plying motorcycles on motorways imposed by the National Highways and Motorway Police was illegal. The High Court allowed the petition and ICA filed by the petitioners was dismissed. Hence, this Civil Petition for leave to appeal.

Issues: i) What is purpose of section 45 of the National Highways Safety Ordinance, 2000?

ii) What approach the court ought to adopt in interpretation of statute or any enactment therein?

iii) Whether principle of equality or egalitarianism means that every law must

have universal application to all persons?
iv) What is meant by judicial review and judicial overreach?

Analysis: i) Section 45 of the Ordinance 2000, in its plain language, is analogous to a non-obstante clause which seems to have been given an overriding effect on other provisions in its true spirit. The powers vested in under Section 45 of the Ordinance 2000 are in fact meant to ensure and regulate safety measures in the larger public interest to avoid untoward risks of accidents in order to save precious lives which in no way seems to have any tendency, objective and or ingenuity to deprive a person from his life or liberty, rather the powers have been conferred by all means to restrict entry in the public interest to regulate and ensure safety measures of traffic on motorways.

ii) It is well settled exposition of law that a statute or any enacting provision therein must be construed as to make it effective and operative. The Latin legal maxim "ut res magis valeat quam pereat" denotes that it is better for a thing to have effect than to be made void or it is better to validate a thing than to invalidate it. The Court should, in so far as possible, avoid that construction which may ascribe or attribute unreasonableness to the will of legislature and while moving into the task of interpretation of any law or provision, the predominant objective should be that the law survives and the presumption, if any, must be in favour of its constitutionality. The court should not adopt such interpretation which renders the statute or any of its provisions inoperative or unworkable.

iii) It is a well acknowledged and long-standing precept that persons may be classified into groups and such groups may be treated differently if there is a reasonable basis for such difference. The principle of equality or egalitarianism does not mean that every law must have universal application to all persons. In fact, the fluctuating needs of dissimilar sets of persons necessitate different treatment. The touchstone of acceptable classification requires the fulfillment of two basic ingredients, namely that the classification must be founded on an intelligible differentia which may judiciously distinguish persons or things that are grouped together from others left out of the group, and the differentia must have a logical and reasonable linkage with the object sought to be achieved.

iv) In the case reported as PLD 2021 SC 571, this Court held that the Judicial review is the power of the courts to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the Constitution. Judicial review is the genus and judicial activism or judicial restraint are its subspecies. The judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government. Judicial overreach is transgressive as it transforms the judicial role of adjudication and interpretation of law into that of judicial legislation or judicial policy making, thus encroaching upon the other branches of the Government and disregarding the fine line of separation of powers, upon which is pillared the very construct of constitutional democracy.

Conclusion: i) The powers vested under Section 45 of the Ordinance 2000 are in fact meant to ensure and regulate safety measures in the larger public interest to avoid untoward risks of accidents in order to save precious lives.
ii) A statute or any enacting provision therein must be construed as to make it effective and operative. The court should not adopt such interpretation which renders the statute or any of its provisions inoperative or unworkable.
iii) Principle of equality or egalitarianism does not mean that every law must have universal application to all persons.
iv) Judicial review is the power of the courts to examine the actions of the legislative, executive and to determine whether such actions are consistent with the Constitution. The judicial overreach is when the judiciary starts interfering with the proper functioning of the legislative or executive organs of the government.

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6. **Supreme Court of Pakistan**
Jawad Ahmad Mir, etc. v. Prof. Dr. Imtiaz Ali Khan and others.
Civil Petition No. 3944 of 2019
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3944_2019.pdf

Facts: The petitioner had questioned the Notification whereby the Governor of KPK/Chancellor, Women University authorized respondent No.1/Vice Chancellor, University of Swabi to look after the affairs of the office of Vice Chancellor, Women University till the appointment of a regular Vice Chancellor.

Issues: (i)Whether a person who is otherwise eligible to hold a particular post can be can be assigned acting charge and current charge by a competent authority in view of an exigency as a stopgap arrangement?
(ii) What is meant by the term "Stopgap"?
(iii) What is the rationale behind the writ of *quo warranto*?
(iv) Whether a writ of *quo warranto* can only be filed by an aggrieved person?
(v) What are the conditions necessary for the issuance of a writ of *quo warranto*?
(vi) What are the essential grounds for issuance of a writ of *quo warranto*?

Analysis: (i) The language of the impugned Notification unequivocally demonstrates that this assignment was given as a stopgap arrangement for looking after the affairs of the Women University till such time that a regular Vice Chancellor is appointed... We have flicked through the reply of the respondent No.1 and 5 submitted in the High Court wherein it was specifically pleaded that there was no permanent faculty in the Women University, nor was there any Pro Vice Chancellor available during the tenure of the Vice Chancellor and, since the selection process was not initiated as envisioned under the KPU Act , therefore the impugned Notification was issued to run the day-to-day affairs of the Women University…At times the person possessing requisite antecedents to qualify for a

particular post may not be available in the department and, while the selection for appointment is under process, or is delayed due to some plausible reason for the time being, the competent authority, in view of exigency, may assign acting charge and current charge as a stopgap arrangement.

(ii) The expression 'stopgap' means a temporary way of dealing with a problem or satisfying a need and/ or something that can be used until something better or more permanent can be obtained. Ad-hoc appointment is made, or look-after/acting or additional charge is given, under exceptional situations as a stopgap arrangement for a limited period with the sole aim and intention to continue such appointment till the regular appointment on the post. A person appointed as a stopgap arrangement does not hold such post in a substantive capacity; this arrangement characterizes a class which is distinct and dissimilar from those who are appointed to posts in Service compliant to the relevant rules of recruitment. Look-after or additional charge as a stopgap arrangement shall not entitle the incumbent to claim any benefit on account of such arrangement which can be revoked or withdrawn by the competent authority at any time without assigning any reason.

(iii) The writ of quo warranto is in the nature of setting forth an information before the High Court against a person who claimed and usurped an office, franchise or liberty. The rationality of the writ of quo warranto is to settle the legality of the holder of a statutory or Constitutional office and decide whether he was holding such public office in accordance with law or against the law.

(iv) The writ of quo warranto can be instituted by a person though he may not come within the meaning of words "aggrieved person". For the purpose of maintaining a writ of quo warranto there is no requirement of an aggrieved person, and a whistle blower need not to be personally aggrieved in the strict sense and may relay the information to the court to enquire from the person holding public office. The purpose of the writ of quo warranto is to pose a question to the holder of a public office: “where is your warrant of appointment by which you are holding this office?” In the writ of quo warranto no special kind of interest in the relator is needed, nor is it necessary to explain which of his specific legal rights is infringed. It is enough for this issue that the relator is a member of the public and acts bona fide. This writ is more in the nature of public interest litigation where undoing of a wrong or vindication of a right is sought by an individual for himself, or for the good of the society, or as a matter of principle.

(v) The conditions necessary for the issuance of a writ of quo warranto are that the office must be public and created by a statute or Constitution itself; the office must be a substantive one and not merely the function of an employment of a servant at the will during the pleasure of others; there has been contravention of the Constitution or a statute or statutory instrument by appointing such person to that office.

(vi) The essential grounds for issuing a writ of quo warranto are that the holder of the post does not possess the prescribed qualification; the appointing authority is

not the competent authority to make the appointment and that the procedure prescribed by law has not been followed. The burden of proof is then upon the appointee to demonstrate that his appointment is in accordance with the law and rules. It is clear that before a person can claim a writ of *quo warranto*, he must satisfy the court, *inter alia* , that the office in question is a public office and is held by a usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

Conclusion: (i) A person who is otherwise eligible to hold a particular post can be assigned acting charge and current charge by a competent authority in view of an exigency as a stopgap arrangement.
(ii) The expression 'stopgap' means a temporary way of dealing with a problem or satisfying a need and/ or something that can be used until something better or more permanent can be obtained.
(iii) The rationality of the writ of quo warranto is to settle the legality of the holder of a statutory or Constitutional office and decide whether he was holding such public office in accordance with law or against the law.
(iv) The writ of quo warranto can be instituted by a person though he may not come within the meaning of words "aggrieved person".
(v) Above mentioned are the conditions necessary for the issuance of a writ of quo warranto.
(vi) The essential grounds for issuing a writ of quo warranto are that the holder of the post does not possess the prescribed qualification; the appointing authority is not the competent authority to make the appointment and that the procedure prescribed by law has not been followed.

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7. **Supreme Court of Pakistan**
Javed Iqbal v. The State
Criminal Appeal No.139 OF 2022
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan,
Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._139_2022.pdf

Facts: Through this appeal by leave of the Court, appellant has impugned the judgment of the Peshawar High Court, Peshawar, whereby his appeal was dismissed and his sentence of imprisonment for life under section 9(c) of the Control of Narcotics Substances Act, 1997 was maintained.

Issues: i) Whether prosecution is duty bound to prove safe custody and safe transmission of the sample parcels and what is the effect if the same is not established by the prosecution?
ii) Whether confession could be split into pieces, and any part of the same can be taken to favour the prosecution?
iii) Whether accused can be convicted solely on the basis of confession?
iv) When the question of burden of proof become relevant?

v) Whether accused is entitled to the benefit of doubt arising out of plea/ confession?

Analysis: i) So the safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend benefit of doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused.

ii) It is settled by now by this Court that any confession cannot be taken into consideration in pieces. The argument of the learned Addl. AG KP is that some part of the judicial confession can be taken into consideration but we have already observed in number of cases that any confession made by an accused, whether judicial or extra-judicial, should be taken into consideration in toto and could not be split into pieces, nor any part of the same can be taken to favour the prosecution. There is no doubt that any such confession may be taken into consideration but the court cannot select out of the statement, the passage, which goes against the accused. Such confession must be accepted or rejected as a whole. No scrutiny is required by this Court of such a confession.

iii) The proper and the legal way of dealing with a criminal case is that the Court should first discuss the prosecution case and evidence in order to come to an independent finding with regard to the reliability of the prosecution witnesses, particularly the eye-witnesses and the probability of the story told by them, and then examine the version of the accused whether in the shape of confession, judicial or extra judicial, or statement recorded under section 342 or 340(2) of the Code (hereinafter called 'the statement '). If the Court disbelieves or rejects or excludes from consideration the prosecution evidence, then the Court must accept 'the statement' of the accused as a whole without scrutiny. If 'the statement' is exculpatory, then he must be acquitted. If 'the statement' when believed as a whole, constitutes some offence punishable under the law, then the accused should be convicted for that offence only.

iv) Where the prosecution succeeds in establishing its case against the accused beyond reasonable doubt, then the stage arrives for consideration of the plea of accused in defence and the question of burden of proof becomes relevant. Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise.

v) It is the prosecution who has to prove the case against an accused beyond any doubt and accused is not required to establish his plea (stated in his confessional statement or in his statement recorded under section 342 or 340(2) of the Code) and it is the duty of the Court to examine as to whether such plea was reasonably possible and the benefit of doubt arising out of such plea/ confession must be extended to the accused.

Conclusion: i) In the cases of 9(c) of CNSA, it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory and if any link is missing in such like offences the benefit must be extended to the accused.

ii) Any confession made by an accused, whether judicial or extra-judicial, should be taken into consideration in toto and could not be split into pieces, nor any part of the same can be taken to favour the prosecution.

iii) If the Court disbelieves or rejects or excludes from consideration the prosecution evidence, then the Court must accept 'the statement' of the accused as a whole without scrutiny. If 'the statement' when believed as a whole, constitutes some offence punishable under the law, then the accused should be convicted for that offence only.

iv) Where the prosecution succeeds in establishing its case against the accused beyond reasonable doubt, then the stage arrives for consideration of the plea of accused in defence and the question of burden of proof becomes relevant.

v) It is the prosecution to prove the case against accused beyond any doubt and accused is not required to establish his plea (stated in his confessional statement or in his statement recorded under section 342 or 340(2) of the Code) and the benefit of doubt arising out of such plea/confession must be extended to the accused.

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8. **Supreme Court of Pakistan**
Sajid Mehmood v. Mst. Shazia Azad and others
Civil Petition No. 1451 of 2020
Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1451_2020.pdf

Facts: This Civil Petition for leave to appeal is directed against the Judgment passed by the learned Lahore High Court, in W.P., whereby the claim of the petitioner, under Section 17 of the 1964 Act, the provisions of the Qanun-e-Shahadat Order, 1984 are not applicable to proceedings before the Family Court in respect of Part-I of the Schedule was dismissed.

Issues: i) Whether the provisions of the Oath Act are applicable to the proceedings before the Family Court?

ii) Whether the party making the offer has a right and authority in law to withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will?

Analysis: i) Nevertheless, under Section 17 of the 1964 Act, the application of the QSO 1984 and the provisions of the Code of Civil Procedure 1908 ("CPC"), except Sections 10 and 11 have been excluded and made inapplicable to the proceedings before the Family Court in respect of Part-I of the Schedule, but concomitantly

under Sub-section (2) of Section 17, it is enumerated in tandem that Sections 8 to 11 of the Oaths Act, 1873 ("Oaths Act") shall apply to all proceedings before the Family Court.

ii) Under the provisions of the Oaths Act, a party in litigation can offer the opposite party to accept or reject the claim on special oath, but they cannot compel each other to take the special oath, however if the offer is accepted by the other party then a binding agreement comes into existence and the party making the offer has no right and authority in law to resile from it. In the absence of any such satisfactory or sufficient cause the Court is obligated to implement the agreement and to record the statement of the party concerned to make a decision in the case accordingly. The petitioner cannot wriggle out or withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will.

Conclusion: i) Under Sub-section (2) of Section 17 of the Family Court Act, the provisions of the Oath Act are applicable to all proceedings before the Family Court.

ii) The party making the offer has no right and authority in law to withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will.

