LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-10-2022 to 31-10-2022)

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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SELECTED ARTICLES

1. **Supreme Court of Pakistan**
Aina Haya v. Principal Peshawar Model Girls High School-I, Peshawar, etc
Civil Petition No.2824 of 2019
Mr. Justice Umar Ata Bandial HCJ, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Amin-ud-Din Khan
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2824_2019.pdf

Facts: The petitioner was expelled from school and her request to send her name for the final examination of the 10th class was also refused by the school. Aggrieved, the petitioner challenged the said refusal before the learned Peshawar High Court through a constitutional petition. Initially interim relief was granted to the petitioner and she sat the examination, which she subsequently passed. Later on the constitutional petition was dismissed by the Learned High Court hence, she filed instant civil petition.

Issues: Whether any dispute can be decided mere on humanitarian grounds even at the expense of overriding the clear letter of the law?

Analysis: It is important to highlight that judges are to decide disputes before them in accordance with the Constitution and the law and not on the basis of their whims, likes and dislikes or personal feelings or mere humanitarian grounds. While justice is tempered with mercy but not at the expense of overriding the clear letter of the law. Compassion and hardship, therefore, may be considered by courts for providing relief to an aggrieved person, but only when there is scope in the relevant law to do so, not in breach of the law.

Conclusion: Any dispute cannot be decided merely on humanitarian grounds and also not at the expense of overriding the clear letter of the law.

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2. **Supreme Court of Pakistan**
M/s A.J. Traders through its proprietor Muhammad Ilyas v. The Collector of Customs (Adjudication) Islamabad & others
Civil Appeals Nos. 354 to 356 of 2020
Mr. Justice Qazi Faez Isa Mr. Justice Yahya Afridi Mr. Justice Jamal Khan Mandokhail
https://www.supremecourt.gov.pk/downloads_judgements/c.a._354_2020.pdf

Facts: The appellants availed the benefit of SRO No. 266(I)/2001 ('SRO 266') and imported silver and gold which was required to be used in the manufacture of jewellery and the jewellery manufactured therefrom was to be exported within one hundred and eighty days, but no export took place. Therefore, orders-in-original were passed by the Collector of Customs, which were unsuccessfully appealed before the Customs Appellate Tribunal ('the Tribunal'). Thereafter, the appellants filed customs references before the Peshawar High Court, Peshawar but these too were dismissed. Hence, these appeals.

Issue: Whether the statutory requirement to decide an appeal within a particular time frame, is a mandatory obligation cast on a State functionary and whether non-compliance therewith adversely affects the rights of the taxpayer?

Analysis: The use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision; it is certainly one of the indictors of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the Court to garner the real intent of the legislature as expressed in the law itself. If a taxpayer's appeal is not decided within the stipulated period, his appeal cannot be negated and the taxpayer non-suited on this score. To hold otherwise would be eminently unfair and give the State a premium for its own functionary's non-compliance with the law. Article 4 of the Constitution of the Islamic Republic of Pakistan ('the Constitution') accords the protection of law and to be treated in accordance with law to be the inalienable right of every citizen and also of every other person for the time being in Pakistan. The right to be dealt with in accordance with the law is further fortified by Article 10A of the Constitution which stipulates a fair trial and due process as a Fundamental Right. These rights cannot be negated or diluted by statute, and if any law purports to do so it shall to such extent be void, as stipulated in Article 8(1) and (2) of the Constitution. Therefore, it cannot be stated that an order belatedly passed on a taxpayer's appeal is a void order and/or a nullity.

Conclusion: Deciding an appeal within a statutory period is not a mandatory obligation and its non-compliance does not adversely affect the rights of the taxpayer.

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3. **Supreme Court of Pakistan**
Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others v. Nargis Jamal, Ex-DEO (Female) Karak
Civil Appeal No. 19 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.a._19_2022.pdf

Facts: This Civil Appeal by leave of the Court is directed against the Judgment passed by the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Issues: i) Whether competent authority is bound to adhere to the recommendations of inquiry committee while imposing punishment?
ii) What is role of Service Tribunal in awarding of punishment?

Analysis: i) There is no hard and fast rule that the competent authority in all circumstances is bound to adhere to the recommendations of the inquiry committee or inquiry officer but what carries great weight is the assiduousness and onerous duty of the

competent authority to scrutinize and gauge the inquiry proceedings and inquiry report with proper application of mind for a fine sense of judgment and if charges of misconduct are proved and ample opportunity of defence was afforded to the accused during the inquiry, then obviously, keeping in mind all attending circumstances including the gravity or severity of the proven charges, the competent authority may impose the punishment in accordance with law.

ii) Without a doubt, under Section 5 of the Service Tribunal Act 1973, the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against and, for the purpose of deciding any appeal, the law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and substitute the quantum of punishment in a right and proper manner but only in a suitable case within the statutory command. Be that as it may, the award of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed upon the delinquent is found to be unreasonable or contrary to law. Under section 5 of the Service Tribunals Act, the Service Tribunal enjoys powers to modify any Appellate order but such power is to be exercised carefully, judiciously and with great circumspection by assigning cogent, valid and legally sustainable reasons justifying such modification.

Conclusion: i) There is no hard and fast rule that the competent authority in all circumstances is bound to adhere to the recommendations of the inquiry committee or inquiry officer.

ii) The award of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is secondary unless the punishment imposed by competent authority is found to be unreasonable or contrary to law.

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4. **Supreme Court of Pakistan**
Raja Muhammad Owais v. Mst. Nazia Jabeen and others.
Civil Petition No.240 of 2021.
Mr. Justice Mr. Justice Syed Mansoor Ali Shah, Mrs. Justice Ayesha A. Malik
https://www.supremecourt.gov.pk/downloads_judgements/c.p._240_2021.pdf

Facts: The Petitioner has assailed order of the learned High Court whereby judgment by the Appellate Court was set aside and judgment passed the learned Senior Civil Judge was restored wherein application for custody of the children had been accepted.

Issues: i) Whether a female on account of re-marriage may be disqualified to exercise right of Hizanat of her minor?

ii) What are the major paramount considerations for custody of minor?

Analysis: i) A mother on account of re-marriage is not absolutely disqualified to be entrusted the custody of a minor child rather she may lose the preferential right of custody.

ii) Paramount consideration where custody is concerned is the welfare of the minor that is to consider what is in the best interest of the child. The court's jurisdiction in custody cases is in the form of parental jurisdiction which means that the court must consider all factors from the parents' ability to provide for the child including physical and emotional needs, medical care but also relevant is the parents' ability to provide a safe and secure home where the quality of the relationship between the child and each parent is comforting for the child. Hence, there is no mathematical formula to calculate the welfare of the minor, as the factors range from financial and economic considerations to the household environment, the care, comfort and attention that a child gets.

Conclusion: i) A female on account of re-marriage cannot be disqualified to exercise right of Hizanat of her minor.

ii) Paramount consideration for custody is the welfare of the minor.

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5. **Lahore High Court**
Nestle Pakistan v. Sub Registrar, Nishtar Town, Lahore etc.
W.P. No. 53187 of 2022
Mr. Justice Shujaat Ali Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC7089.pdf

Facts: The petitioner (company) acquired area on lease. For the purpose of registration of the Lease Deed, deficient stamp duty was submitted which was not impounded rather the respondent no.01 Registry Moharrar pointed out deficiency of amount which was deposited and the Lease Deed was again presented for registration before the Sub-Registrar, who impounded the same on account of deficiency of stamp duty. Being aggrieved of impounding of the Lease Deed, the petitioner-company approached respondent no.2 the Additional Deputy Commissioner (General), by filing a representation but the same was rejected. Being dissatisfied with orders, passed by respondents no.1 & 2, the petitioner-company filed this writ petition.

Issues: i) Whether the matter can be brought before the Collector under Section 41 of the Stamp Act, 1899 after depositing of deficient stamp duty, prior to impounding of the Lease Deed?

ii) Whether the stamp duty is liable to be paid by the lessor under the Stamp Act, 1899 against the amount in lieu of services mentioned in the Lease Deed?

iii) Is it permissible under the law to refer the meaning of any word, term or phrase, from other Statutes when the language of a Statute itself is clear about the same word, term or phrase?

iv) Whether the Local Commission acting on behalf of a Sub-Registrar, appointed for completion of codal formalities for registration of a document, can impound a document?

v) When there are two possible interpretations of a fiscal Statue; the one favoring and the other charging provision, which one should be applied?