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9. **Supreme Court of Pakistan**

Divisional Superintendent Postal Services Faisalabad etc. v. Khalid Mahmood & others etc.

C.M.As No. 3837 to 3845 of 2022 in Civil Petitions No. Nil of 2022 And Civil Petitions No.1874, 1987 to 2001, 2091, 2605, 2477 and 2478 of 2022.

Mr. Justice Sardar Tariq Masood, Mr. Justice Amin-ud-Din Khan, Mr. Justice Muhammad Ali Mazhar

https://www.supremecourt.gov.pk/downloads_judgements/c.m.a._3837_2022.pdf

Facts: Petitioners have filed Civil Petitions for leave to appeal against the common judgment passed by the Federal Services Tribunal which was passed on the basis of admissions of the petitioners regarding the grant of arrears of pay and allowances of the respondents pursuant to their regularization in service.

Issues: (i) Whether a department can challenge the factual position encapsulated in its comments before services tribunal regarding regularization of services of employees?

(ii) Whether a services tribunal while exercising powers of Civil Court enshrined under the CPC can look into the admission made by the departments in its comments?

(iii) Whether regularization of services of contractual employees by a department of its own will and volition can be termed or declared illegal or unconstitutional?

(iv) What is the precondition and benchmark of an admission under Order XII, Rule 6 CPC?

(v) What is the legislative purpose of Order XII, Rule 6, CPC?

Analysis: (i) The factual position encapsulated in the comments cannot be challenged by the petitioners due to their acquiescence that the services of the respondents (employees) have been regularized and their Service books have also been verified with a further promise to pay arrears on the availability of funds, hence at this stage the petitioners' plea is also hit by the doctrine of approbate and reprobate, which means to approve and disapprove. This doctrine is founded on the maxim '*quod approbo non reprobo'* which translates to "that which I approve, I cannot disapprove". It is also known as principle of equitable doctrine of election.

(ii) Under Section 5 of the Service Tribunals Act 1973, the Tribunal is deemed to be a Civil Court and have the same powers as are vested in such court under the CPC, including certain other powers mentioned in the Section, but not excluding or disregarding other powers of the Civil Court provided in the CPC, therefore, the learned Tribunal while exercising powers of Civil Court enshrined under the CPC had rightly looked into the admission made by the petitioners in their comments.

(iii)…if the Department of its own will and volition decides to initiate any action for regularizing the services of contractual employees, the said action cannot be termed or declared illegal or unconstitutional unless the rights of similarly placed persons or employees are contravened or exploited due to such regularization.

(iv) The elemental characteristic of an admission is that it should be a condensed and cautious act. The precondition and benchmark of an admission is that it should be unconditional, unambiguous and intend the same to be read and construed as an admission. The legislative intent is clear that it should be unambiguous and clear.

(v) The legislative purpose of Order XII, Rule 6, CPC is to cut short the length of litigation with forward-thinking comprehension and without the imposition of any irrational constraint, rather the court should consciously and judicially look into the fundamental constituents of the admission for its satisfaction whether the lis can attain finality or not in the facts and circumstances of each case. In the event of any ambiguous, conditional or unclear admission, the court cannot be left to interpretative determination, but the proper course would be that the case should be decided on merits after denouement of a full-fledged trial.

Conclusion: (i) A department cannot challenge the factual position encapsulated in its comments before services tribunal regarding regularization of services of employees.

(ii) A services tribunal while exercising powers of Civil Court enshrined under the CPC can look into the admission made by the departments in its comments.

(iii) Regularization of services of contractual employees by a department of its own will and volition cannot be termed or declared illegal or unconstitutional unless the rights of similarly placed persons or employees are contravened or exploited due to such regularization.

(iv) The precondition and benchmark of an admission is that it should be unconditional, unambiguous and intend the same to be read and construed as an admission.
(v) The legislative purpose of Order XII, Rule 6, CPC is to cut short the length of litigation with forward-thinking comprehension and without the imposition of any irrational constraint.

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10. **Supreme Court of Pakistan**
Yasir Aftab v. Irfan Gull and others
Civil Appeal No.2797 of 2022
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2797_2022.pdf

Facts: The appellant filed his nomination papers for the seat of councilor. The respondent Nos. 1 and 2 ("contesting respondents") sought rejection of the nomination papers on the ground, that the appellant had not fully disclosed and declared his and his spouse's assets/ properties. The objection was rejected by the Returning Officer and the nomination papers accepted. The contesting respondents filed an appeal before the appellate authority constituted by the Election Commission of Pakistan ("ECP") under Rule 18(5) of the 2015 Rules. The appeal was dismissed. The contesting respondents thereafter filed a writ petition under Article 199 of the Constitution before the High Court, which was allowed. Being aggrieved by the said decision, the appellant sought leave to appeal against the same. Leave was granted.

Issues: i) What laws are applicable in relation to local body elections in the province of Sindh?
ii) If multiple nomination papers are filed for a candidate and one suffers from any defect but the other(s) do not, it is only the first set that will stand rejected and the candidate will be able to contest the election on the basis of the other(s)?
iii) Whether it is post-election requirement to declare assets and an incorrect declaration is wholly without any consequence and can result in the rejection of the nomination papers?
iv) What steps are required to be carried out by the Returning Officer while making enquiry regarding the nomination papers?

Analysis: i) In relation to Sindh, that law on the provincial side is the The Sindh Local Government Act, 2013, read with the 2015 Rules. These contain several detailed provisions in relation to elections to local bodies. The Elections Act, 2017 ("2017 Act") was enacted by Parliament as comprehensive legislation in relation to elections to, inter alia, replace existing (federal) laws in force at that time. Since the Constitution by then also empowered Parliament in relation to local government, the 2017 Act also makes many provisions in relation thereto, and indeed devotes a whole chapter to that subject: ss. 219-229 (Chapter XIII, "Conduct of Elections to the Local Governments"). As is apparent, how exactly

the 2013 Act on the one hand and the 2017 Act on the other are to interact in relation to local body elections is an exercise that can be complex and (if only occasionally) even fraught. While this appeal does not directly raise any such issue there can be little doubt that the scheme now in place constitutionally and legislatively is not without difficulties.

ii) There is no provision equivalent to Article 62(1)(f) in the 2013 Act, it follows that a failure to make a proper declaration of assets in the nomination papers, if there be such a requirement, that does not entail any consequence as in relation to the Federal and Provincial legislatures. The only consequence is that the nomination papers stand rejected and the candidate cannot participate in that particular election. But even this statement must be qualified. Rule 16(5) of the 2015 Rules provides as follows: "A person may be nominated in the same electoral unit by not more than five nomination papers". Proviso (i) to sub-rule (3) of Rule 18 provides, in effect, that if multiple nomination papers are filed for a candidate and one suffers from any defect but the other(s) do not, it is only the first set that will stand rejected and the candidate will be able to contest the election on the basis of the other(s). Thus, the consequence of a failure of the nomination papers to be statutorily compliant and, in particular, a failure to properly disclose assets (if that is indeed so required) is much less drastic in relation to local government elections under the 2013 Act than under the 2017 Act in relation to elections to the Federal or Provincial legislatures.

iii) Annexed to the 2015 Rules are various forms. The first five of these are in relation to nominations for the various offices to which a person may wish to contest elections. Form III relates to the election of a member to a District Council and is relevant for present purposes. That this is the form to be used is made clear by Rule 16(3). This form has appended to it a declaration, whereby the declarant (i.e., the candidate, here the appellant) "solemnly declare[s] that no movable property or immovable property, land, house, apartment, shop, share certificate, securities, bonds, insurance policies, gold jewelry and motor vehicle are held by [him] or any member of [his] family dependent upon [him] except as below" and there then follows a table in which the particulars and details of the assets have to be set out. If the candidate is successful, he then has to make another declaration as required by s. 23, as set out in Form XVII annexed to the 2015 Rules. This form is essentially the same as the pre-election declaration. However, the requirement under s. 23 obviously cannot obviate the necessity of the form that applies at the pre-election stage. If any objection is raised to the declaration of assets therein and the same is sustained then the nomination may be rejected by the Returning Officer, subject to what has been said above in respect of multiple nomination papers and the right of appeal (see Rules 16 to 18 of the 2015 Rules). The consequence of course is only that the candidate cannot contest that particular election, but the submission now under consideration, namely, that an incorrect declaration is wholly without any consequence by reason of s. 23 cannot, with respect, be accepted. The primary ground taken accordingly fails. This brings us to the second ground, namely, that it is only a material defect or

omission in the declaration of assets, if willfully, knowingly or deliberately made that can result in the rejection of the nomination papers.

iv) While making enquiry regarding the nomination papers, it requires a two-step exercise to be carried out by the Returning Officer. In the first stage he must determine whether the defect objected to is of a substantial nature. If the answer is in the negative, that concludes the exercise and he is bound not to reject the nomination papers. If the answer is in the affirmative, then the matter moves to the second stage. He must consider whether, in his discretion (exercised in a lawful manner), to overrule the objection to the defect though it be of a substantial nature, as long as it can be remedied forthwith. If he exercises his discretion in favor of the candidate and the defect is remedied forthwith the nomination papers stand accepted. If he refuses to exercise his discretion then of course the nomination papers stand rejected. But whatever his action the Returning Officer must record his reasons appropriately and accordingly, in relation (as the case may be) to both stages of the exercise.

Conclusion: i) The Constitution, the Sindh Local Government Act, 2013 read with the 2015 Rules, the Elections Act, 2017 ("2017 Act") are applicable in relation to local body elections in the province of Sindh.

ii) Yes, if multiple nomination papers are filed for a candidate and one suffers from any defect but the other(s) do not, it is only the first set that will stand rejected and the candidate will be able to contest the election on the basis of the other(s).

iii) Yes, it is post-election requirement to declare assets and an incorrect declaration is only a material defect or omission in the declaration of assets and if not willfully, knowingly or deliberately made that cannot result in the rejection of the nomination papers.

iv) Two-steps are required to be carried out by the Returning Officer. In the first stage he must determine whether the defect objected to is of a substantial nature. In the second stage, he must consider whether, it is in his discretion, to overrule the objection to the defect though it be of a substantial nature, as long as it can be remedied forthwith.

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11. **Supreme Court of Pakistan**
Nawab Siraj Ali & Nawab Sajjad Ali v.
The State through A.G. Sindh
Criminal Appeal 400/2019
Ghulam Murtaza v. The State through A.G. Sindh
Criminal Appeal 401/2019
Shahrukh Jatoi v. The State through A.G. Sindh
Criminal Appeal 402/2019
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi.
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._400_2019.pdf

Facts: The conviction and sentence of appellants under Section 7 of the Anti-Terrorism Act, 1997 was held as not sustainable and matter was remanded for *de novo* trial. The said order of the High Court was challenged by civil society before this Court through Criminal Petitions. Criminal Appeals had arisen out of the leave granting order which were converted into Suo Motu Case and learned Division Bench of the High Court of Sindh was ordered to decide the *lis* on merits. Meanwhile, the learned High Court set aside the conviction of the appellants under Section 302/109/354/34 PPC, on basis of compromise between the parties but maintained their conviction under the Section 7 Anti-Terrorism Act, 1997 being not compoundable. Hence, the present appeals.

Issues: Whether every case of grievous bodily injury or harm, damage to private property, doing anything that is likely to cause death or endangers a person's life etc., would amount to offence of terrorism?

Analysis: Anti-Terrorism Act, 1997 is a special law enacted with a special intent and purpose, which can be gathered from the bare reading of Preamble of the said Act which is an introductory statement that explains the very purpose and underlying philosophy behind the enactment. The Preamble shows that the basic purpose behind the enactment of Anti Terrorism Act, 1997, was to prevent, (i) terrorism, (ii) sectarian violence, and (iii) for speedy trial of heinous offences. Section 6 of the Act defines terrorist acts, Section 7 provides punishment for such acts, whereas Section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. The cases of the offences specified in entry No. 4 of the Third Schedule to the Anti Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule, for purpose of speedy trial of such heinous offences. In such cases of heinous offences mentioned in entry No. 4 of the said Schedule, an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism.

Conclusion: Every case of grievous bodily injury or harm, damage to private property, doing anything that is likely to cause death or endangers a person's life etc., would not amount to offence of terrorism.

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12. **Supreme Court of Pakistan**
Muhammad Bashir v. The State etc.
Jail Petition No. 557 of 2016
Muhammad Essa v. Muhammad Bashir etc.
Criminal Petition No. 1391-L of 2016
Muhammad Essa v. Saeed Ahmed etc.
Criminal Petition No. 1392-L of 2016
Mr. Justice Ijaz ul Ahsan, Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/j.p._557_2016.pdf

Facts: Petitioner Muhammad Bashir along with two co-accused was tried in a private complaint for offences under Sections 302/34 PPC. Trial Court convicted the petitioner and one co-accused while acquitting the other co-accused. The High Court maintained the conviction of petitioner while altering the sentence of death to imprisonment for life and also acquitted co-accused. Being aggrieved by the High Court judgment, the petitioner/convict filed Jail Petition whereas the complainant filed Criminal Petitions against acquittal of co-accused and for enhancement of the sentence of the petitioner/convict.

Issues: (i) Whether ocular evidence can be given preference over medical evidence?
(ii) Whether the ocular account of witnesses who are related to the deceased can be believed to sustain the conviction?
(iii) Whether prosecution evidence can be rejected owing to minor discrepancies on trivial matters not affecting the material considerations of the prosecution case?

Analysis: (i)…it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it becomes highly improbable to mention the distance correctly and the location of the fire shots with exactitude.
(ii) As far as the question that the witnesses of the ocular account are related to the deceased, therefore, their testimonies cannot be believed to sustain conviction of the petitioner/convict is concerned, it is by now a well established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the petitioner/convict could not point out any reason as to why the complainant has falsely involved the petitioner/convict in the present case and let off the real culprit. Such reasoning does not appeal to reason. Substitution in such like cases is a rare phenomenon. The complainant would not prefer to spare the real culprit who murdered his brother and falsely involve the petitioner without any rhyme and reason.
(iii) It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its

entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.

Conclusion: (i) Ocular evidence can be given preference over medical evidence where it is found trustworthy and confidence inspiring.
(ii) The ocular account of witnesses who are related to the deceased can be believed to sustain the conviction.
(iii) Prosecution evidence cannot be rejected owing to minor discrepancies on trivial matters not affecting the material considerations of the prosecution case.

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13. **Supreme Court of Pakistan**
Dean/Chief Executive, Gomal Medical College,
Medical Teaching Institution, D.I. Khan v.
Muhammad Armaghan Khan and others
Civil Appeal No. 1474 OF 2021
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1474_2021.pdf

Facts: The petitioner through this civil appeal has challenged the order of the Appellate Tribunal whereby the appeal of the respondent No. 1 against his termination from service was allowed with direction to the petitioner to reinstate respondent No. 1 with back benefits.

Issue: Whether an appeal lie to Supreme Court under Article 212(3) of the Constitution against an order of a tribunal created by a Provincial law to which the proviso to clause (2) of the said Article has not been made applicable?

Analysis: Since Provincial legislation cannot of its own affect or act upon the jurisdiction of this Court there was the need for intervening Federal legislation. The necessary "bridge" is provided by the proviso to clause (2) of the Article 212(3) of the Constitution. But, it must be remembered, the Federation cannot be compelled to enact the relevant law. If the Provincial Assembly wishes to shut out every judicial remedy and leave only the route to this Court, it must first pass the necessary resolution and that must then be followed up by a Federal law. It is only then, and under cover of an Act of Parliament, that the door to this Court is opened. If the Provincial Assembly does not wish to follow this route or Parliament refuses to enact the enabling legislation in terms of the proviso, then the door to this Court remains shut. Since clause (2) would not then apply the jurisdiction of the other courts (which in practical terms would mean recourse to the High Court under Article 199) would remain open. Clause (2) and, as presently relevant, its proviso is the gateway to clause (3). The two must be read and applied together and not in isolation and as standalone provisions. … Accordingly, we hold that an appeal to this Court under clause (3) of Article 212 against a decision of an Administrative Tribunal created by a Provincial law under clause (1) is possible if, and only if, clause (2) applies to the said Tribunal, i.e., it is covered by an appropriate resolution of the Provincial Assembly and consequent Federal legislation in terms of the proviso.

Conclusion: No appeal lies to this Court in terms of Article 212(3) against the decision of a Tribunal created by a Provincial law to which the proviso to clause (2) has not been applied.

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14. **Supreme Court of Pakistan**
Muhammad Iqbal etc. v. Nasrullah
Civil Appeals No.2433 OF 2016
Mr. Justice Ijaz ul Ahsan, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._2433_2016.pdf

Facts: Through this appeal by leave of the Court, the appellants have called in question the vires of the judgment passed by the learned Single Judge of the High Court, whereby the Civil Revision filed by the respondent was allowed and the judgments of the learned two courts below dismissing the suit filed by the respondent were set at naught.

Issues: i) Whether an agreement to sell confers title?
ii) Whether Talb-e-Muwathibat can be performed if the agreement is conclusive?
iii) Whether the suit is competent/ maintainable if the sale is not complete?

Analysis: i) It is settled law that an agreement to sell does not create any title or claim over the property. It also does not create ownership in the land and, as such, a person in whose favour such an agreement is made cannot claim a decree of title on the basis of incomplete sale consideration.
ii) Even an agreement contains an acceptance of receipt of an earnest or partial payment of the total sale consideration, it does not need to be registered because all it does in lieu of is grant the right to get another document i.e. sale deed. Unless the sale deed is registered and title is transferred, the possibility always exists that the agreement to sell might be terminated in the event of breach of any provision contained therein. Therefore, Talb-e-Muwathibat cannot be performed.
iii) If the sale is not complete then subsequent performance of Talb-e-Muwathibat and filing of suit for pre-emption is pre-mature.

Conclusion: i) An agreement to sell doesn't confer title.
ii) Talb-e-Muwathibat cannot be performed even the agreement is conclusive.
iii) The suit is not competent/ maintainable if the sale is not complete.

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15. **Supreme Court of Pakistan**
Shahray Khan (decd.) through LRs etc. v.
Qadir Bakhsh (decd.) through LRs etc.
Civil Petition No. 2658 of 2019.
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2658_2019.pdf

Facts: Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the vires of judgment passed by the learned High Court whereby the Civil Revision filed by the

petitioners was dismissed and the orders of the learned two Courts below were upheld.

Issues: Whether a limited owner can further transfer the property?

Analysis: A limited owner of the property is not competent to transfer further the portion of the landed property.

Conclusion: A limited owner cannot further transfer the property.

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16. **Supreme Court of Pakistan**
Mukhtiar Hussain v. Mst. Shafia Bibi
Civil Petition No.3988 of 2019
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Shahid Waheed
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3988_2019.pdf

Facts: This petition for leave to appeal is directed against the judgment, whereby the Lahore High Court declined to revise the concurrent findings of its two courts below dismissing the application under Order IX, Rule 13, CPC for setting aside ex-parte judgment and decree.

Issues: Whether the ground of compromise of the parties could have been considered sufficient cause that could prevent the petitioner or his counsel from appearing before the Court, and based on this, could the Court set aside the ex-parte decree?

Analysis: When the stance of the compromise does not appear to be tenable, for, firstly, that no compromise deed has been attached with the application nor did the details of the terms and conditions of the alleged compromise in the application were mentioned, nor the date, time and name of the persons were mentioned before whom it was made, secondly, it was not mentioned in the application that he had told his counsel about the alleged compromise and instructed him not to appear before the Court, and thirdly, he had not disclosed any reason as to why he did not take any step to confirm the fact of withdrawal of suit from his counsel. As such, the application was deficient in necessary material facts, and was vague in all respects, and appeared to be an attempt to cover up his misdeeds and negligence. Scrutinised thus, and per the old aphorism "nullus commodum capere protect de injuria sua propria", the petitioner could not be allowed to take advantage of his own wrong or negligence, and accordingly we are not persuaded to interfere with the concurrent findings of the three courts.

Conclusion: When the ground of compromise of the parties were deficient in necessary material facts, and vague in all respects, it could not have been considered sufficient cause that could prevent the petitioner or his counsel from appearing before the Court, and based on this, the Court could not set aside the ex-parte decree.

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17. **Lahore High Court**
Ifraheem etc v. The State
Criminal Appeal No.120640/J/2017
Mst. Sairan Bibi etc v. The State
Criminal Appeal No. 127129/J/2017
The State v. Binyameen etc.
Murder Reference No.645/2017
Mr. Justice Muhammad Ameer Bhatti HCJ, Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC7919.pdf

Facts: Appellants have filed appeals against their conviction and sentence. Besides these appeals, the Learned Additional Sessions Judge has sent Murder Reference under section 374 Cr.P.C for confirmation of the death sentence awarded to Appellants. Through this consolidated judgment criminal appeals and murder reference has been decided.

Issues: i) Whether improvements on material aspects of the case make the witness untrustworthy?
ii) Whether assailant can be identified through medical evidence?
iii) What is importance of motive when ocular testimony not proved?
iv) Whether abscondence of the accused after the occurrence is conclusive proof of his guilt?

Analysis: i) It is a settled law that a witness who improves his statement on material aspects of the case is untrustworthy.
ii) It is now well settled that medical evidence may confirm the eye-witness account about the seat and nature of injuries, the kind of weapon used in an occurrence but cannot identify the assailant.
iii) The law is that it will have a bearing on the case only if the prosecution succeeds in proving the charge against the accused through direct or circumstantial evidence. Even the strongest motive loses its importance when ocular testimony fails.
iv) The alleged absconding of the Appellants after the occurrence is not conclusive proof of their guilt. It is only supporting evidence.

Conclusion: i) A witness who improves his statement on material aspects of the case is untrustworthy.
ii) Medical evidence may confirm the eye-witness account about the seat and nature of injuries, the kind of weapon but cannot identify the assailant.
iii) Motive loses its importance when ocular testimony fails.
iv) Abscondence of the accused after the occurrence is not a conclusive proof of his guilt. It is only supporting evidence.

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18. **Lahore High Court**
Mustafa Masood v. Defence Housing Authority, Lahore, etc.
W.P. No. 45771 of 2022.
Mr. Justice Shujaat Ali Khan,
https://sys.lhc.gov.pk/appjudgments/2022LHC7599.pdf

Facts: Being aggrieved of non-issuance of NDC by the DHA authorities, the petitioner has filed instant petition.

Issues: Whether caution marked by DHA pursuant to an order passed by the Executing Court at Lahore even after transfer of decree to other province, is justified?

Analysis: When it was brought to the notice of DHA that after transfer of decree out of province of Punjab, the execution proceedings became redundant and requisite order of transfer of decree was also placed before the DHA authorities, they were under bounden responsibility to remove Caution and issue NDC to the petitioner upon fulfillment of other codal formalities but lingering on the matter till date speaks volume about the fact that DHA authorities, instead of facilitating its residents, are creating hurdles in their way to deal with their property according to their own whims. **(…)** As a necessary corollary to the above discussion, I have no hesitation to hold that continuation of Caution marked by the respondents pursuant to an order passed by the Executing Court at Lahore even after transfer of decree to the province of Sindh is not justified. Likewise, the request of the petitioner for issuance of NDC could not be declined.

Conclusion: Caution marked by the respondents pursuant to an order passed by the Executing Court at Lahore even after transfer of decree to the province of Sindh is not justified, as after transfer of decree out of province of Punjab, the execution proceedings became redundant.

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19. **Lahore High Court**
Abdul Rasheed v. Province of the Punjab etc.
Civil Revision No. 237171 of 2018
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC7711.pdf

Facts: The petitioner filed a suit for possession against the respondents and the suit was decreed by the learned Civil Judge, against which the respondents filed an appeal before the learned Additional District Judge, which was disposed of, on the basis of report of the Local Commission. Feeling aggrieved of judgment & decree, passed by learned Appellate Court the petitioner filed Civil Revision before this Court which was accepted and the matter was remanded to learned Appellate Court for decision afresh. During post remand proceedings, learned Appellate Court after calling objections from both the parties qua the report of the Local Commission again accepted the appeal filed by the respondents. Aggrieved of judgment & decree, passed by learned Appellate Court the petitioner has filed this petition.

Issues: i) Whether an appellate Court, has the power to appoint a local commission for spot inspection?
ii) Whether after rejection of objections on the report of local commission; the court can decide the matter on the basis of report of the Local Commission?

Analysis: i) According to section 75 read with Order XXVI CPC and Chapter 10, Part-B of Lahore High Court Rules and Orders, Volume-I, Court can appoint a commission inter-alia for local investigation and report submitted by the said commission can be used by the court for just decision of the case. Power of the court to appoint a Local Commission came under discussion before the Apex Court of the country In the light of judgments of superior courts there leaves no ambiguity that court, even the Appellate Court, has power to appoint a commission for spot inspection.
ii) There is no cavil with the fact that no lis can be decided only on the basis of report of Local Commission but when the Local Commission was appointed by court with mutual consent of the parties and undertaking that they would abide by the findings of the Local Commission, Court can decide the matter on the basis thereof. Further, if a party is aggrieved of report of the Local Commission can file objections against its report but when the said objections are spurned by the court, matter between the parties can be decided on the basis of report of the Local Commission.

Conclusion: i) Yes, an appellate Court, has the power to appoint a local commission for spot inspection.
ii) After rejection of objections on the report of local commission; the court can decide the matter on the basis of report of the Local Commission.

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20. **Lahore High Court, Lahore**
The State v. Muhammad Shahzad
Murder Reference No.20 of 2019
Muhammad Shahzad v. The State, Etc.
Criminal Appeal No.6256 of 2019
Miss. Justice Aalia Neelum, Mr. Justice Anwaarul Haq Pannu.
https://sys.lhc.gov.pk/appjudgments/2022LHC7689.pdf

Facts: Trial court convicted the appellant under Section 302(b) PPC and sentenced to Death. Resultantly, Criminal Appeal and Murder Reference for confirmation of the death sentence of the appellant were filed.

Issues: When there is an element of doubt as to the guilt of the accused, can the benefit thereof be extended to him?

Analysis: The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as

matter of right and not of grace and for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is a circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt. The doubt of course must be reasonable and not imaginary or artificial. In simple words it means that utmost care should be taken by the Court in convicting an accused.

Conclusion: If there is an element of doubt as to the guilt of the accused, the benefit thereof must be extended to him as a matter of right.

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21. **Lahore High Court**
Ahsan Khan v. Government of the Punjab etc.
I.C.A. No.71340/2021 etc.
Mr. Justice Abid Aziz Sheikh, Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC7862.pdf

Facts: The appellant filed application for appointment as headman of village. The collector concerned gave 15 marks of hereditary claim to respondent no. 04 being second blood in terms of rule 17(1)(a) of the Land Revenue Rules, 1968. The grant of marks to respondent No. 4 for hereditary claim became the cause to file Constitution Petition by appellant which was dismissed, hence, this intra court appeal. Along with this ICA, connected Constitutional petitions, having common questions of law, shall be decided.