Analysis: i) When any deficiency in respect of stamp duty is pointed out by the relevant authority, the same can be made good by the party concerned, prior to impounding the said document and same can be presented again for registration and if no deficiency is noted, the registering authority is bound to register the document. A perusal of Section 41 of the Stamp Act, 1899, shows that the same is only applicable if a party in whose favor an instrument has been executed brings the matter before the Collector pointing out any deficiency in respect of stamp duty.

ii) The term "lease" has been defined under Section 2(16) of the Act, 1899, According to the definition clause, read with Article 35 of Schedule-I (Punjab) of Act, 1899, lease relates to Patta, Kabuliyat or Undertaking relating to cultivate, occupy or deliver running of immoveable property or instrument relating to tolls. If the Lease Deed executed in favor of the petitioner company is considered in the light of the afore-quoted definition then, the charges to be paid by the petitioner-company on account of provision of services is not covered under the said definition inasmuch as it does not convey any right to the petitioner-company to cultivate, occupy, possession of immovable property rather the said amount is to be paid by the lessor in lieu of the services to be provided to it. In this scenario, stamp duty is only payable in respect of land/area being leased out to the petitioner-company.

iii) There is no cavil with the proposition that when a word, term or phrase has not been defined in an enactment, reference can be made for the said purpose to some other related enactment or its general meanings are taken to decide lis pending before a forum but when the language of a Statute itself is unambiguous about any word, term or phrase, reference to other Statutes for the said purpose is not permissible.

iv) According to Section 33 of the Act, 1899 if a person in-charge of a public office before whom an instrument is presented for registration, comes to the conclusion that the same is not duly stamped, can impound the same. Further, according to proviso to Section 2 of Section 33, it is incumbent upon the Provincial Government to determine which offices shall be deemed to be public offices but the respondents nowhere have clarified that the Local Commission falls within the definition of said term. Moreover, according to proviso (b) to subsection 3 of Section 33, it is also duty of the Provincial Government to determine the persons who can be considered as in-charge of public offices. A conjunctive reading of Sections 2(22A) & 2(22B) of the Act, 1899 renders it crystal clear that public office means an office which is being maintained out of national exchequer and public officer means who is being paid from the national exchequer. If the status of the Local Commission is considered in the light of afore-referred law, there leaves no ambiguity that since the Local Commission is not paid out of the national exchequer rather he receives fee to be determined by a

Sub-Registrar, in consultation with the party concerned, he cannot be considered as in-charge of a public office for the purpose of the Act, 1899, thus, the Local Commission has no authority to impound any document handed over to him for completion. There is no denying the fact that a Local Commission acts on behalf of a Sub-Registrar but in case of any omission or commission, instead of taking action by himself, Local Commission is bound to report the matter to the Sub-Registrar. At the maximum, the status of Local Commission is that of a representative of Sub-Registrar.

v) It is well entrenched by now that while defining any provision of an enactment, plain meanings of a word, term or phrase should be applied instead of stretching or minimizing the intent of the legislature by borrowing its meanings from other enactments to the disinterest of a particular party. It is of common knowledge that while interpreting any charging provision of a fiscal Statue, in the event of two possible interpretations, the one favouring the individual should be applied.

Conclusion: i) When the deficient stamp duty is deposited prior to impounding of the Lease Deed, then the matter cannot be brought before the Collector under Section 41 of the Stamp Act, 1899.

ii) Under the Stamp Act, 1899 the stamp duty is not liable by be paid to the lessor against the amount in lieu of services mentioned in the Lease Deed.

iii) It is not permissible under the law to refer the meaning of any word, term or phrase, from other Statutes when the language of a Statute itself is clear about the same word, term or phrase.

iv) The Local Commission acting on behalf of a Sub-Registrar, appointed for completion of codal formalities for registration of a document, cannot impound a document but in case of any omission or commission, instead of taking action by himself, he is bound to report the matter to the Sub-Registrar.

v) When there are two possible interpretations of a fiscal Statue; the one favoring and the other charging provision, the one favoring should be applied.

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6. **Lahore High Court, Lahore**
Mst. Bharai Bibi And Others v. Muhammad Arif And Another
Civil Revision No.10872 Of 2021
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6986.pdf

Facts: The suit for declaration along with permanent injunction was decreed. However, the appeal was accepted resulting in dismissal of suit, hence, the instant revision petition.

Issues: i) What evidence is required to be produced for discharging burden to prove sanctity of an oral gift by beneficiary thereof, which gift is challenged or called into question especially on the basis of fraud and misrepresentation?

ii) Does the efflux of time extinguishes the right of inheritance and does limitation run against a void transaction based on fraud?

Analysis: i) A transaction which is based on an oral gift has two parts, namely the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift i.e., offer, acceptance and delivery of possession. It is to be proved that when, where and in whose presence oral gift was made. Further, no gift in the ordinary course of human conduct can be made without reason or justification which is also to be proved. In addition, particulars whatsoever of the time, date, place and witnesses of the declaration of the gift made by donor have to be provided in pleadings or any evidence can be produced in this behalf. The mutation on the basis of an oral gift has to be independently established by adopting the procedure provided in the Land Revenue Act and the rules framed thereunder as well as the evidentiary aspects of the same in terms of the Qanun-e-Shahadat Order, 1984, including production of marginal witnesses of the disputed mutations, *Patwari Halqa* and Revenue Officer who attested the mutations. Moreover, appearance of the donor before the revenue officer for the purpose of getting the disputed mutations sanctioned has to be proved as well. To add, the onus was heavily placed on the shoulders of beneficiary to prove that the transaction of gift was effected without exercising undue influence over the donor or that donor had independent advice at the relevant time and that donor had effected the transaction with free will and consent.

ii) Fraud vitiates the most solemn transaction; therefore, the limitation would run from the date of knowledge.

Conclusion: i) The beneficiary has not only to prove the valid execution of gift deed or mutation but also the original transaction.

ii) The efflux of time does not extinguish the right of inheritance and limitation does not run against a void transaction based on fraud.

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7. **Lahore High Court, Lahore**
Muhammad Yaqoob, etc. v. Raheela Yousaf, etc.
Civil Revision No.18764 of 2022
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC6996.pdf

Facts: Instant revision petition is brought by petitioners being aggrieved of judgment & decree dated 14.12.2020 passed by learned trial court to the effect of dismissing their suit for want of evidence under Order XVII, Rule 3, Code of Civil Procedure, 1908, and judgment & decree dated 14.01.2022 passed by the learned Appellate Court dismissing their consequently filed appeal in limine.

Issues: Whether, instead to passing order giving absolute last opportunity for evidence, transferee court is required to issue notice parvee to the parties or their counsel fixing a date to appear before it after transfer of case under administrative order of District Judge if the case is transferred under administrative order of District Judge?

Analysis: If the case is transferred under section 24-A (2) of the Code of Civil Procedure, 1908, the parties aredirected to appear before the learned transferee Court and if party fails to appear then penal order can be passed against such party. However,

if case is transferred with administrative order of District Judge, then Para 6 of the Chapter XIII, Volume I of the High Court Rules and Orders require that the Court from which the case is transferred should inform the parties fixing a date to appear before the transferee Court.

Conclusion: Transferee Court is required to issue notice parvee to the parties and their counsel, fixing a date to appear before it if the case is transferred under administrative order of District Judge.

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8. **Lahore High Court**
Mahmooda Bibi v. Muhammad Khurshid Alem & others.
Civil Revision No.1426 of 2015
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2022LHC7002.pdf

Facts: Initially, a suit for declaration with consequential relief was instituted by the present petitioner challenging the vires and validity of disputed gift mutation. The trial Court vide impugned judgment and decree dismissed the suit. The petitioner being aggrieved of the said judgment and decree preferred an appeal but the same was also dismissed vide impugned judgment and decree by the learned appellate Court; hence, the instant revision petition.

Issue: i) When validity of gift is challenged then on whom burden to prove lies?
ii) Whether donor has to furnish reasons while making the gift?
iii) Whether in case of oral gift it is necessary to prove oral gift and mutation (entered thereupon) independently?