Issues: i) When the Court can declare delegated legislation as ultra vires or illegal?
ii) What is object of appointment of village headman?
iii) Whether rule 17(1) to the extent of hereditary claim, is repugnant to injunctions of Islam?
iv) Whether the marks assigned to hereditary claims, 30 marks to first blood and 15 marks to second blood, are mandatory?
v) Whether someone can have any vested right to the appointment in the office of village headman?

Analysis: i) It is settled law when the Court is required to determine the legality of delegated legislation, the same can only be declared ultra vires or illegal if they are found repugnant to Act, violative of the object and reasons of the enactment or lack of sanction etc.
ii) There are no two views about the fact that appointment of a person in the office of village headman is purely an administrative arrangement, having object to create a link between villagers and local authority and the Board of Revenue or its officer being specialized in the matter and well conversant with the requirements, are in better position to make suitable arrangements and / or to select persons to serve the purposes of this administrative link.
iii) It has been observed by the Honourable Supreme Court of Pakistan in *"Maqbool Ahmad Qureshi"* case that if hereditary claim is taken as one of the relevant factor in favour of the candidate whose merits otherwise are favourable

comparing with other contestants, no grievance can arise which rather will meet the plea of administration. Provision of rule 17 of the Rules, after amendment and prior to the promulgation of the Notification has been held by the Honourable Supreme Court of Pakistan as not repugnant to injunctions of Islam.

iv) The sub-rule 1 of rule 17 provides that "in the first appointment of headman, following matters shall be considered and the maximum marks to be assigned against each item are as under...". The reading of the sub-rule reflects that the word "shall", used in the first part of the sentence, makes it incumbent upon the authorities to ensure considering the factors given thereunder. Thus, considering all the factors are mandatory requirement of law. However, in later part of the sentence the rule-makers have elected the word "maximum". The word "maximum" has simple meaning that is the greatest quantity or highest point(s). The use of word „maximum", by the rule-makers, in this part of rule 17(1) as well as in the third column contained thereafter leads to clear inference that the authority can still withhold the grant of highest allocated marks to the hereditary claim, otherwise, the object to choose a person to serve as a link between authorities and villagers is likely to be defeated.

iv) The very purpose of legislature, while delegating the powers in section 36 of the Act to make rules vis-à-vis appointment of village headman, is to create a link for the discharge of duties by the revenue authorities and not to create any vested rights amongst Citizens or villagers to be appointed as a headman, and such appointment is essentially an administrative function, which vests exclusively in the domain of the revenue authorities, who by virtue of experience and training are in the better position to make suitable choice.

Conclusion: i) Court can declare delegated legislation as ultra vires or illegal if they are found repugnant to Act, violative of the object and reasons of the enactment or lack of sanction etc.

ii) The object of appointment of village headman is to create a link between villagers and local authority and the Board of Revenue or its officer being specialized in the matter.

iii) Rule 17(1) to the extent of hereditary claim, is not repugnant to injunctions of Islam.

iv) The marks assigned to hereditary claims, 30 marks to first blood and 15 marks to second blood, are not mandatory and the authority can still withhold the grant of highest allocated marks to the hereditary claim.

v) Nobody can have any vested right to the appointment in the office of village headman.

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22. **Lahore High Court**
Raja Ibadat Sajjad Khan v. Mst. Shehnaz Kousar etc.
Writ Petition No.13531/2022
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC7759.pdf

Facts: That plaintiffs/respondents No.1 to 3 filed a suit for recovery of maintenance allowance against the defendant/petitioner in which petitioner's right to file written statement was closed. The learned Judge Family Court, after framing of issues, recorded respondents' evidence and the respondents/plaintiffs' witnesses were also cross examined by the petitioner. However, the petitioner was not allowed to produce his evidence as his right of defence was already closed. Finally, the suit was decreed. This Constitutional Petition is directed against the judgments and decrees passed by the learned Judge Family Court and learned Appellate Court, respectively.

Issues: i) Whether Family Court has power to close the right of written statement of the defendant?
ii) Whether defendant can cross-examine the witnesses of plaintiff, take part in the arguments and can also lead evidence to disprove the facts stated in the plaint, even though his right to file written statement was already closed?

Analysis: i) No doubt, there is no specific provision under the Act to strike off the right of defence of defendant for failure to file written statement. However, this Court in "Khalil-ur-Rehman Bhutta v. Razia Naz and another" (1984 CLC 890), held that for the orderly dispensation of justice under the Act, in the case of a contumacious default of a defendant to file written statement, the Family Court will be well within its authority to make an order in the nature of Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC)… The law is settled that failure of a defendant to file written statement within stipulated time period entails striking off his defence in terms of Order VIII Rule 10 CPC.
ii) It is not difficult to deduce that in absence of written statement, the defendant can still cross-examine the PWs, lead evidence to disprove the facts averred in the plaint and also take part in the arguments.

Conclusion: i) Family Court has power to close the right of written statement of the defendant.
ii) Defendant can cross-examine the witnesses of plaintiff, take part in the arguments and can also lead evidence to disprove the facts stated in the plaint, even though his right to file written statement was already closed.

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23. **Lahore High Court**
Temoor Shikoh v. Member (Judicial-III), B.O.R. etc.
W.P. No.13222 of 2017
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC7808.pdf

Facts: The District Collector after fetching reports from the subordinate not only removed the petitioner from his office, rather Assistant Commissioner, was directed to prepare the case for fresh appointment of lamberdar. This order though was assailed by the petitioner via appeal & then RoR before the Additional Commissioner (Consolidations) as well as learned Member (Board of Revenue), yet were dismissed through orders respectively, thus this petition for setting aside

of those concurrent orders was made.

Issues: Whether lamberdar/headman can be dismissed from his post except grounds mentioned in rule 18 of the West Pakistan Land Revenue Rules, 1968?

Analysis: Verily, rule 17 of the West Pakistan Land Revenue Rules, 1968 provides the criteria for the appointment of lamberdar to perform his obligations in terms of rule 22. There is no cavil that a headman can be dismissed from his post, but only on the grounds referred in rule 18…..

Conclusion: A lamberdar/headman can be dismissed from his post only on the grounds referred in rule 18 of the West Pakistan Land Revenue Rules, 1968.

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24. **Lahore High Court**
Commissioner Inland Revenue, Lyallpur Zone, RTO, Faisalabad. v.
M/s. Ideal Sweets, Bakers and Nimko, Faisalabad.
STR No. 162977 of 2018
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC7665.pdf

Facts: This judgment deals with misuse of the rectification jurisdiction under Section 57 of the Sales Tax Act, 1990 ("Act of 1990") by Appellate Tribunal Inland Revenue ("Appellate Tribunal"), in a matter, which had finally been decided by learned Division Bench of this Court in reference jurisdiction under Section 47 of the Act of 1990.

Issues: i) Whether rectification jurisdiction under Section 57 of the Sales Tax Act, 1990, extended to the Appellate Tribunal Inland Revenue on 01.07.2013, could be exercised retrospectively?
ii) Whether plea of indecision of the grounds on merits, could be allowed, without rebutting the presumption of truth attached with judicial proceedings under Section 129(e) of the Qanoon-e-Shahadat Order, 1984?

Analysis: i) Section 57 of the Act of 1990, at that time, was allowing correction of clerical and arithmetical errors, which was substituted through Finance Act, 2013, effective from 01.07.2013. Comparative reading of existing and repealed provisions of Section 57, confirms the legal position of absence of rectification jurisdiction for the order passed before 01.07.2013. The rectification of an order, being a substantive right, could not be applied retrospectively.
ii) The Appellate Tribunal has decided main appeal, which attained finality after decision by learned Division Bench of this Court. The Appellate Tribunal has also violated the presumption of truth, under Article 129(e) of the Qanoon-e-Shahadat Order, 1984, attached with the judicial proceedings.

Conclusion: i) Rectification jurisdiction under Section 57 of the Sales Tax Act, 1990, extended

to the Appellate Tribunal Inland Revenue on 01.07.2013, could not be exercised retrospectively.

ii) Plea of indecision of the grounds on merits, could not be allowed, without rebutting the presumption of truth attached with judicial proceedings under Section 129(e) of the Qanoon-e-Shahadat Order, 1984.

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25. **Lahore High Court Lahore**
M/S Al-Ghani Chain Industries (Pvt.) Ltd. v. Federation of Pakistan, Etc
W. P. No. 57607 of 2022.
Mr. J. Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022lhc7659.pdf

Facts: Through these connected petitions, application of Valuation Ruling on goods declaration for import of Motorcycle/Rickshaw chain is assailed.

Issues: Whether provisional assessment can be made if any Valuation Ruling is in field and applicable on the declared goods?

Analysis: Circumstances for invoking provisions of Sections 81 and 80 of The Customs Act, 1969 are different. The provisions under Section 80 ibid deal with goods declaration under Section 79 ibid, through Customs Computerized System as well as manual. In case the Goods Declaration is manual, the officer of Customs shall calculate the payments of duty, taxes and other charges accordingly. If goods declaration is through Customs Computerized System, the goods can be examined on the basis of computerized selective criteria. Section 81 of The Customs Act, 1969 deals with the situation where during examination, the officer of Customs is uncertain about correctness of the declaration on the goods declared under Section 79 ibid, for the reason that goods require chemical or other test or a further inquiry. Meanwhile, the officer not below the rank of Assistant Collector is empowered to provisionally determine the duty taxes and other charges. The provisional assessment is conditional under second proviso to subsection (1) and cannot be passed, unless differential amount is secured through Bank Guarantee or pay Order. The third proviso to Section 81 ibid, clearly stops from passing a provisional assessment order, where Valuation Ruling issued under Section 25A of The Customs Act, 1969 is in field, irrespective of the fact whether any review or revision is pending under Section 25D of said Act. An assessment completed under Section 80 ibid becomes an order appealable under Section 193 of The Customs Act, 1969.

Conclusion: If any Valuation Ruling is in field and applicable on the declared goods, provisional assessment cannot be made.

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26. **Lahore High Court**
Synthetic Products Enterprises Limited v. Federal Board of Revenue, etc.
W.P.No. 62961 of 2021
Mr. Justice Shahid Jamil Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC7886.pdf

Facts: The petitioner has challenged the notices under Section 138(1) of the Ordinance of 2001 issued for recovery of Worker Welfare Fund (WWF) which was previously allowed to be adjusted against refund of income tax in the relevant tax years.

Issues: (i) Whether the judgment in East Pakistan Chrome Tannery Case can be applied retrospectively and allowed adjustment of WWF can be recovered?
(ii) Whether adjustment of WWF is part of deemed assessment under section 120 of the Income Tax Ordinance of 2001?

Analysis: (i) The judgment by Apex Court would not be applicable, retrospectively, for reversing the agreed adjustment of WWF against tax. The FBR as well as taxpayer *bonafidely* treated the Fund as tax, because Section 4 of WWF Ordinance 1971 made the provisions of the Ordinance of 2001 applicable for charging, recovery and refund of the Fund. Circular dated 17.02.2000, allowing adjustment was issued under this understanding. In this Court's opinion, it derived statutory authority under Section 170(3), at relevant time, therefore, is not declared illegal or in conflict with the judgment in *East Pakistan Chrome Tannery Case*, which was not available and enforced by FBR till 25.05.2021.
(ii**)** On furnishing of complete return the Commissioner is taken to have made an assessment order of *"taxable income"* and *"tax due thereon"*. The order under Section 120 is taken to be assessment order for all purposes of the Ordinance of 2001. Subsection (2A) was inserted in Section 120 and after the date it is notified, the return of income is processed through automated system. Certain adjustments, *inter alia*, of incorrect claim are allowed to be made by Commissioner, before the return attains status of an assessment order by operation of law. On identifying the incorrect claim, a system generated notice is issued, before making adjustment. Importantly, if no adjustmentis made within six months of filing the return, the amounts specified in the return shall be deemed to be rightly adjusted amounts, therefore, would be part of assessment order under Section 120…Admittedly, no system generated notice under subsection (2A) was issued, therefore, the WWF adjusted or allowed to be adjusted is part of order under Section 120, under third proviso to Section 120(2A).

Conclusion: (i) The judgment in *East Pakistan Chrome Tannery Case* cannot be applied retrospectively and allowed adjustment of WWF cannot be recovered.
(ii) The adjustment of WWF is part of deemed assessment under section 120 of the Income Tax Ordinance of 2001.

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27. **Lahore High Court**
Tahir Jamil Butt v. The Lahore High Court
Service Appeal No. 27 & 43 of 2000
Mr. Justice Mirza Viqas Rauf, Mr. Justice Muhammad Sajid Mehmood
https://sys.lhc.gov.pk/appjudgments/2022LHC7781.pdf

Facts: The appellant was dismissed from service with immediate effect on charges of having persistent reputation of being corrupt etc. The departmental appeal filed by appellant was also dismissed. Hence, this appeal u/s 5 of Punjab Subordinate Judiciary Service Tribunal Act, 1991. The appellant has also challenged the order vide which representation of appellant against the adverse remarks recorded in ACR was rejected.

Issues: Whether Service Tribunal can modify the punishment imposed by Inquiry/Authorized Officer?

Analysis: It is trite law that imposition of penalty is within the domain of Inquiry/Authorized Officer, who is fully empowered to impose such penalty upon its employee on finding him guilty of commission of misconduct as it considered appropriate and conversion of penalty imposed by the Inquiry/Authorized Officer would require strong justifiable reasons for the Tribunal to lessen its gravity. The powers of the Tribunal to modify the punishment imposed by the Inquiry/Authorized Officer are neither unbridled nor unlimited.

Conclusion: Yes, Service Tribunal can modify the punishment imposed by Inquiry/Authorized Officer.

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28. **Lahore High Court, Lahore**
Abdul Hamid v. The State etc.
Criminal Appeal No. 684 of 2019
Mr. Justice Mirza Viqas Rauf, Mr. Justice Ch. Abdul Aziz.
https://sys.lhc.gov.pk/appjudgments/2022LHC7816.pdf

Facts: Through appeal in terms of Section 48 of the Control of Narcotic Substances Act, 1997, petitioner assailed sentence awarded to him by trial court.

Issues: i) Why it is important to hold identification parade soon after arrest of accused?
ii) What would be effect of withholding important prosecution witnesses?
iii) What would be consequences of the deficiencies arising out from the contents of arrest warrant and proclamation as well as the failure of prosecution to prove their respective execution?
iv) What would be consequences of prosecution's failure to prove the case beyond scintilla of any doubt?

Analysis: i) If accused was not previously known to the witnesses, thus to exclude the question of any mistaken identification it was incumbent to hold identification test proceedings subsequent to the arrest of the accused so as to exclude all hypothesis of mistaken identification and false implication.
ii) For proving the transmission of complaint from the spot to police station, the evidence of Constable used in such transmission had its own importance and the omission of prosecution to produce him left a question mark about the manner in which the FIR was registered. In order to prove the alleged noticeable

abscondence of appellant, Constable involved in execution of relevant warrants & proclamation was important witness in the case. Constable driving recovered vehicle to police station from the spot and SI having allegedly arrested appellant should have had find place in the calendar of witnesses.

iii) The warrant, proclamation and abscondence of appellant are meant to provide corroboration to the case of prosecution.

iv) Even in a heinous case, the prosecution cannot be absolved from its responsibility of proving the case beyond scintilla of any doubt. As per saying of the Holy Prophet (ﷺ), the mistake in releasing a criminal is better than punishing an innocent person.

Conclusion: i) To exclude the question of any mistaken identification, it is incumbent to hold identification test proceedings subsequent to the arrest of the accused.

ii) From withholding of important prosecution witnesses, inference would be drawn in consonance with Article 129 Illustration (g) of Qanun-e-Shahadat Order, 1984, which is to the effect that had these witnesses appeared before the trial court they would not have supported the case of prosecution.

iii) The deficiencies arising out from the contents of arrest warrant and proclamation as well as the failure of prosecution to prove their execution, would leave these documents nothing but simple strayed piece of papers having no legal consequences.

iv) The benefit of prosecution's failure to prove the case beyond scintilla of any doubt ought to be extended to the accused which can best be provided through the judgment of acquittal.

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29. **Lahore High Court**
Muhammad Alam Khilji & others v.
Judge Accountability Court & others
W.P. No. 3197 of 2022
Mr. Justice Mirza Viqas Rauf, Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC7771.pdf

Facts: Through this single judgment connected writ petitions filed under National Accountability Bureau Ordinance, 1999 of similar questions of law and fact are decided. Separate references were placed before the National Accountability Courts concerned for conducting trial of the "petitioners" under Sections 18(g) read with Section 24 of the National Accountability Ordinance, 1999. The "petitioners" while facing trial were in judicial custody. In the meanwhile, an amendment was introduced in the "Ordinance" through the National Accountability Act, 2022 by First and Second Amendment Act. Due to change in the "Ordinance", the National Accountability Courts concerned refused to exercise jurisdiction in the bail matter and directed the "respondent-department" to produce the "petitioners" (accused) before the competent forum in time.

Issues: What remedy can be availed by the persons when due to amendment in the law their matter is not covered under the amended provisions of law?

Analysis: When amendments were introduced in the "Ordinance" through the National Accountability (Amendment) Act, 2022, the situation arise that all pending inquiries, investigations, trials or proceedings under the "Ordinance" relating to persons or transactions find mentioned in clause (a) of sub-section (2) shall stand transferred to the concerned authorities, departments and courts under the respective laws but the case of the "petitioners" was not covered under the above provision of law and they have been left unattended by the legislature to languish behind the bars. Therefore, the bails of the petitioners were entertained by the High Court with the observation that, no person can be left remediless in any eventuality and more specifically, when the life and liberty is involved.

Conclusion: If after amendment in the law the matter of the persons is not covered under the amended provisions of law, then matter of such persons can be entertained under the writ petition as no person can be left remediless, when the life and liberty is involved.

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30. **Lahore High Court**
Hamid Mukhtar v. Federal Ministry of Energy, etc
ICA No. 71303 of 2022
Ch. Muhammad Iqbal, Mr. Justice Muazamil Akhtar Shabir,
https://sys.lhc.gov.pk/appjudgments/2022LHC7636.pdf

Facts: Through this Intra Court Appeal, filed under Section 3 (2) of the Law Reforms Ordinance, 1972, the appellant has challenged the order of dismissal of his constitutional petition passed by learned Single Judge in Chambers. Through the constitutional petition, the appellant had prayed that he be allowed to join service as he had been restrained illegally and unlawfully by the respondents to mark his attendance and continue his service; further direction was sought to regularize his services in the interest of justice, which relief has been declined by dismissal of the constitutional petition.

Issues: i) Whether writ petition by the contract employee seeking reinstatement in service is maintainable?
ii) Where the main ground on which the petition has been dismissed is upheld by the appellate court, then, whether the impugned order can be reversed merely for the reason that any additional ground provided to dismiss Writ Petition, which even otherwise was subsidiary in nature, was not sustainable?
iii) Where a decision is passed on a certain ground, whether the same can be sustained/upheld on the basis of another ground?

Analysis: i) This Court has already concluded that Writ Petition by the appellant, who was a contract employee seeking reinstatement in service is not maintainable, which observation shall hold the field regardless of who the respondents in the Writ Petition are.

ii) Where the main ground on which the petition has been dismissed is upheld by the appellate court, then the impugned order cannot be reversed merely for the reason that any additional ground provided to dismiss Writ Petition, which even otherwise was subsidiary in nature, was not sustainable rather the appellant has to show that the impugned decision would not be sustainable due to reversal of the finding on said additional ground provided in the impugned order.
iii) It is settled law that where a decision is passed on a certain ground, the same can be sustained/upheld on the basis of another ground even if the ground on which the decision had been made does not find favour with the appellate court.

Conclusion: i) Writ Petition by the contract employee seeking reinstatement in service is not maintainable.
ii) If main ground on which the petition has been dismissed is upheld then the impugned order cannot be reversed.
iii) Where a decision is passed on a certain ground, the same can be sustained/upheld on the basis of another ground.

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31. **Lahore High Court**
Muhammad Riaz Ahmad v. Mst. Shaheen Akhtar etc.
Writ Petition No.40877 of 2021
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC7788.pdf

Facts: Through the instant writ petition the petitioner has challenged the vires of judgment & decree passed by the learned Judge Family Court who partially decreed the suit of respondents No.1 & 2 for recovery of marriage expenses of respondent No. 2 and also assailed the judgment & decree passed by the learned Addl. District Judge who partially accepted the appeal of the petitioner, modified the judgment & decree of the learned trial court and decreased the amount of marriage expenses.

Issue: Whether a Muslim father is under an obligation to pay the expenses incurred on marriage of his unmarried daughter besides paying the maintenance allowance or 'maintenance' of a daughter includes the 'marriage expenses'?

Analysis: The right of maintenance does not limit itself only to food, raiment and lodging but also entails all the other necessary expenses for the mental and physical wellbeing of the recipient. The father must function as guardian on her behalf in such marriage to enable his daughter into the contract of marriage. This paramount responsibility of the father as guardian at the time of marriage of his daughter must necessarily bring with it the corresponding obligation to ensure that all necessary expenses in connection with the marriage are met by him. Father has the indisputable obligation to maintain his unmarried daughter and he has the obligation to ensure that the unmarried daughter under his charge is given away in marriage properly, as such the legal obligation to meet the reasonable marriage

expenses of his daughter, as part of his obligation to pay maintenance to her. A father is not only bound to maintain his daughter by providing financial support for her food, clothes, lodging, education, health etc. till her marriage but also responsible to bear the expenses incurred on her marriage according to his financial status.

Conclusion: Yes, a Muslim father is under an obligation to pay the expenses incurred on marriage of his unmarried daughter besides paying the maintenance allowance and 'maintenance' of a daughter includes the 'marriage expenses' as well.

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32. **Lahore High Court**
Nasreen Akhtar Siddiqui. v. Govt. of the Punjab, etc.
W. P.No.69955 of 2021
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC7905.pdf

Facts: Through this petition, the petitioner has sought grant of remissions to his son on the ground that the co-accused was granted remissions.

Issues: i) Whether the period during which the accused remained on bail after being released from jail until he is again placed in confinement can be considered as the sentence served by him?
ii) Whether a convicted prisoner undergoing sentence of imprisonment is entitled to remissions of the period during which he was on bail?

Analysis: i) A bare reading of the Rule 35 of the Pakistan Prisons Rules, 1978 makes it clear that the period which is not to be counted as sentence served is the period which an accused spends out of prison and is not again committed to prison.
ii) The clear fallacy of remissions can be demonstrated through an illustration. "An accused was tried for an offence under section 380 PPC. During trial period, he was allowed to remain on bail and the trial prolonged up to, say 3 years. Finally the Court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence entitled to remission of that period"? Yet another illustration can be shown by stretching the above illustration a little further. If the aforesaid convicted person filed an appeal and got his sentence suspended by the appellate Court and the appellate Court confirmed the conviction and sentence after a period of three years, is he entitled to claim that he need not go to jail at all as he was on bail for more than three years during the post-conviction stage also? If it is to be held that he is entitled to such remission, the criminal justice system would be reduced to a mockery.

Conclusion: i) As per the Rule 35 of the Pakistan Prisons Rules, 1978 the period during which the accused remained on bail after being released from jail until he is again placed in confinement cannot be considered as the sentence served by him.

ii) A convicted prisoner undergoing sentence of imprisonment is not entitled to remissions of the period during which he was on bail.

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33. **Lahore High Court**
Ghulam Sarwar v. Ex-Officio Justice of Peace etc.
W.P. No. 39257 of 2021
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC7848.pdf

Facts: Through the instant writ petition the petitioner impugns the order passed by the learned Ex-Officio Justice of Peace, whereby an application filed by the petitioner under sections 22-A, 22-B, Cr.P.C. seeking registration of criminal case against private respondents has been dismissed.

Issues: i) If there is information relating to the commission of a cognizable offence, where such information is reported and under what provision of law?
ii) Where an aggrieved person could seek remedy against the Officer In-charge of a police station who refused registration of FIR?
iii) Whether the provisions of section 22-A(6), Cr.P.C. make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard?
iv) Whether the jurisdiction of the JOP is limited to the examination of the complaint/information laid before him and he should right away direct the Officer In-charge of police station to register FIR if it discloses commission of a cognizable offence?
v) What is the nature of functions which the JOP performs and as to whether the same are executive, administrative, ministerial or quasi-judicial?
vi) How the JOP should decide the applications under section 22-A (6), Cr.P.C. while exercising his powers under quasi-judicial?
vii) Whether an inquiry can be conducted by the Police before the registration of the case?

Analysis: i) If there is information relating to the commission of a cognizable offence, it falls under section 154 of the Code of Criminal Procedure. The provisions of section 154, Cr.P.C. are quite explicit and the duty of the officer in charge of the local Police Station in that regard is mandatory in nature. As such a police officer is bound to receive a complaint when it is preferred to him or where the commission of an offence is reported to him orally, he is under statutory obligation to enter it in the prescribed register, but the condition precedent is simply twofold: first, it must be an information and, secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events.
ii) It was the intention of the legislature that if there is a genuine grievance on the part of an individual against the police and most particularly with reference to

non-registration of FIR, he will resort to the concerned Justice of Peace i.e. Sessions Judge or Additional Sessions Judge in a District for the redressal of his grievance and the concerned JOP would pass an appropriate order by keeping in view the fact and circumstance of the case.

iii) It has been noticed that in section 154, Cr.P.C. the word "shall" has been used while in section 22-A(6) Cr.P.C. the word "may" has been used, which manifests the intention of the legislature that the officer in charge of the relevant Police Station may be under a statutory obligation to register an FIR whenever information disclosing commission of a cognizable offence is provided to him but the provisions of section 22-A (6) Cr.P.C. do not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard as such the Justice of Peace is still left with discretion to pass an order for the registration of FIR that's too in appropriate/certain cases.

iv) Functions performed by the Ex-officio Justice of Peace were not executive, administrative or ministerial inasmuch as he did not carry out, manage or deal with things mechanically. Such functions as described in clauses (i), (ii) and (iii) of section 22-A (6), Cr.P.C. were quasi-judicial as Ex-officio Justice of Peace entertained applications, examined the record, heard the parties, passed orders and issued directions with the application of mind. Every list before him demanded discretion and judgment. Functions so performed could not be termed as executive, administrative or ministerial on any account.

v) The functions, the Ex-officio Justice of Peace performs are not executive, administrative or ministerial while the same are quasi-judicial in nature. The functions, the Ex-Officio Justice of Peace performs, are not executive, administrative or ministerial inasmuch as he does not carry out, manage or deal with things mechanically. His functions as described in Clauses (i), (ii) and (iii) of sub-section (6) of section 22-A, Cr.P.C. are quasi-judicial as he entertains applications, examines the record, hears the parties, passes orders and issues directions with due application of mind. Every lis before him demands discretion and judgment. Functions so performed cannot be termed as executive, administrative or ministerial on any account.

vi) The use of the words "examines the record, hears the parties" contemplates hearing the proposed accused and going beyond the contents of the application for registration of case to determine whether sufficient incriminating material exists to justify the direction. The legal jurisprudence in our country is well settled that registration of FIR is not an adverse order. The JOP exercises quasi-judicial functions does not overrule that said principle. As such, the JOP does not have the absolute duty to hear the accused while deciding an application. Although an Ex-officio Justice of Peace is not bound to seek report from the police but when a report is called, then it should not be ignored. An-Ex-Officio Justice of Peace is not bound to seek report from the police at every cost and he is fully competent to decide the application and pass an order, even without any report by the police. But when a report is called, to know the truth and real facts,

as per the above-mentioned dictum, then it should not be ignored. If Ex-Officio Justice of Peace does not agree with the report, then should give the reasons. Seeking and obtaining a police report but ignoring and passing an order contrary to it, without assigning any reason could not be appreciated. Special care to this situation is required under section 22-A(6), Cr.P.C and he may afford him audience only if the circumstances demand so. No hard and fast rule can be laid down in that respect.

vii) No doubt, that an inquiry cannot be conducted by the Police before the registration of the case is correct but if the complainant concealed material facts in his application and if report is not summoned from the local Police, the registration of the case on the simple application of the complainant may causes harassment to innocent persons and would also be abuse of process of law. Furthermore, where the court felt that a preliminary inquiry or pre-registration inquiry can take place in the cases where the information was cryptic, without any substance, uncertain or vague which could create a doubt in the mind of the Court that the information laid before him does not clearly disclose commission of a cognizable offence and there is a need to conduct a further inquiry before registration of an FIR.