Analysis: i) Ingredients for a valid gift are: offer, acceptance and delivery of possession. When sanctity of a gift deed or mutation is challenged or called into question, the beneficiary has not only to prove the valid execution of gift deed or mutation but also the original proceedings of gift.
ii) It is not necessary for a donor to furnish reasons for making a gift yet no gift in the ordinary course of human conduct can be made without reason or justification be it natural love and affection for one or more of his children who may have taken care of the donee in his old age and thus furnished a valid basis and justification for the donor to reward such effort on the part of the donee by way of making a gift in his/her favour.
iii) Transaction which is based on an oral gift has two parts, namely the fact of the oral gift which has to be independently established by proving through cogent and reliable evidence the three necessary ingredients of a valid gift as noted above. However, that is not enough. The second ingredient i.e. mutation on the basis of an oral gift has to be independently established by adopting the procedure provided in the Land Revenue Act and the rules framed there under as well as the evidentiary aspects of the same in terms of the Qanun-e-Shahadat Order, 1984." .

Conclusion: i) When validity of gift is challenged, the burden lies on beneficiary who has to prove not only the valid execution of gift deed or mutation but also the original proceedings of gift.
ii)) It is not necessary for a donor to furnish reasons for making a gift because it is always made due to natural love and affection .
iii) Yes, in case of oral gift it is necessary to prove oral gift and mutation (entered thereupon) independently.

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9. **Lahore High Court**
Al-Hadi Rice Mills (Pvt.) Ltd., etc. v. MCB Limited, etc.
EFA No.19288 of 2022
Mr. Justice Abid Aziz Sheikh, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2022LHC7050.pdf

Facts: The petitioners challenged the order of learned Judge Banking Court in which objection petition against auction sale was dismissed and auction sale was confirmed in favour of the respondent No.7 ('auction purchaser') and filed this execution appeal.

Issues: i) Whether a bid offered by a single / sole bidder could be classified as 'public auction'?
ii) Whether guidelines of the State Bank of Pakistan or statutory obligation can be deviated in determination of reserve price of property for public auction?

Analysis: i) By no stretch of imagination auction sale involving a single participant could be construed as public auction. The argument that bid by a single bidder tantamount to public auction, must fail, being fallacious and somewhat misconceived. Allegations, simplicitor, alleging criminal interference by the appellants during the conduct of auction sale would not per se extend legitimacy to single-bidder sale, since there are ways and mechanism to deal with such situations. In the wake of absence of any competitive bidding, devoid of participants, court auctioneers can defer the sale and lodge a complaint against the delinquents / rogue elements –police assistance may be sought by the court auctioneers if various attempts, earlier made, remained unsuccessful...
ii) There is no cavil that determination of reserve price, based on latest valuation report arranged / conducted, ensures reasonableness, rationality, fairness, and otherwise promotes transparency, besides extending credibility to the judicial sales. Argument that distressed sales are immune from the guidelines of the State Bank of Pakistan – which guidelines suggest determination of reserve price of property based on valuation report having a shelf-life – is misconceived. Fixation of reserve price of the properties, put to auction sales, is an important judicial business and cannot be left to be determined on the basis of valuation report, procured five years before consideration of terms and conditions of proclamation of sale. The statutory obligation of the court executing the decree, to determine and settle terms and conditions of sale, inclusive of question of fixation of reserve price, in particular requirements prescribed under Order XXI Rule 65 & 66, in the

context of public auction, have had to be enforced and adhered to in letter and spirit to ensure that no undue advantage is gained by the decree holder against the judgment debtor and vice versa.

Conclusion: i) A bid offered by a single / sole bidder could not be classified as 'public auction'.
ii) Guidelines of the State Bank of Pakistan or statutory obligation cannot be deviated in determination of reserve price of property for public auction.

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10. **Lahore High Court**
Liaqat Ali v. Chief Officer, Municipal Committee, Gojra etc.
Writ Petition No.70550/2021
Mr. Justice Abid Aziz Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC7147.pdf

Facts: The petitioner has challenged an order passed by Chief Officer, Municipal Committee, Gojra (respondent No.1) whereby he held that Municipal Committee has no jurisdiction in the matter for issuing Divorce Effectiveness Certificate and parties were advised to approach Council of Islamic Ideology for resolution of their dispute.

Issues: (i) Whether a decree for dissolution of marriage becomes ineffective merely because a copy to chairman of arbitration council was not sent by court within prescribed period?
(ii) Whether a decree of Khula can be revoked unilaterally by a wife?
(iii) Whether intervening marriage (Halala) is a condition precedent for re-union of spouses subsequent to effectiveness of dissolution of marriage on the basis of khula?
(iv) Whether a Union Council is bound to issue divorce effectiveness certificate once the reconciliation proceedings between the spouses are failed?
(v) Whether Chief Officer, Municipal Committee can refer a matter to Council of Islamic Ideology?

Analysis: (i) A decree for dissolution of marriage does not became ineffective merely because copy to Chairman was not sent by Court within prescribed period and in such situation, its effectiveness would be reckoned from the date of due service and efflux of the requisite period, as be relevant in a particular case.
(ii**)** Perusal of section 7(3) of the Muslim Family Laws Ordinance 1961 manifests that talaq can be revoked expressly or otherwise before expiry of 90 days. However, section 21(3) of the Family Courts Act 1964 is a nonabstante clause and under clause (b) of subsection (3) of section 21 of the Act, there is no room of revocation available for the decree of khula and only way decree will become ineffective if reconciliation has been effected between the parties in accordance with the provisions of the Ordinance. The presence of word "revoke" in section 7(3) of the Ordinance and its conspicuous absence in section 21(3)(b) of the Act,

leave no manner of doubt that decree of khula will only become ineffective if within 90 days, a reconciliation has been affected between the spouses on the basis of mutual or bilateral arrangement. Unless there is mutuality, it cannot be said that reconciliation has been affected between the parties and decree has become ineffective for the purpose of section 21(3)(b) of the Act.

(iii) It is well settled law that pronouncement of khula by the Court is a single divorce, as the husband never accepted it voluntarily. Such kind of dissolution of marriage is known as "Talaq- ul-Baayen", and in such like case, intervening marriage (Halala) is not a condition precedent for re-union of the spouses, however, only condition is to perform fresh nikah.

(iv) It is well settled law that neither the Chairman of the Union Council nor the Arbitration Council can nullify a decree of dissolution of marriage, rather their only function is to certify whether reconciliation has succeeded or failed….the purpose of Arbitration Council is to hold reconciliation proceedings between the spouses and if matter was not reconciled, Chairman Arbitration Council had to issue certificate of effectiveness of talaq after period of 90 days.

(v) Part IX of the Constitution of Islamic Republic of Pakistan, 1973 deals with the composition, functions and procedure of Islamic Council and the role of Islamic Council is of advisory nature in terms of Article 230 of the Constitution. The primary object of the Islamic Council is to advise the parliament, Provincial Assembly, President or Governor to ensure conformity of laws with the injunctions of Islam, therefore, the instant matter between private individuals could not be referred to Council of Islamic Ideology by respondent No.1.

Conclusion: (i) A decree for dissolution of marriage does not become ineffective merely because a copy to chairman of arbitration council was not sent by court within prescribed period.

(ii) A decree of Khula cannot be revoked unilaterally by a wife.

(iii) Intervening marriage (Halala) is not a condition precedent for re-union of spouses subsequent to effectiveness of dissolution of marriage on the basis of khula.

(iv) A Union Council is bound to issue divorce effectiveness certificate once the reconciliation proceedings between the spouses are failed.

(v) Chief Officer, Municipal Committee cannot refer a matter to Council of Islamic Ideology.

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11. **Lahore High Court**
Khalid Iqbal, etc. v. Mst. Yasmeen, etc.
Civil Revision No. 1705/2015
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC7028.pdf

Facts: Through this Civil Revision, the petitioner has called into question the legality & validity of the orders of courts below whereby the application made for restoration of the lis was declined.

Issues: i) Whether suit can be dismissed for non-appearance when entire evidence has been led?
ii) How law of limitation shall operate when order of dismissal of suit for default is null & void?