Conclusion: i) If there is information relating to the commission of a cognizable offence, such information is be reported to officer in charge of the local Police Station under section 154 of the Code of Criminal Procedure.

ii) An aggrieved person could seek remedy against the Officer In-charge of a police station who refused registration of FIR before the concerned Justice of Peace i.e. Sessions Judge or Additional Sessions Judge in a District.

iii) The provisions of section 22-A(6), Cr.P.C. does not make it obligatory for an ex-officio Justice of the Peace to necessarily or blind-foldedly issue a direction regarding registration of a criminal case whenever a complaint is filed before him in that regard.

iv) The jurisdiction of the JOP is not limited to the examination of the complaint/information laid before him.

v) The functions, the Ex-officio Justice of Peace performs are not executive, administrative or ministerial while the same are quasi-judicial in nature.

vi) An-Ex-Officio Justice of Peace is not bound to seek report from the police at every cost and he is fully competent to decide the application and pass an order, even without any report by the police. No hard and fast rule can be laid down in that respect.

vii) Yes, an inquiry can be conducted by the Police before the registration of the case to avoid harassment to innocent persons and abuse of process of law.

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34. **Lahore High Court, Lahore**
Ahmad Faran Sabir v. The State etc.
Crl. Misc. No. 8564/M/2022
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022lhc7910.pdf

Facts: Petitioner was booked in a criminal case punishable under section 489-F PPC for dishonestly issuing a cheque to the complainant. He moved an application under section 249-A Cr.P.C. before the Judicial Magistrate for his acquittal claiming that the charge against him was groundless and there was no probability of his being convicted of any offence. The Judicial Magistrate dismissed that application, and his decision was upheld in revision by the Additional Sessions Judge. The petitioner assailed the said order before the High Court through this petition filed under section 561-A Cr.P.C.

Issue: Whether a 'cash cheque' is covered by section 489-F PPC and its dishonour would entail criminal liability?

Analysis: Cheque is a kind of bill of exchange though it has certain peculiarities. Our law is quite similar to the provisions of Britain's Bills of Exchange Act of 1882. Since there is little jurisprudence on 'cash cheque' in Pakistani jurisdiction, therefore, guidance is taken from English Law. Pakistani law – like English law – expressly extends the definition of the term 'bill of exchange' to the bearer of the instrument. Under English Law, the payee must be a "specified person" while Pakistan's Negotiable Instrument Act of 1881 mandates that he must be a "certain person". This difference has no legal consequence as both phrases have the same meaning. The petitioner has neither denied his signature on the cheque nor the fact that it is drawn on his account. He has challenged its validity on the premise that it does not conform to the requirements of section 5 of the Negotiable Instrument Act of 1881. Given the above discourse, that contention is repelled.

Conclusion: 'Cash Cheque' is covered by section 489-F PPC and its dishonour would entail criminal liability.

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35. **Lahore High Court**
Faysal Bank Limited v. Haris Steel Industry (Pvt.) Limited
Ex.A.No.50-B of 2016
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC7608.pdf

Facts: The petitioners/judgment debtors have filed objection petition in terms of Section 19 of the Financial Institution (Recovery of Finance) Ordinance, 2001 thereby objecting to auction proceedings on the ground that the land of judgment debtors was auctioned illegally.

Issues: (i) Under which provisions of the Financial Institution (Recovery of Finance) Ordinance, 2001 and the Code of Civil Procedure, 1908, the Banking Court has to approve the auction schedule?
(ii) What should be included in terms and conditions of the auction approved by the Court in the light of the provision of the CPC?

(iii) Whether the objection petition is maintainable in case of non-deposit of 20% as per Order XXI Rule 90 CPC even in case of material illegality and irregularity in the auction proceedings?
(iv) What is the time frame of the auction and its objection to be decided?
(v) What are the vested rights of the bidders and auction purchasers after they have become successful bidder before the sale certificate is issued?
(vi) Whether the pasting of poster in the Court Premises is mandatory?
(vii) Whether the signing of attendance sheet and bidding sheet, is mandatory or directory?
(viii) What is the criteria to adjudge the transparent relationship of the Court auctioneer with all the stakeholders?
(ix) What are the instances which amount to substantial injury Order 21 Rule 90 of CPC?
(x) Whether the auction that has been conducted without following the procedure, violates the fundamentalrights of the auction purchaser under Article 23 and 24 of the Constitution?
(xi) Whether the vested/third party rights accrued in favour of a bidder are defeatable?

Analysis: (i) Section 19 of the Ordinance and Section 151 read with Order XXI of the CPC deals with execution proceedings before the Banking Court and gives discretion to it to execute a decree of Banking Court as per the provisions of the CPC, or in any manner the Court deems fit…Order XXI Rule 66 deals with proclamation of sales by public auction while Rule 67 deals with mode of making proclamation. Once an order for sale under Rule 64 is made, the Court causes a proclamation of intended sale, after notice to the decree holder and the judgment debtor under order XXI Rule 66 CPC.
(ii) In the light of Order XXI Rule 66 the CPC, following elements should be included in the terms and conditions of the auction schedule/proclamation approved by the Court:-

i. Time and place of sale of auction property.
ii. Description of the property to be sold at auction.
iii. The revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estatepaying revenue to the Government.
iv. Any encumbrance to which the property is liable.
v. The amount for the recovery of which the sale is ordered.
vi. Every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.
vii. The reserve price of the property.

(iii) As per the second proviso of Rule 90, Order XXI of the CPC, until and unless, the judgment debtors deposit an amount equal to 20% of the sum realized at the sale or furnish such security as the Court may direct, in every case, any

objection would not be maintainable even when there is material illegality and irregularity in the auction proceedings. The requirement to deposit 20% of the auction price, or such other security as directed by the Court, along with an application under Order XXI Rule 90 of the CPC is mandatory, and any application that fails to fulfil this requirement cannot be entertained and is liable to be dismissed by the Court.

(iv) Order XXI Rule 68 deals with the time frame of sale through auction. Under this Rule an interval of 15 days must elapse between the date of proclamation and the date of sale of an immovable property…As far as the time frame for decision of the objection petition against auction is concerned, Section 19(7) of the Ordinance envisages that, notwithstanding anything contained in the CPC, or any other law for the time being in force, the Banking Court is required to follow the summary procedure for purpose of investigation of claims and objections in respect of attachment or sale of any property, whether or not mortgaged, pledged or hypothecated, and shall complete such investigation within 30 days of filing of the claims or objections.

(v) The Hon'ble Supreme Court of Pakistan has repeatedly held that the nature of a bid made in the auctions, whether it is the highest or the lowest, is that of an offer which does not by itself give rise to any rights to the bidders or auction purchasers, as the same is always subject to acceptance by the Court after proper application of its judicial mind and deposit of full purchase-money under Order XXI Rule 85 CPC…Therefore, unless the Court confirms the auction by accepting the bid of the highest bidder, no vested/third party right accrue in favour of the auction purchaser.

(vi) The pasting of poster in the Court premises is one of the modes of making proclamation under the provisions of Order XXI Rule 67 which enables due publicity to an auction sale. Every proclamation is to be made and published, as nearly as may be, in the manner prescribed by the Order XXI Rule 54 sub-rule (2)…Thus, a substantial compliance of the provisions of the Order XXI Rule 54 sub-rule (2) is enough for the purposes of sale proclamation and attracting the prospective bidders, and in the absence of any specific complaint in this regard, the entire auction proceedings cannot be vitiated by the Court.

(vii) As far as the issue of signing of attendance sheet and bidding sheet is concerned, the Civil Procedure Code is silent on this point. By way of practice the signing of the attendance sheet and the bidding sheet is for the purpose to establish that the sale is conducted in a fair and transparent manner at site in terms of the proclamation of auction approved by the Court. It further establishes that the auction proceedings and the auction report are not bogus or sham.

(viii) For the purposes of maintaining the transparency in the auction proceedings, it is the duty of the Court to check whether the criteria for the public auction of the property as envisaged under Order XXI has been complied with, and whether at the time of drawing up the proclamation of sale, the Court Auctioneer kept in his mind the requirements under Order XXI Rules 66, 67, 84 and 85... Otherwise, failure of the Court Auctioneers to adhere to the said

Rules could vitiate the auction proceedings on account of the material irregularity resulting in lack of transparency and rendered the proclamation of sale illegal.

(ix) Following are the instances that amount to substantial injury under Order XXI Rule 90 C.P.C.,

i. Presence of evidence on record that the auction proceedings are not conducted at the site.
ii. The property has been sold at a throw away price.

(x) An auction that has been conducted without following the procedure does not violate the fundamental rights of the auction purchaser under Articles 23 and 24 of the Constitution as the same are subject to certain restrictions imposed by the law.

(xi)The vested/third party rights accrued in favour of a bidder when the auction-sale becomes complete, i.e. when the Court confirms the auction sale. However, such vested rights again are defeatable and would not take away the right of the mortgagor/judgment debtor to redeem his property if he brings his case within the parameters of Order XXI Rule 89, Rule 90, or Rule 91 of the CPC. However, position of the auction purchaser is differentwhen the court confirms the auction sale in favour of the auction purchaser.

Conclusion: (i) Banking Court approves an auction schedule under Section 19 of the Financial Institution (Recovery of Finance) Ordinance, 2001 read with Section 151 and Order XXI Rule 66 of the Code of Civil Procedure, 1908.

(ii) Above mentioned are the terms and conditions which should be included in the auction approved by the Court in the light of the provision of the CPC.

(iii) Objection petition is not maintainable in case of non-deposit of 20% as per Order XXI Rule 90 CPC even in case of material illegality and irregularity in the auction proceedings.

(iv) As per Order XXI Rule 68 an interval of 15 days must elapse between the date of proclamation and the date of sale of an immovable property while the objections to an auction must be decided within 30 days of the filing of the same as per Section 19(7) of the Financial Institution (Recovery of Finance) Ordinance, 2001.

(v) Unless the court confirms the auction by accepting the bid of the highest bidder, no vested/third party right accrue in favour of the auction purchaser.

(vi) The pasting of poster in the court Premises is not mandatory.

(vii) The signing of attendance sheetand bidding sheet, is neither mandatory nor directory but a mere practice to establish that the sale is conducted in a fair and transparent manner.

(viii) The criteria to adjudge the transparent relationship of the Court auctioneer with all the stakeholders is the compliance or non-compliance of Order XXI Rules 66,67,84 and 85 CPC.

(ix) The instances amounting to substantial injury under Order 21 Rule 90 of CPC includes presence of evidence on record that the auction proceedings are not conducted at the site or the property has been sold at a throw away price.

(x) The auction that has been conducted without following the procedure does not violates the fundamentalrights of the auction purchaser under Article 23 and 24 of the Constitution.
(xi) The vested/third party rights accrued in favour of a bidder are defeatable if the mortgagor/judgment brings his case within the parameters of Order XXI Rule 89, Rule 90, or Rule 91 of the CPC.

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36. **Lahore High Court**
Muhammad Naeem Mir v. Federation of Pakistan etc.
W.P.No.70991/2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC7703.pdf

Facts: The petitioner has filed writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 with the prayer to direct the Respondents to stop the protests, including the Long March.

Issues: Whether the fundamental right to peaceful protest can be exercised in a way it infringes the fundamental right to free movement and right of trade/business?

Analysis: Suffice to mention here that in Mian Ali Asghar Case (2020 CLD 157), this Court besides giving observations regarding the peaceful protest and procession being a fundamental right of all the citizens in a democratic country, has also held that "protesters who claim to espouse their cause often forget that their right to protest ends when other person's right to free movement and right of trade/business starts."

Conclusion: The fundamental right to peaceful protest cannot be exercised in a way it infringes the fundamental right to free movement and right of trade/business.

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37. **Lahore High Court**
Muhammad Bashir v. Syed Imdad Ali Shah
C.R. No. 6746 of 2020
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC7900.pdf

Facts: Through this civil revision, petitioner has called in question order passed by learned Additional District Judge, whereby in suit for recovery filed by respondent under Order XXXVII of C.P.C. against the petitioner, his application for leave to defend has been dismissed.

Issues: i) Whether it is necessary that an affidavit shall be accompanied with application for leave to defend filed in suit under Order XXXVII of C.P.C?
ii) Whether Court may require affidavit for determination of question of limitation, which is a mixed question of law and facts?

Analysis: i) Perusal of the Rule III(1) of Order XXXVII C.P.C. shows that Court has to

consider the application for leave to defend on the basis of affidavit relating to facts submitted by the applicant and not otherwise. An exception to said legal position would be that the claim of the applicant to obtain leave to defend is based on question of law only and not on the basis of any disputed fact, then affidavit may not be required to be filed as the Court is always competent to decide the questions of law as same only require interpretation of law.

ii) The Court while determine the said question of limitation, which is a mixed question of law and facts may require affidavit to be attached with the application for leave to defend, if the said question is to be determined by the resolution of some disputed facts. However, if for resolution of said question of limitation, decision has to be made on admitted facts or facts which are not disputed then the Court on its own can determine the said question of limitation even if not raised by any party whether leave to defend has been granted or not.

Conclusion: i) It is necessary that an affidavit shall be accompanied with application for leave to defend filed in suit under Order XXXVII of C.P.C but not required when just question of law is involved.

ii) Court may require affidavit for determination of question of limitation, which is a mixed question of law and facts.

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38. **Lahore High Court**
Muhammad Rafique v. Addl. District Judge, Jhang, etc
Writ Petition No. 71147 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022lhc7684.pdf

Facts: Through this constitutional petition, the petitioner has called in question the orders passed by both the courts below, whereby in a suit for specific performance of agreement to sell, stay application filed by the petitioner has concurrently been dismissed.

Issues: Whether mere possession over the suit property can be made a basis to equip the party for entitlement of injunction?

Analysis: Mere possession over the suit property cannot be made a basis to equip the party with injunction for an indefinite period, unless the right to continue to hold the said possession under some legal right is established on the record.

Conclusion: Mere possession over the suit property cannot be made a basis to equip the party for entitlement of injunction.

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39. **Lahore High Court**
Uzma Tahrim and others v. Habib Bank Limited and others
C.O.S. No. 41078 of 2022
Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2022LHC7938.pdf

Facts: Through this application filed by the plaintiffs under Section 11 of Financial Institutions (Recovery of Finances) Ordinance, 2001 ("the Ordinance") and other enabling provisions of law, applicants seek passing of interim decree in their favour and against the respondent/defendant ("Respondent Bank").

Issues: i) Whether separate interim decrees cannot be passed in favour of some of plaintiffs especially when there is stay order against one of plaintiff?
ii) Whether interim decree can only be passed while granting leave to defend and not otherwise in terms of Section 11 of the Ordinance?
iii) Whether waiting for grant of leave to defendant for the purpose of passing interim decree for admitted amounts is necessary?

Analysis: i) If the amount payable to all the plaintiffs have separately been determined by the bank through its audited accounts and the said amounts are not interdependent on each other then there is no impediment in passing of piecemeal decree in favour of some of the plaintiffs/applicants to the exclusion of others. The Court is well within its jurisdiction to pass a separate interim decree to the extent of letters issued separately to plaintiffs in which the liability of bank has been admitted and to deal with the matter of one of the plaintiff separately.
ii) Subsection (1) of Section 11 provides the powers of the Court to pass an interim decree on admitted facts and the first proviso to section 11 provides the powers of Court to modify the said interim decree in part or whole or reverse the same. Although, subsection (1) provides that said interim decree may ordinarily be passed on the basis of admitted amount while granting leave to defend for the rest of the case, however, the words "while granting leave to defend" employed in said Section do not bar or imply that such decree cannot be passed before leave to defend is granted, especially when the admitted amount is payable by the defendant to the plaintiff regardless of the fact whether leave to defend is granted or refused.
iii) Waiting for grant of leave to defendant for the purpose of passing interim decree for admitted amounts is immaterial for the reason that in any case decree to the said extent may be passed by the Court on the basis of admission of the defendant, therefore, expression "while granting leave to defend" is to be liberally interpreted instead of its strict construction and it is held that this Court can pass interim decree even prior to grant of leave to defend.

Conclusion: i) Yes, separate interim decrees can be passed in favour of some of plaintiffs especially when there is stay order against one of plaintiff if the amount payable to all the plaintiffs have separately been determined by the defendant/bank through its audited accounts and the said amounts are not interdependent on each other whereas liability to bank (defendant) has been admitted to the extent of such plaintiffs.
ii) The words "while granting leave to defend" employed in Section 11 do not bar or imply that such decree cannot be passed before leave to defend is granted,

especially when the admitted amount is payable by the defendant to the plaintiff regardless of the fact whether leave to defend is granted or refused.
ii) Waiting for grant of leave to defendant for the purpose of passing interim decree for admitted amounts is immaterial.

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40. **Lahore High Court, Lahore**
Murder Reference No.55/2018,
Muhammad Tayyab v. The State
Criminal appeal 778/2018
Mst. Naseem Bibi v. The State, etc.
Criminal appeal 778/2018
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022lhc7641.pdf

Facts: In consideration were the Murder reference and rival appeals of appellant accused.

Issues: i) What is the scope of reliability and credibility of direct and circumstantial evidence?
ii) What is effect of doubt in guilt of accused arising in circumstantial evidence?
iii) Whether the discovery of dead body of deceased victim, upon application moved before Illaqa Magistrate for disinterment of corpse, can be evaluated as a discovery in the light of Article 40 of Qanun-e-Shahadat Order, 1984?
iv) Whether report of PFSA pertaining cause of death of deceased victim as firearm injury would be considered as proper admission of fact regarding cause of death especially when relevant post mortem report does not carry final opinion regarding his cause & time of death?
v) Whether PFSA reports may be relied for purpose of identity of dead body of deceased if safe transmission of relevant parcels from doctor to PFSA is in doubt and no other evidence is available for identity of dead body of deceased?
vi) What is weight of recoveries of hoer (Kassi), softy (shoes) & pistol in a murder case if same are without testing reports?
vii) Whether factors like failure to give evidence as witnessor to provide evidence can be read against accused if he opts to produce DW to dislodge the alleged motive?

Analysis: i) Reliability always depends upon capacity of a witness to depose, legality and competency of processes, whereas credibility touches the character of a witness in relation to any fact in issue or relevant fact. Any violations of the legally acceptable or mandated process of collection/recording may lead to make it unreliable. Witnesses may be unreliable because of various factors such as old age, inability to remember past events, relationship with the victims and/or the complainant; any likely motives for the commission of perjury, such as financial gain, duress, past history of witnesses, lack of requisite knowledge or experience etc. Circumstantial evidence means the evidence afforded not by the direct testimony of an eye-witness to the fact to be proved, but by the bearing upon

that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than the truth of the principal fact. The leading rules of circumstantial evidence are that the facts alleged as the basis of any inference must be clearly proved and indubitably connected with the factum probandum.

ii) The burden of proof is always on the party who asserts the existence of any act which infers legal accountability; the corpus delicti must be clearly proved before any effect is attached to circumstances supposed to be inculpatory of a particular individual; the best evidence must be adduced which the nature of the case demands; evidence ought to be received with distrust, wherever any considerable time has elapsed since the commission of alleged offence and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused as well as incapable explanation upon any other reasonable hypothesis than that of his guilt.

iii) Doctor confirmed the fact that exhumation of dead body was done in the graveyard by the court order on the application. When application was already moved for exhumation and information in this respect was available with the police, doctor and complainant, question of "exclusive knowledge" does not arise so as to make recovery of dead body as admissible evidence under Article 40 of Qanun-e-Shahadat Order, 1984.

iv) As per report of Forensic Science Agency, injuries pertaining entrance & exit of single fire were inflicted by firearm weapon sufficient to cause death in ordinary course of nature. Cause of death is not mentioned in post mortem report under final opinion. Neither the time nor cause of death is determined by the doctor. Exaggerated version of doctor about cause of death by firearm before the court cannot be considered because accused was not aware of such opinion nor copy of it was provided to him.

v) Safe transmission of parcels from doctor to PFSA was in serious doubt and chain is broken. Therefore, DNA report showing the identity of deceased as biologically full siblings of complainant loses its efficacy and cannot be read in favour of prosecution.

vi) Recovered hoer (Kassi) is not sent for testing to obtain any forensic clue with respect to use of such Kassi for causing any injury or excavation of earth for burial of dead body. Similarly, softy (shoes) is also not sent for testing nor any expert examined such shoes to know about its size to be fit in the feet of deceased. Recovery of pistol is doubtful as police had already visited that place prior to date of recovery. Only a functionality test report of such pistol was obtained, no bullet casings were collected by the police so as to obtain any evidence of its matching with alleged pistol. Though doctor observed injuries by firearm weapon, but it is not discernable from the record that it was caused with pistol shots.

vii) Motive bottomed by the prosecution was without support of any evidence yet from the accused's side DW was produced, However, The evidential burden is not shifted to the accused/appellant in order to dislodge the prosecution case.

Conclusion: i) Both reliability and credibility of direct or circumstantial evidence are locus in a case for a well- reasoned decision by the court.

ii) If there is any reasonable doubt in the guilt of the accused, he is entitled to be acquitted as matter of right.
iii) This discovery of body of deceased was not a secret information that could remain within the knowledge of police and the appellant, so as to evaluate it in the light of Article 40 of Qanun-e-Shahadat Order, 1984.
iv) The report of PFSA pertaining cause of death of deceased victim is improper admission of fact regarding cause of death.
v) PFSA reports are of no use to the prosecution for purpose of identity of dead body of deceased if safe transmission of relevant parcels from doctor to PFSA is in doubt and no other evidence is available.
vi) Mere recovery of hoer (Kassi) and softy (shoes) are of no avail and recovery of pistol does not add any quality to prosecution case without their testing reports.
vii) Factors like failure to give evidence as witness or provide evidence cannot be read against accused even if he opts to produce DW to dislodge the alleged motive.

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41. **Lahore High Court**
Rashid Ahmed & Rabia Bibi v. The state
Criminal Appeal No.185 & 245 of 2015
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC7745.pdf

Facts: Appellant along with co-convict (since released from jail after serving out of his whole sentence) was tried by the learned trial court in a private complaint under sections 376 (ii) PPC emanated from case in respect of an offence under section 376 (ii) PPC registered at Police Station and at the conclusion of trial, the learned trial court while acquitting co-accused, convicted and sentenced the appellant.

Issues: i) Whether in convicting the person in the offence of fornication, the complaint in terms of section 203-C, Cr.P.C. is mandatory?
ii) Whether male alone can be convicted in the offence of fornication?
iii) Whether accused is entitled for benefit of doubt and it is better to release 100 persons guilty persons should let off but one innocent person should not suffer?

Analysis: i) For convicting a person in the offence of fornication, complaint in terms of section 203-C, Cr.P.C. is mandatory.
ii) A male alone cannot be convicted in the offence of fornication and the consenting female could not be believed as a witness against the male.
iii) This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. The responsibility to prove its case beyond any shadow of reasonable doubt squarely lies with the prosecution and if it fails to successfully discharge it, the only result can be the extension of benefit of doubt to the accused person and it is, by now, well established proposition that multiple doubts are not required in this regard, even a single circumstance creating doubt in a prudent mind is sufficient.

Conclusion: i) Complaint u/s 203-C Cr.P.C is mandatory in offence of fornication.
ii) In the case of fornication, male alone cannot be convicted.
iii) The benefit of doubt must be extended in favor of accused and it is that 100 guilty persons should let off but one innocent person should not suffer.

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42. **Lahore High Court**
Shahid Wazeer v. Additional District Judge, etc.
Writ Petition No. 17366/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC7798.pdf

Facts: Petitioner filed application under Section 25 of the Guardian and Wards Act, 1890 whereas, Respondent No.3 also filed a guardian petition and both the petitions were consolidated in which the learned Trial Court chalked out schedule of meeting with consent of the parties but Respondent No.3 challenged the same and it was modified by the learned appellate court. Hence, instant constitutional petition has been filed by the petitioner.

Issues: i) Whether non-custodial parent has a right to file a suit for visitation rights?
ii) What is paramount consideration in deciding a guardian petition, including chalking of a visitation schedule?
iii) Whether the Guardian Court can assume that an overnight stay of the minor with non-custodial parent is harmful or beneficial by applying a straitjacket formula?

Analysis: i) The law on the subject is contained in the Act. The parent who does not have custody has the visitation rights, being a non-custodial parent. A non-custodial parent has a right to file a suit for visitation rights. The law in vogue on the subject lacks any guidelines about the duration or frequency of such visits or the overnight stay of the minor with non-custodial parent. The Act does not contemplate a set pattern of the visitation schedule for the minors inasmuch as it is silent on the frequency of visitation or the venue thereof.
ii) It is trite law that while deciding a guardian petition, including chalking of a visitation schedule, it is the 'welfare of the minor' which is of paramount consideration. Limited hours of meeting within the Court premises is the policy generally adopted by the Courts which is certainly not an appropriate solution inasmuch as it only enables a minor to identify his relation with the non-custodial parent without developing any bonding due to the lack of proper interaction between the minors and such non-custodial parent because of non-conducive environment of the Court premises. As a natural corollary, there is great chance that the minor will turn against such non-custodial parent. Therefore, the Courts are to consider the impact that the proposed visitation schedule might have on the child. Failure to protect the development of healthy and secure attachments of a minor with non-custodial parent can have long-term negative effects on the development of the minor, hence, the basic consideration while chalking out the

visitation schedule is to ensure that the minor will not turn against one parent because of inadequacy of time given to the non-custodial parent. In case reported as "Umer Farooq vs Khushbakht Mirza" (PLD 2008 Lahore 527), this Court has held that the parents, especially father being natural guardian, has an inherent right to properly and effectively participate in the upbringing of the minors while developing proper bonding and love with the minors that can only be achieved if the visitation schedule is chalked out in such a manner that the non-custodial parent meets the child in a pleasant, homely and responsive environment on frequent and regular basis. Certainly, the Court's premise is not such place where a minor can have congenial feeling towards his/her parent. Moreover, a balanced annual visitation plan would benefit the child as it would allow significant time to develop a meaningful relationship with both parents. Overnight access could also benefit the child by giving him or her an opportunity to interact with the family of the non-custodial parent and maintain relations with them. Learned Guardian Courts are obligated to chalk out a schedule in such a manner that both the parents must be accommodated in such a way that one parent should not be deprived from participating in the important aspects and events of the minor's life, inter alia, school and leisure time activities, annual vacations, birthdays, and other important occasions and festivals such as Eid etc. The fundamental rule which the Court must follow is to ensure that the minor spends proper and adequate time with non-custodial parent who can also exhibit his or her love and affection towards the child for which overnight stay with non-custodial parent is one of the most appropriate steps and in this regard different arrangements work better for children of different ages.

iii) Overnight stay of a child of tender age with non-custodial parent may not be advisable. Similarly, there appears to be no harm in allowing overnight stay in case of a male child above 07 years of age. These aspects should be kept in mind while chalking out the visitation schedule. Therefore, the fact whether the Guardian Court can or should assume that an overnight stay of the minor with non-custodial parent is harmful or beneficial until proved otherwise is a question which cannot be answered by way of applying a straitjacket formula and invariably has to be decided by keeping in view peculiar facts of every case on its own merits, including but not limited to factors such as the age of the minor, the environment in the house of the non-custodial parent, availability of time with the noncustodial parent and his/her other social and moral obligations and commitments.