Analysis: i) When entire evidence is available with the Court to make final decision after going through the same then at this stage while attracting provisions of Order IX CPC, the dismissal of suit for default is not justified.
ii) When order of dismissal of suit for default is null & void, then the appropriate Article applicable is Article 181 of the Limitation Act, 1908.

Conclusion: i) Suit cannot be dismissed for non-appearance when entire evidence has been led.
ii) Article 181 of the Limitation Act, 1908 shall apply when order of dismissal of suit for default is null & void.

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12. **Lahore High Court**
Muhammad Shafiq Khan v. Mohammad Waryam
Civil Revision No.1082 of 2016
Mr. Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC7043.pdf

Facts: Through this civil revision, the petitioner challenged the concurrent judgments and decrees passed by the two Court below, whereby, suit instituted by the respondent for possession through pre-emption was decreed.

Issue: i) Whether non production of Acknowledgement Due Card in evidence of postman is fatal for the case of pre-emptor?
ii) Whether simple dispatch of formal notice of *Talb-i-Ishhad* is sufficient or its service upon vendee is necessary to prove *Talb-i-Ishhad*?

Analysis: i) It further was drastic that despite Postman was summoned and his statement-in-chief recorded, but Acknowledgment Due Card was not put/confronted to him. Had the registered post been handed over to Postman for its delivery, he was under obligation to make report on the A.D. Card that same was handed over to the vendee. Non-tendering of A.D. Card during evidence of Postman was a fatal drawback on the part of pre-emptor. So much so, through statements of other witnesses or even via statement of counsel for the preemptor the A.D. Card was never brought on suit record. Its withholding compelled the Court to draw adverse inference that notice Talb-i-Ishhad was not served upon the vendee.
ii) The Apex Court repeatedly held that the requirement of "sending notice in writing" is followed by A.D. Card, which signifies that intention of law is not merely dispatch of a formal notice on the part of pre-emptor conveying his/her intention to pre-empt, but a notice must be served on the addressee is real import of relevant provision of law. The apex Court, in Muhammad Bashir's case (2007 SCMR 1105) while referring/discussing chain of authorities came to the

conclusion that "presumption of service" in terms of Article 129 of Qanun-e-Shahadat, 1984 read with section 27 of the General Clauses Act does not arise in pre-emption cases, if the addressee disowns the receipt of notice Talb-i-Ishhad.

Conclusion: i) Non production of Acknowledgement Due Card in evidence of postman is fatal for the case of pre-emptor.
ii) Simple dispatch of formal notice of *Talb-i-Ishhad* is not sufficient rather its service upon vendee is necessary to prove *Talb-i-Ishhad*.

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13. **Lahore High Court**
Zahid Mahmood & another v. Sabir Hussain
C.R.No.51659 of 2022
Mr.Justice Ch. Muhammad Masood Jahangir
https://sys.lhc.gov.pk/appjudgments/2022LHC7034.pdf

Facts: The decisions of two Courts below whereby not only suit for possession via specific performance of agreement to sell instituted by the petitioners/plaintiffs was dismissed rather their appeal regretted as well, are subject of petition in hand.

Issues: i) Whether it is compulsory to produce two attesting witnesses/marginal witness as per requirement of Article 79 QSO?
ii) Whether evidence of scribe can be used to consider it as statement of marginal witness?
iii) Whether withholding the marginal witness is justified that he is closely related to the alleged vendor?
iv) What is the value of Expert's opinion?
v) Whether admission of a party in ignorance of legal rights has any legal value?

Analysis i) As Exh.P1 & Exh.P2 involved future obligation & financial liability, thus those were to be executed under mandate of Article 17 of the Qanun-e-Shahadat Order, 1984 and sine qua non for the beneficiary/petitioners to prove the same according to mode provided in Article 79 of the Order ibid. Although these two documents at the time of its scribe per spirit of former Article were attested by Ghazanfar Ali (PW3) and one Mian Ikram being marginal witnesses, yet surprisingly the latter despite availability was not examined, thus compulsory requirement of Article 79 was not followed.
ii) This aspect with some more clarity that nothing short of two attesting witnesses can even be imagined for proving sale contract, besides that testimony of scribe cannot be used to consider it as statement of marginal witness.
iii) as ordained above the mandatory provisions of law had to be complied and fulfilled and only for the reason or the perception that such attesting witness if examined may turn hostile does not absolve the concerned party of its duty to follow the law and allow the provisions of the Order, 1984, relating to hostile witness take its own course. (…) Thus made it clear that for any risk, mandatory requirement of law cannot be avoided.
iv) It is always risky to base the findings of genuineness of writing or signature on

Expert's opinion, because such like report cannot be taken as conclusive proof. Even otherwise, a document not part of judicial record can only be proved by examining direct affirmative evidence and any secondary or other mode cannot be taken a substitute to the former mode of proof, thus the alleged Report was of no help to the petitioners. (…) It is well-established by now that expert‟s evidence is only confirmatory or explanatory of direct or circumstantial evidence and the confirmatory evidence cannot be given preference where confidence inspiring and worthy of credence evidence is available

v) It is settled law that admission of a party in ignorance of legal rights has no legal effect, which being wrong on point of fact is also not admissible. The respondent/defendant might be under illusion or delusion that report would never come against his version, therefore had made the aforesaid statement, which even was shrouded in mystery besides that it was uncertain at the time when worded so. The said statement of respondent was based upon a result to be received in future. In terms of Article 34 of the Order,1984, an admission even if considered to be a legal right is just a relevant fact, however cannot be taken as conclusive proof against a party making it. In particular backdrop of the case, the statement made by the respondent for sending his signatures/thumb impressions to the Expert is not an admission as defined in relevant provision of the Order ibid as nowhere it was claimed that these were his thumb impressions, who since inception of litigation was claiming those to be forged & fictitious.

Conclusion: i) The command of the Article 79 is vividly discernible which elucidates that in order to prove an instrument which by law is required to be attested, it has to be proved by two attesting witnesses.

ii) Testimony of scribe cannot be used to consider it as statement of marginal witness.

iii) Only for the reason or the perception that such attesting witness if examined may turn hostile does not absolve the concerned party of its duty to follow the law.

iv) Expert‟s evidence is only confirmatory or explanatory of direct or circumstantial evidence and the confirmatory evidence cannot be given preference where confidence inspiring and worthy of credence evidence is available.

v) Admission of a party in ignorance of legal rights has no legal effect, which being wrong on point of fact is also not admissible.

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14. **Lahore High Court**
Commissioner Inland Revenue, Zone-I, LTU, Lahore v. M/s Marwat Enterprises Pvt. Limited, Lahore
PTR No. 280 of 2013
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC7209.pdf

Facts: The applicant filed Reference application under section 133 of the Income Tax Ordinance, 2001 against the decision of Appellate Tribunal Inland Revenue regarding tax assessment of the respondent-taxpayer finalized under section 161/205 of the Income Tax Ordinance, 2001.

Issues: (i) What is the purpose of the advance tax under the Income Tax Ordinance, 2001?
(ii) What is the rationale behind sub-section 1B of section 161 of the Income Tax Ordinance, 2001?
(iii) Whether the burden under section 161 of Income Tax Ordinance, 2001 can be wholly and solely shifted on the taxpayer in the light of *Bilz' Case*?
(iv) Whether default surcharge can be imposed and recovered in case where failure to deduct tax is not established under section 161 of the Income Tax Ordinance, 2001?
(v) Whether reconciliation under Rule 44 can be called without first ensuring filing of statements under the said Rule?

Analysis: (i) The very purpose of advance tax is collection of tax in advance and its adjustment at later stage but not charging or levy of tax.
(ii**)** Subsection 161(1B) casts an obligation upon the Commissioner or Taxation Officer to satisfy itself that the tax due of the person, from whose payment advance tax was to be deducted or collected, has been paid. The rationale in the subsection (1B) is very simple that a tax liable to be adjusted against tax due, cannot be recovered when the tax due is already paid. Recovery of any amount, thereafter, not adjustable against tax due for the relevant period, shall have to be refunded and the whole exercise for recovery would be futile, as tax collected would not become part of National Exchequer rather would burden it with an expense which could have been expended for recovery of tax due.
(iii) The Hon'ble Apex Court in case reported as *Commissioner Inland Revenue Zone-I, LTU v. MCB Bank Limited* **(2021 SCMR 1325)**, has deprecated such misreading of the judgment in *Bilz' case* by the tax authorities thereby issuing general and vague show cause notices under Section 161 of the Ordinance *ibid* and termed suchlike notices as a fishing expedition and roving inquiry.Tax authorities had taken certain observations madein *Bilz' case* out of context, and misused them as a tool and instrument to harass taxpayers. It must be clearly understood that *Bilz' case* was not, and could not be used as a platform or tool by the tax authorities to launch expeditious probes. It cannot shift the burden under Section 161, from the very inception, wholly and solely on the taxpayer by the expedient of simply identifying one or more payments, or a class or category of payments.
(iv)…Provisions of Section 162(2) of the Ordinance of 2001 regarding imposition and recovery of default surcharge etc. are only attracted where failure to deduct tax is established under Section 161. Since we are observing that taxation authorities have failed to exercise jurisdiction under Section 161, therefore, question of default surcharge does not arise at this stage.
(v) The practice of calling reconciliation, in absence of any statement, is against the spirit of Rule 44 of the Income Tax Rules, 2002. Rule 44 envisages, unequivocally, that reconciliation has to be of the biannual or annual statements

with other material and declaration submitted in or with the return. If there is no statement filed by the taxpayer, as is recorded in the impugned order, no occasion of reconciliation arises. It is duty of the Commissioner, as tax administrator to ensure that biannual or annual statements are filed within the time stipulated by the Statute.

Conclusion: (i) The very purpose of advance tax is collection of tax in advance and its adjustment at later stage but not charging or levy of tax.
(ii) The rationale in the subsection (1B) is very simple that a tax liable to be adjusted against tax due, cannot be recovered when the tax due is already paid.
(iii) The burden under section 161 of Income Tax Ordinance, 2001 cannot be wholly and solely shifted on the taxpayer in the light of *Bilz' Case*.
(iv) Provisions of Section 162(2) of the Ordinance of 2001 regarding imposition and recovery of default surcharge etc. are only attracted where failure to deduct tax is established under Section 161.
(v) Reconciliation under Rule 44 cannot be called without first ensuring filing of statements under the said Rule.

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15. **Lahore High Court**
Commissioner Inland Revenue v. M/s Lahore Rubber Store
STR No. 80 of 2016.
Mr. Justice Shahid Jamil Khan, Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC7179.pdf

Facts: Respondent registered person's appeal was dismissed. An application of respondent for rectification under Section 57 of Sales Tax Act, 1990 was moved which was allowed through concise order hence, instant sales tax reference has been filed.

Issues: i) What is rectification jurisdiction under Section 57 of Sales Tax Act, 1990?
ii) Whether Appellate Tribunal, on an application for rectification, recalls its earlier final order and fixes the appeal for rehearing?
iii) Whether rectification jurisdiction can be a substitute of Tax Reference?
iv) Whether after exercising original jurisdiction, the Tribunal becomes functus-officio?

Analysis: i) The rectification is a jurisdiction ancillary to the appellate jurisdiction, intended to rectify a mistake of fact or law apparent on the face of record which does not require investigation, appraisal of evidence, interpretation of law or an enquiry into facts.
ii) We have noticed, in number of cases that Appellate Tribunal, on an application for rectification, recalls its earlier final order and fixes the appeal for rehearing. Such practice is deprecated and held alien to the rectification jurisdiction.
iii) It is held that rectification jurisdiction cannot be a substitute of Tax Reference, therefore, the Tribunal must check the bonafide by seeking explanation for not

filing rectification application, soon after the date of receiving certificate copy of the final order.

iv) After exercising original jurisdiction, the Tribunal becomes functus-officio with a little window for rectification of a mistake which in our opinion is an equitable remedy because law favour justice, to ensure that, an apparent and floating mistake, causing injustice, is allowed to be rectified within limitation of five years. Normally, an appealable order attains finality on expiration of limitation for filing the appeal or other remedy. Such a finality, cannot be compromised by filing an application for rectification to manage rehearing or review of the mater. Any injustice, because of an identified mistake, is rectifiable, as envisages in Section 221 of Income Tax Ordinance, 2001 ("Ordinance of 2001"), Section 57 of Sales Tax Act, 1990 ("Act of 1990") and Section 70 of Federal Excise Act, 2005 ("Act of 2005").

Conclusion: i) The rectification is a jurisdiction ancillary to the appellate jurisdiction, intended to rectify a mistake of fact or law apparent on the face of record.

ii) Appellate Tribunal, on an application for rectification, does not recall its earlier final order and fix the appeal for rehearing.

iii) Rectification jurisdiction cannot be a substitute of Tax Reference.

iv) After exercising original jurisdiction, the Tribunal becomes functus-officio with a little window for rectification of a mistake.

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16. **Lahore High Court**
Ghulam Ali v. Rana Babar Khan, etc.
W.P.No.49479 of 2020
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC7257.pdf

Facts: An ejectment petition was filed by respondent No.1 against respondent No.2, which was allowed. Feeling aggrieved of the same, petitioner filed an application for suspension of ejectment order, which was dismissed and the appeal of such order was also dismissed, hence, this petition.

Issues: Whether an application under section 12(2) CPC can be filed against ejectment order of Rent Tribunal?

Analysis: Under Section 26 of the Punjab Rented Premises Act, 2009 Act the Rent Tribunal can exercise limited powers as contemplated in CPC and by virtue of section 34 of the Act there is a bar as to the applicability of the remaining provisions of CPC etc. to the proceedings before the Rent Tribunal, yet keeping in view the import of section 31 of the Act the Rent Tribunal is invested with the powers to execute its orders passed under the Act as a civil court. In view of the above it is held that since the Rent Tribunal in view of section 31 of the Act can exercise/invoke the provisions of CPC and exercise the jurisdiction accordingly, thus, where a person is aggrieved of an order passed by a Tribunal under the Act on the basis of fraud he can challenge the same through an application under section 12(2) CPC and

ouster as contained in sections 26 and 34 of the Act will not apply.

Conclusion: An application under section 12(2) CPC can be filed against ejectment order of Rent Tribunal.

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17. **Lahore High Court**
Muhammad Inam Bhatti v. Syed Muhammad Sibtain.
C.R.No.52637 of 2020
Mr. Justice Faisal Zaman Khan
https://sys.lhc.gov.pk/appjudgments/2022LHC7263.pdf

Facts: The execution petition filed by the petitioner was dismissed for non-prosecution. Feeling aggrieved, the petitioner filed as application for restoration of the execution petition which was dismissed. Hence, this civil revision.

Issue: Whether an executing court is vested with the powers to restore an execution petition, which was dismissed for non-prosecution?

Analysis: There is no cavil to the proposition that there is no specific provision in the Code of Civil Procedure, 1908, which stricto senso could be applied for restoration of execution petition, however, it is equally important to note that if there was no provision available for seeking restoration of the execution petition, isn't the court invested with the inherent powers under Section 151 CPC for passing appropriate orders in order to meet the ends of justice. the Executing Court can restore the same in exercise of its inherent powers vested in it under Section 151 CPC as interpreted in a judgment reported as *North-West Frontier Province Government, Peshawar through Collector, Abbotabad and another v. Abdul Ghafoor Khan through legal heirs and 2 others (PLD 1993 SC 418)* as the said provision is an enabling provision and cater for an ostensible impossible situation where no express provision of law is attracted and since there is no prohibition for exercising such jurisdiction, thus mere absence of provision does not curtail or abridge the jurisdiction of a court from passing an order so as to advance and meet the ends of justice.

Conclusion: Yes, an executing court is vested with the powers to restore an execution petition, which was dismissed for non-prosecution in exercise of its inherent powers under section 151 of CPC.

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18. **Lahore High Court, Lahore**
Naveed Khalid Butt and another v. The Bank of Punjab and others
Execution First Appeal No. 45601 of 2022
Mr. Justice Shahid Karim and Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2022LHC7010.pdf

Facts: Through appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, the appellants assailed the orders passed by the learned Single Judge in Chambers disposing of their applications in the

Execution Application being not maintainable as the decree-holder/Bank had not yet filed the requisite accounts of the sale.