Conclusion: i) A non-custodial parent has a right to file a suit for visitation rights.

ii) Paramount consideration in deciding a guardian petition, including chalking of a visitation schedule is 'welfare of the minor'.

iii) The Guardian Court cannot assume that an overnight stay of the minor with non-custodial parent is harmful or beneficial by applying a straitjacket formula but it can be decided by keeping in view peculiar facts of every case on its own merits.

43. **Lahore High Court, Lahore**
Hayat Ali (deceased) through his legal heirs v.
Mst. Khatoon Begum (deceased) through her legal heirs etc.
Civil Revision No. 419-D of 2018
Mr. Justice Anwaar Hussain.
https://sys.lhc.gov.pk/appjudgments/2022LHC7837.pdf

Facts: This Civil Revision was instituted assailing judgment & decree of learned appellate court handed down to the reverse judgment & decree of trial court dismissing suit of deceased predecessor of respondents instituted to challenge sale mutation regarding suit property.

Issues: i) Upon whom shall lie burden to prove sale transaction/mutation alleged from pardanasheen illiterate village lady, challenged with allegations of fraud & misrepresentation?
ii) What would be effect of failure of beneficiary of mutation to depose himself in evidence if he also happens to be real brother of alleged transferor/*pardanasheen* lady?
iii) What would be effect of non-production of attesting witnesses to mutation by beneficiary thereof?
iv) Whether impleading revenue officials in every case pertaining allegation of fraud is necessary?
v) Does it carry significance if record of admitted mutation is not adduced in statement of party challenging it, instead is exhibited in statement of her counsel?

Analysis: i) Specific allegation of fraud was leveled by late predecessor of respondents on the score that she was a simple, illiterate and village lady falling under the definition of pardanasheen lady. If it is assumed that deceased predecessor of respondents was unmarried at the time of impugned mutation and no adviceof husband could have been made available, this fact in itself places even higherand heavier burden of proof on the beneficiary of the impugned mutation to prove the genuineness of transaction given the fact that pardanasheen lady was unmarried sister of the beneficiary, whose father had passed away and she being an illiterate village woman was dependent on her brothers regarding her worldly affairs. However, late predecessor of respondents was villager and an illiterate lady and there is nothing to dislodge that she was not married before sanctioning of the impugned mutation and independent advice was available to her as no male member of her in-law's family or her husband verified her. Burden to prove the transaction was on the beneficiary and not on pardanasheen lady.
ii) While there is no cavil to the proposition that a party in a suit can always contest the same either directly or through an attorney. However, where a beneficiary claims to have purchased the property from his sister who is pardanasheen lady, he himself should have had appeared to face the cross-examination.
iii) Both attesting witnesses to mutation should appear before the learned Trial

Court to substantiate version of the beneficiary or any application should be filed for production of secondary evidence if they were not available.

iv) Purpose of arraying the officials as parties to suit is to provide them an opportunity to participate and put forth their defence against the allegations of fraud. In case they are not impleaded by the parties, the revenue officials can always be summoned by either side or if considered necessary even as Court witnesses.

v) It is settled law that any person who claims title through a mutation and such mutation is challenged, the burden of proof of proving transaction embodied in the mutation is upon him.

Conclusion: i) A heavy burden was on the beneficiary of the transaction/mutation involving illiterate village lady.

ii) Failure of beneficiary of a mutation to depose himself in evidence could impel the Court to draw adverse interference.

iii). In case of non-production of attesting witnesses, beneficiary of impugned mutation would fail to produce cogent, reliable and confidence inspiring evidence as per mandate of Article 17 read with Articles 70, 79 & 80 of the Qanun-e-Shahadat Order, 1984.

iv) Impleading revenue officials in every case is not a rule of thumb.

v) It is not of any significance if impugned mutation is broughton the record through the statement of counsel as admitted facts need not be proved**.**

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44. **Lahore High Court, Lahore**
Ch. Muhammad Saleem v. Ch. Abdul Razzaq
R.S.A No.16/2011
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2022LHC7824.pdf

Facts: The concurrent findings of law and fact in the suit for possession through right of pre-emption have been assailed through the instant Regular Second Appeal.

Issues: (i) Whether the right of pre-emption and the determination of sale price stand at two different pedestals severable from each other or both are so inextricably intertwined that failure to reach a settlement on sale price by a vendee and pre-emptor ipso facto obliterates the compromise to the extent of right of pre-emption?

(ii) What is the true import and scope of Section 27 of the The Punjab Pre-emption Act 1991?

Analysis: (i) A suit for possession through pre-emption involves two major constituents in a linear manner; firstly, the determination as to whether the right of pre-emption vests in a pre-emptor or not; and, secondly, the determination of actual sale consideration. The right of pre-emption is not a right of repurchase partaking of a new contract of sale rather the same is in the nature of substitution where the pre-emptor is made to step into the shoes of the vendee. When a pre-emptor is able to

establish his right of pre-emption. The second constituent relates to determination of the conditions on which the vendee stands. Thus, it does not envisage a re-negotiation of the sale price but only the determination and ascertainment of the same as the parties were in dispute as regards the same. The admission/compromise to the extent of vesting of right of pre-emption is conclusive. The law envisages that once the right to pre-emption is established, the sale price may be determined by the court in case of dispute between the parties. The establishment of right of pre-emption and determination of price are two independent aspects having their respective place in the adjudication process.

(ii) Through section 27 of The Punjab Pre-emption Act, 1991, the legislature has specifically empowered the learned Trial Court to determine the sale price where the parties are at variance as to the actual sale price paid by the vendee in a sale contract that triggered pre-emption.

Conclusion: (i) The right of pre-emption and the determination of sale price stand at two different pedestals severable from each other and failure to reach a settlement on sale price by a vendee and pre-emptor *ipso facto* does not obliterate the compromise to the extent of acknowledgement of right of pre-emption.

(ii) In ordinary cases of pre-emption where there is a disagreement over the price in a suit for pre-emption, the Courts frame specific issues in terms of Section 27 of the The Punjab Pre-emption Act 1991 to decide the matter.

LATEST LEGISLATION/AMENDMENTS

1. "The Punjab Local Government Act, 2022" is enacted to reconstitute local governments in the Punjab and consolidate laws relating to powers and functions of the local governments.
2. "The Multan University of Science and Technology Act, 2022" is enacted to provide for the establishment of Multan University of Science and Technology.
3. "The Urdu language Act, 2022" is enacted to provide for strict compliance of Urdu script in the public and private sector.
4. "The Sahara University Act, 2022" is enacted to provide for the establishment of the Sahara University.

SELECTED ARTICLES

1. **MANUPATRA:**
   https://articles.manupatra.com/article-details/Applicability-of-the-Statute-of-Limitation-to-Arbitration-Proceedings-A-Comprehensive-Analysis

   Applicability of the Statute of Limitation to Arbitration Proceedings: A Comprehensive Analysis By Anshu Singh Rathore

   Introduction:

The law of limitation is based on the principle "vigilantibus non dormientibus jura subveniunt" which means the law serves the vigilant, not the indolent. The law of limitation bars the remedy only after the limitation period has expired. But it does not extinguish a right on which the suit has to be based. In the case of SC Prashar vs Vasant Sen[1], the Hon'ble supreme court observed that the Statute of limitation is the statute of repose, peace, and justice. The intention of the Law of limitation is not to give a right where there is not one but to impose a bar after a certain period to impose an existing right. This article analyzes the application of various provisions of the Limitation Act, 1963 (Hereinafter the Act, 1963) to the Arbitration & Conciliation Act, 1996 (Hereinafter the Act, 1996).

2. **MANUPATRA:**
https://articles.manupatra.com/article-details/A-study-on-International-Monetary-Law

A study on International Monetary Law By Poonam Panchal

International Monetary System: *The international monetary system refers to a system that encompasses internationally accepted rules, conventions and multilateral institutions governing balance of payment relations between countries[1]. As per International Monetary Fund (IMF), the international monetary system includes rules and arrangements between countries that govern 4 core elements of the system: i) exchange rates, ii) international payments system, iii) international capital movements, and iv) monetary reserves and access to liquidity[2]. These core elements make up a country's balance of payment account and the stability of international monetary system depends on the smooth functioning of these elements, that is to say on the stability of countries balance of payment[3].*

The term international monetary system acquired legal relevance[4] with its inclusion in an international treaty language i.e., the Articles of Agreements[5] (Articles). The Articles lay down the precise purpose and objective of international monetary system in Article IV, which states that:".....the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that sustains sound economic growth, and the principal objective is the continuing development of the orderly underlying conditions that are necessary for financial and economic stability.....[6]"

3. **MANUPATRA:**
https://articles.manupatra.com/article-details/Examining-the-Right-to-Freedom-and-Expression-in-light-of-Public-Functionaries

Examining the Right to Freedom and Expression in light of Public Functionaries By Malvika Pachauri

INTRODUCTION: *A forlorn incident occurred on the night of 29th July 2016 wherein a dozen robbers allegedly committed the heinous crime of gang raping a 35 year old woman and her minor daughter near Bulandshahr. This antagonized the hoi polloi and*

certain political remarks made by a senior party leader namely Azam Khan pertaining to the incident posed crucial questions before the court in respect to the limitations on the freedom of speech and expression on high public functionaries. Latterly the Supreme Court has undertaken the posting of hearing of pleas pertaining to such limits on 15 November 2022 and a constitution bench is being constituted for the same. The major question of law raised was whether the court has the authority to impose restrictions on the right to freedom and expression beyond restrictions provided in the constitution and whether public functionaries should be vicariously responsible to the state for disregarding the principle of collective responsibility. Hence, this Article aims to address the constitutional aspects in light of recent developments and presents the legal standpoint catering to the major questions ahead of the constitution of the bench.

4. **THE YALE LAW JOURNAL**
https://www.yalelawjournal.org/forum/deference-delegation-and-divination

Deference, Delegation, and Divination: Justice Breyer and the Future of the Major Questions Doctrine By Thomas B. Griffith & Haley N. Proctor

ABSTRACT: *On the final day of Justice Breyer's tenure on the U.S. Supreme Court, the Court formally recognized the major questions doctrine, which requires an agency to point to "clear congressional authorization" before it exercises a novel power with economic and political significance. Though its origins are disputed, our account traces the doctrine to MCI Telecommunications Corp. v. AT&T—a decision announced just months before Breyer joined the Court—and from there to an article Breyer penned while a judge on the U.S. Court of Appeals for the First Circuit. The doctrine therefore provides a vantage point from which to survey Breyer's administrative-law jurisprudence in panorama. That is this Essay's aim.*

We begin by examining the major questions doctrine, the details of which remain hazy, in large part because the Court is of many minds about what Congress does when it gives discretion to agencies. Justice Breyer had one answer, to which the Essay turns next: Congress legislates in broad strokes but leaves it to agency experts to fill in the details. Courts police these experts at the boundaries. Breyer's answer led him to follow the logic of the major questions doctrine in some cases but not others. The key, for him, was flexibility. Over the course of his tenure, Breyer's case-by-case approach guided the Court to treat questions of deference with nuance. But an increased appreciation for the degree of policy-making authority agencies wield has more recently led the Court to utilize the major questions doctrine in a manner at odds with Breyer's judicial philosophy. The Essay traces this evolution and concludes by predicting an uncertain future for a doctrine with such unstable foundations.

5. **HUMAN RIGHTS LAE REVIEW(OXFORD ACADEMIC**
https://academic.oup.com/hrlr/article/22/4/ngac028/6809071?searchresult=1#379455740

Rethinking the Right to Freedom of Thought: A Multidisciplinary Analysis By Sjors Ligthart, Christoph Bublitz, Thomas Douglas, Lisa Forsberg, Gerben Meynen

ABSTRACT: *In recent years, there has been increased academic interest in the human right to freedom of thought (RFoT). Scholars from various disciplines are currently debating the content and scope of this right. In his annual thematic report of 2021, the United Nations Special Rapporteur on Freedom of Religion or Belief paid explicit and comprehensive attention to the RFoT, encouraging further clarification of the content and scope of the right. This paper aims to contribute to this end, setting the stage for further research, by offering a multidisciplinary analysis of the RFoT's scope, relation to other rights, practical significance and moral foundations.*