Issues: Whether applications of the appellants qua objections to the sale of mortgaged property without intervention of the Court and seeking injunction for restraining the sale of mortgaged property were maintainable before proper accounts for the sale proceeds are filed in the Court?

Analysis: The financial institutions have been authorized to sell a particular mortgaged property without intervention of the Court by virtue of subsection (4) of Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and a discretion has been conferred upon the Banking Court under subsection (13) of Section 15 of said Ordinance to grant an injunction restraining the sale or proposed sale of mortgaged property on the grounds specifiedtherein. Subsection (14) of Section 15 of subject Ordinance confers a right upon the mortgagor or any person entitled to a share in the rateable distribution of assets or whose interest is affected by the sale to apply to theBanking Court for having the sale set aside on the ground of fraud, subject to conditions specified therein. Subsection (15) of Section 15 of subject Ordinance provides limitation of seven days of completion of the public auction for filing an application for setting aside sale of the mortgaged property under subsection (14) of Section 15 and stipulates a condition of deposit of an amount equal to twenty five per cent of the reserved price or furnishing security for the same amount to the satisfaction of the Banking Court for such application to be entertained. After the sale takes place (real or fictitious), a sale deed in respect of the property is to be executed by the financial institution authorized in this behalf by virtue of subsection (8) of Section 15 of the subject Ordinance and Subsection 8 *ibid* contains a proviso that nosuch sale deed shall be executed or registered until expiry of seven days after the completion of the public auction for the sale of the mortgaged property. The object of this proviso manifestly is to provide an opportunity to those entitled under subsections (13) and (14) of Section 15 of subject Ordinance to avail the remedies provided under the said provisions inasmuch as otherwise, in terms of subsection (9) of Section 15 of said Ordinance, upon execution and registration of the sale deed of the mortgaged property in favour of the purchaser, all rights in such mortgagedproperty vest in the purchaser free from all encumbrances and the mortgagor is divested of any right, title and interest in the mortgaged property. No doubt the financial institution which has sold the mortgagedproperty is required to submit proper accounts of the sale proceeds in the Banking Court within thirty days of the sale, as manifest from subsection (11) of Section 15 of subject Ordinance, however, in the scheme of said Section such occasion arises after the sale has become absolute eitherbecause no remedy was availed under subsections (13) and (14) of said Ordinance or the remedy availed did not yield fruitful results for the objector.

Conclusion: Applications qua objections to the sale of mortgaged property without intervention of the Court and seeking injunction for restraining the sale of mortgaged property were maintainable before proper accounts for the sale proceeds are filed in the Court.

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19. **Lahore High Court**
M/s Best Way Cement Ltd. v. Yasir Saleem and 2 others
Writ Petition No.1645 of 2021
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC7165.pdf

Facts: During the pendency of suit for declaration etc. filed by respondent, the respondent filed an application seeking withdrawal of the suit with permission to file afresh. The application was declined by the learned Civil Judge. Feeling aggrieved, the respondent filed a revision petition before the learned Additional District Judge, which was allowed by way of impugned judgment. Hence, this writ petition.

Issues: i) When a plaintiff can withdraw his/her suit with permission of court to file the fresh?
ii) What can be most relevant instances of formal defect?
iii) What would be effect of withdrawal of suit or abandon of part of claim without permission of court?

Analysis: i) In terms of Order XXIII, Rule 1, sub-rule (1) a plaintiff is always at liberty to withdraw a suit or abandon part of claim at any time against all or any of the defendants after the institution. However, under sub-rule (2), in order to get a permission for a fresh suit a plaintiff has to demonstrate to the satisfaction of the court that the suit must fail by reason of some formal defect or there are other sufficient grounds for allowing him to institute a fresh suit for the subject matter of the suit or part of claim.
ii) In order to further elaborate the term it can be said that following may be the most relevant instances of formal defect :- (a) Mis-joinder of parties or causes of action which will result in the failure of the suit. (b) Erroneous valuation of the subject matter. (c) Insufficient description of the property involved in the suit. (d) Failure to disclose a cause of action. (e) Material document is not properly stamped. (f) Non-impleading of necessary party. (g) Form of suit etc.
iii) Sub-rule (3) provides the consequences of withdrawal or abandonment of part of claim if it is without permission of the court as is referred in sub-rule (2). In terms thereof, if the plaintiff withdraws a suit or abandons part of claim without permission of the court he shall be liable for such costs and shall be precluded from instituting a fresh suit in respect of such subject matter or such part of claim.

Conclusion: i) The plaintiff can withdraw his/her suit with permission of court to file the fresh at any time by demonstrating to the satisfaction of the court that the suit must fail by reason of some formal defect or there are other sufficient grounds for allowing him to institute a fresh suit for the subject matter of the suit or part of claim.
ii) Above mentioned matters can be most relevant instances of formal defect.
iii) If the plaintiff withdraws from a suit or abandons part of claim without permission of the court he shall be liable for such costs and shall be precluded from instituting a fresh suit in respect of such subject matter or such part of claim.

20. **Lahore High Court**
Azeem Khan and another v. Government of the Punjab through Secretary Mines & Minerals, Punjab Secretariat, Lahore and 6 others
W.P. No. 2363 of 2022
Mr. Justice Mirza Viqas Rauf
https://sys.lhc.gov.pk/appjudgments/2022LHC7172.pdf

Facts: The leases of respondents no.6 & 7 were expired in pursuance whereof respondent No.5 stopped the petitioners from removing the already mined and extracted limestone. Feeling aggrieved the petitioners filed the instant petition.

Issues: i) Whether a petitioner can file the second writ petition on the same cause of action when a previous petition was dismissed as withdrawn?
ii) Whether the discretionary relief of writ can be granted to the petitioner who withheld to disclose the pendency of the suit on the same cause of action?

Analysis: i) Law is well settled that proceedings in a constitutional petition are to be regulated by the Code of Civil Procedure (V of 1908). Order XXIII of the Code mutatis mutandis applies to such proceedings. When the previous petition on the same cause was dismissed as withdrawn so the petitioners are precluded to file the instant petition in terms of sub-rule (3) Order XXIII of Code of Civil Procedure (V of 1908).
ii) The constitutional jurisdiction is always discretionary with the court and the person(s) approaching for the said purpose has/have to establish(s) the negation of his/their vested rights. When the disclosure about the pendency of suit was purposely withheld which sole circumstance is sufficient to disentitle the petitioners from claiming the discretionary relief in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) A petitioner is precluded to file the second writ petition on the same cause of action when a previous writ petition was dismissed as withdrawn.
ii) The discretionary relief of writ cannot be granted to the petitioner who withheld to disclose the pendency of the suit on the same cause of action.

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21. **Lahore High Court**
Hakim Bibi etc v. Fateh Muhammad (deceased) through his legal heirs etc.
W.P.No.707/2011
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC7058.pdf

Facts: Through this writ petition, the petitioners have challenged the validity of order passed by the learned Civil Judge, who dismissed the application under Section 12(2) C.P.C. filed by the petitioners and also assailed the order passed by the learned Additional District Judge, who dismissed the revision petition of the petitioners.

Issue: i) Whether fraud vitiates the most solemn proceedings?
ii) Whether in cases of women folk the courts must be extraordinary careful in the trial proceeding as well as while passing the orders, judgment & decree?
iii) Whether trial court being legal guardian is under obligation to demonstrate extraordinary care and caution to safeguard the rights of minors while proceeding with the suit?
iv) Whether the court is bound to see vigilantly the conduct of the guardian ad litem in representing and defending the minor?
v) Whether the court can remove already appointed Guardian and further appoint a new guardian in his place?
vi) When a party does not assail adverse finding on an issue then whether it attains finality?

Analysis: i) It is settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of laws.
ii) Women folk who are claiming that adverse party with inter se collusiveness obtained the impugned judgments & decrees and in such like cases, the Courts must be extraordinary careful in the trial proceeding as well as while passing the orders, judgment & decree and also to protect the legal rights of the women folk who unfortunately are usually deprived of their legal rights more particularly from their inheritance share in estate left by their predecessors.
iii) it is duty of the Court being custodian to safeguard the rights of the minors and the courts are to realize that a minor litigant is under their protection, and it is primary duty of the courts to watch over minor's interests and ensure that he is duly represented or defended in the proceedings before Court. The Courts are to realize that a minor litigant is considered to be under their protection, and primarily it is their duty to watch over his interests and ensure that he is duly represented and defended in the proceedings before them. That is why, despite appointment of a guardian ad litem, no agreement or compromise can be entered into on behalf of the minor by that guardian without leave of the Court.
iv) The Court is to see vigilantly the conduct of the guardian ad litem in representing and defending the minor, and to remove him if he fails to do his duty by acting in a manner that is detrimental to the interests of the minor. Where there is no other person fit and willing to act as guardian for the minor, the Court is to appoint any of its officers to be such a guardian. Order 32 of the CPC, thus, visualizes no such occasion where a minor defendant can be proceeded against ex parte.
v) Rule 11, Order XXXII, C.P. C. requires that "where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit." The same rule goes beyond

further to prescribe "where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place".

vi) It is settled law that if a party does not assail adverse finding on an issue, it attains finality.

Conclusion: i) Yes, fraud vitiates the most solemn proceedings.

ii) Yes, in cases of women folk the courts must be extraordinary careful in the trial proceeding as well as while passing the orders, judgment & decree.

iii) Yes, trial court being legal guardian is under obligation to demonstrate extraordinary care and caution to safeguard the rights of minors while proceeding with the suit.

iv) Yes, the court is bound to see vigilantly the conduct of the guardian ad litem in representing and defending the minor.

v) Yes, the court can remove already appointed guardian and further appoint a new guardian in his place

vi) Yes, if a party does not assail adverse finding on an issue, it attains finality.

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22. **Lahore High Court**
Muhammad Ayoub v. Muhammad Farooq etc.
C.R.No.889/2018
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC7112.pdf

Facts: Through this civil revision, the petitioner has challenged the validity of the judgment & decree passed by the learned Additional District Judge, Yazman who accepted the appeal of the respondent No.1, set aside the judgment & decree passed by the learned Civil Judge, Yazman and decreed the suit for declaration filed by the respondent No.1/plaintiff.

Issues: Whether a patricide shall be excluded from the inheritance of his father whom he killed himself?

Analysis: As per the Islamic Shariah as well as the settled law of this country, a patricide shall be excluded from the inheritance of his father whom he killed himself. Under Section 317 of the Pakistan Penal Code, 1860, a person who commits murder is debarred from succession of said deceased.

Conclusion: A patricide shall be excluded from the inheritance of his father whom he killed himself.

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23. **Lahore High Court**
Muhammad Siddique v. Government of the Punjab etc.
W.P.No.7737/2022
Mr. Justice Ch. Muhammad Iqbal,
https://sys.lhc.gov.pk/appjudgments/2022LHC7132.pdf

Facts: Son of the petitioner, obtained loan from U-Microfinance Bank. The borrower failed to return the loan amount. The Manager Recovery Entral-2, U Microfinance Bank, made request to the Additional Deputy Commissioner (Revenue), for recovery of the loan amount from the borrower, under Section 114 of the Land Revenue Act, 1967. On receipt of above request, the Additional Deputy Commissioner (Revenue), vide order accorded sanction to recover the defaulted loan amount under Section 114 of the Act. Tehsildar/Assistant Collector-I, while invoking provision of Section 82(5) of the Act ibid, sent son of the petitioner, to civil prison. Hence, this petition.

Issues: i) Whether, under Section 114 of the Land Revenue Act, 1967, Revenue Officers have the power to recover the loan amount of the microfinance institutions from the defaulters?
ii) What remedy is available with microfinance institution for recovery of defaulted loans?

Analysis: i) Under Section 114 of the Act ibid, no authority / power has been given to the Revenue Officers to recover the loan amount of the microfinance institutions from the defaulters.
ii) The respondent-microfinance institution should have approached Civil Court for recovery of the defaulted loan amount from the defaulters instead of setting revenue hierarchy into motion...

Conclusion: i) Under Section 114 of the Land Revenue Act, 1967, no authority/power has been given to the Revenue Officers to recover the loan amount of the microfinance institutions from the defaulters.
ii) Microfinance institutions should approach Civil Court for recovery of the defaulted loan amount from the defaulters instead of setting revenue hierarchy into motion.

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24. **Lahore High Court**
Mst. Shahnaz Mai v. Additional District Judge etc.
W.P. No.7422 of 2022.
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC7138.pdf

Facts: The petitioner (step mother) has challenged the order of the learned Guardian Judge whereby the application under Section 25 of the Guardian and Wards Act filed by respondent No.3 (real mother) for the custody of minor, was accepted and also assailed the judgment and decree.

Issues: i) What are the instructions given to the Muslims regarding the real parentage of the adopted child?
ii) Whether it can be assumed that the minor's welfare lies with anybody else other than the natural parents?

Analysis: i) In Quran Majeed, the matter of calling an adopted child by his real father's name baptizing an adopted child has been elucidated as under: "Allah hath not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whom ye claim (to be your sons) your sons. This is but a saying of your mouths. But Allah saith the truth and He showeth the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful."
ii) As per Para 352 and 354 of Mohammadan Law, the custody and welfare of a minor lies with the natural parents particularly the mother who is bestowed with inbuilt, inherent clemency, tenderness, love and affection to take best care of the minor more than anyone else in this world .

Conclusion: i) Proclaim their real parentage. That will be more equitable in the sight of Allah.
ii) The custody and welfare of a minor lies with the natural parents particularly the mother than anyone else in this world.

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25. **Lahore High Court**
Saeed Anwar alias Noor Muhammad etc. v. Member Colonies Board of Revenue Punjab etc.
W.P.No.5407/2010
Mr. Justice Ch. Muhammad Iqbal
https://sys.lhc.gov.pk/appjudgments/2022LHC7218.pdf

Facts: Through the instant writ petition, the petitioners have challenged the validity of an order passed by the Member Colonies, Board of Revenue, Punjab who cancelled the alleged grant of proprietary rights which were granted in favour of father of petitioner side having obtained on the basis of fraud and concealment of facts.

Issue: i) Whether any ill-gotten gain achieved by fraudster can be validated under any norms of law?
ii) Whether the Board of Revenue has jurisdiction to annul the lease/ allotment / proprietary rights / Conveyance Deed etc?
iii) Whether a right of the party hit by the principle of laches can be enforced?
iv) Whether an order passed by an authority beyond its jurisdiction can be sustained in the eye of law?
v) Whether subsequent purchaser has protection if any infirmity, deficiency or flaw subsequently emerges in the title of owner?

Analysis: i) It is settled law that fraud vitiates the most solemn proceedings and any edifice so raised on the basis of such fraudulent transaction, that stand automatically dismantled and any ill-gotten gain achieved by fraudster cannot be validated under any norms of law.

ii) It is now settled that under Section 30(2) of the Act ibid, the Board of Revenue has jurisdiction to annul the lease/ allotment / proprietary rights / Conveyance Deed etc. obtained on the basis of fraud and in violation of the policy or the statements of conditions issued by the Board of Revenue under the Colonization of Government Lands (Punjab) Act, 1912. The Board of Revenue may, after giving such person a reasonable opportunity of showing cause pass an order resuming the land in respect of which proprietary rights have been acquired or reduce the area of such land or pass such order as it may deem fit.

iii) Laches is a doctrine where under a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party.

iv) Under Section 23 of the Contract Act, 1872, if any order is passed by an authority beyond its jurisdiction and against the public policy, such order is nullity in the eyes of law.

v) Subsequent purchaser only stepped into shoes of his vendor and is debarred to claim any better title than that of his vendor and subsequent purchaser has no protection under Section 41 of Transfer of Property Act and if any infirmity, deficiency or flaw subsequently emerges in the title of owner / vendor that shall always travel with the land and subsequent purchaser is precluded to raise plea of protection of bona fide purchaser under Section 41 of the Transfer of Property Act, rather he may trace his remedy against the vendor as per law. Protection under section 41 of Transfer of Property Act, 1882 can only be claimed when the following conditions are fulfilled: (a) the transferor is the ostensible owner; (b) he is so by the consent, express or implied, of the real owner; (c) transfer is for consideration; and (e) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

Conclusion: i) Any ill-gotten gain achieved by fraudster cannot be validated under any norms of law.

ii) Yes, the Board of Revenue has jurisdiction to annul the lease/ allotment / proprietary rights / Conveyance Deed etc obtained on the basis of fraud and in

violation of the policy or the statements of conditions issued by the Board of Revenue.
iii) A right of the party hit by the principle of laches cannot be enforced.
iv) An order passed by an authority beyond its jurisdiction cannot be sustained in the eye of law.
v) Subsequent purchaser has no protection if any infirmity, deficiency or flaw subsequently emerges in the title of owner and it shall always travel with the land and he is precluded to raise plea of protection of bona fide purchaser

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26. **Lahore High Court**
Rana Muhammad Ahmad Tahir v. Mian Muhammad Zia
SAO No.77924 of 2019
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC7116.pdf

Facts: Respondent filed ejectment petition under Section 13 of the West Pakistan Urban Rent Restriction Ordinance, 1959 and appellant contested said ejectment petition by filing application for leave to contest, however, learned Special Judge (Rent) proceeded to strike off appellant's right under Section 13(6) of the Ordinance of 1959 and allowed the ejectment petition. Feeling aggrieved, appellant preferred first appeal before learned Additional District Judge, which was dismissed, hence, instant appeal.

Issues: i) Whether tenant is bound to increase rent @ 25% after every three years being envisaged by the statute and failure amounts to willful default?
ii) Whether service of notice under Section 5-A of the Ordinance of 1959 by a landlord to a tenant is condition precedent to invoke the jurisdiction of the Special Judge (Rent)?
iii) Whether an appeal is continuation of proceedings wherein entire proceedings are again left open for consideration?

Analysis: i) It is well-settled that tenant is bound to increase rent @ 25% after every three years being envisaged by the statute, failure whereof would entail consequences of willful default and arrears of rent becoming due in terms of Section 13(2((i), which provides that if tenant has not paid or tendered rent due within stipulation proved therein, the Special Judge (Rent) may pass eviction order. Needless to observe that increase in rent under Section 5-A is automatic and is terms as rent due within contemplation of Section 13(2)(i).
ii) Even otherwise, service of notice under Section 5-A of the Ordinance of 1959 by a landlord to a tenant is not condition precedent to invoke the jurisdiction of the Special Judge (Rent).
iii) Suffice it to say that an appeal is continuation of proceedings wherein entire proceedings are again left open for consideration by the Appellate Court and these powers are co-extensive with the powers and obligations conferred upon the original jurisdiction in respect of petitions/suits. The Appellate Court may also

pass an order in favour of a party, even no appeal or cross objections are filed, to secure the ends of justice.

Conclusion: i) Tenant is bound to increase rent @ 25% after every three years being envisaged by the statute and failure amounts to willful default.
ii) Service of notice under Section 5-A of the Ordinance of 1959 by a landlord to a tenant is not condition precedent to invoke the jurisdiction of the Special Judge (Rent).
iii) An appeal is continuation of proceedings wherein entire proceedings are again left open for consideration.

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27. **Lahore High Court**
Abdul Rasheed v. Zahoor-ud-Din (deceased)
through his Legal Heirs & others.
Regular Second Appeal No.130821 of 2018
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2022LHC7123.pdf

Facts: Through this regular second appeal appellant has challenged the legality and validity of judgment and decree, passed by learned Additional District Judge, whereby appellant's appeal against judgment and decree passed by learned Civil Judge, partly decreeing suit filed by deceased respondent side, was dismissed, however, cross objections filed by successors of deceased respondent side were allowed and judgment and decree passed by learned Civil Judge was modified accordingly by decreeing the suit in totality.

Issue: i) Whether oral agreement to sell is permissible in law?
ii) Whether improvements in evidence beyond the pleadings permitted by law?
iii) Whether law permits anybody to approbate and reprobate in the same breath?
iv) Whether party can lead evidence beyond the pleadings without amendment of pleadings?

Analysis: i) No doubt, an oral agreement to sell is permissible in law, but it has to be proved through credible and un-impeachable evidence. Ingredients of date, time, place & mode of payment or names of witnesses of the oral agreement to sell are sine qua non to prove oral sale without which decree of specific performance cannot be passed.
ii) Suits involving sales based on oral agreements are more susceptible to improvements made by parties in the evidence and pleadings in order to succeed. It is imperative that all of these requirements spelt out by Courts with a view that only bona fide oral agreements lead to grant of decrees, need to be strictly enforced and Courts must insist that these be fulfilled at the earliest so as to ensure that an oral agreement is fully proved and the device of oral agreement is not abused by unscrupulous and devious litigants to get decrees by fraud, deceit, skillfully made improvements at different stages the trial.

iii) When initially relief was sought on the basis of oral agreement to sell and later on, a written agreement to sell was introduced during trial proceedings. Under the well-established principle of law, this was not permissible as nobody could be allowed to approbate and reprobate in the same breath.
iv) No party can lead evidence beyond the pleadings. Needless to say that parties are required to lead evidence in consonance with their pleadings and no evidence can be produced or looked into in support of a plea which has not been taken in the pleadings. The Court shall exclude and ignore the evidence led beyond pleadings from consideration. Moreover, if a party intends to prove or disprove a case and some material has to be brought on record as part of evidence, which is not covered by the pleadings, it shall first seek amendment of pleadings.

Conclusion: i) Yes, oral agreement to sell is permissible in law, but it has to be proved through credible and un-impeachable evidence.
ii) Improvements in evidence beyond the pleadings are not permitted by law.
iii) Law does not permit anybody to approbate and reprobate in the same breath.
iv) Party cannot lead evidence beyond the pleadings without amendment of pleadings.

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28. **Lahore High Court**
Liaquat Ali v. The State, etc.
Criminal Appeal No.350-J-2015
Mr. Justice Sardar Muhammad Sarfraz Dogar
https://sys.lhc.gov.pk/appjudgments/2022LHC7015.pdf

Facts: This judgment shall dispose of captioned criminal appeal filed by appellant against his conviction and sentence inflicted upon him vide judgment, rendered by the learned Additional Sessions Judge, in case FIR, registered under sections 302, 452, 109, 337- H(ii) PPC at Police Station whereby, he was convicted.

Issue: i) Who is called chance witness?
ii) What is the evidentiary value of chance witness and when it can be relied upon?
iii) Whether withholding of any important witnesses without any justifiable cause leads the Court to draw an adverse inference against the prosecution?
iv) What is the evidentiary value of medical evidence?
v) Whether conviction can be made on the testimony of sole witness?
vi) In how many categories the oral testimony can be classified?
vii) What is scope of testimony of single witness and whether courts should rely on, if yes then on what parameters?
viii) Whether even a single circumstance which create a doubt, is sufficient to acquit the accused?
ix) Whether the rule of giving benefit of doubt to accused person is a rule of caution and prudence, and same is deep rooted in our jurisprudence for safe administration of criminal justice?

Analysis: i) A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness.

ii) It has now been well settled that for conviction of an accused person it would be highly unsafe to rely upon testimony of a chance witness when remained uncorroborated and for conviction of a accused on capital charge on the basis of testimony of chance witness, the court has to be at guard and corroboration has to be sought for relying upon such evidence. (…) It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time.

iii) Withholding of important witnesses in the peculiar circumstances of case without any justifiable cause leads the Court to draw an adverse inference against the prosecution within the purview of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had they been produced before the trial court, they may have not supported the prosecution version.

iv) It is by now well settled that medical evidence is a type of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant.

v) The Court deems it appropriate to dilate upon acceptability and reliability of uncorroborated testimony of a solitary witness in a prosecution case to arrive at the guilt of the accused. The well-known maxim that "Evidence has to be weighed and not counted" marks a departure from the English law where a number of statutes still prohibit convictions for certain categories of offences on the testimony of a single witness.

vi) Oral testimony in this context may be classified into three categories (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above approach of suspicion of interestedness, incompetence of subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses.

vii) The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is feasible and free from all taints which tend to render oral testimony open to the suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not

the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted.

viii) It is well-established principle of law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused. (…) The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.

ix) The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "Avert punishments [hudood] when there are doubts"; and "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment.

Conclusion: i) The chance witness is a person who happens to be at the place of occurrence of an offence by chance.

ii) It would be highly unsafe to rely upon testimony of a chance witness when remained uncorroborated.

iii) Withholding of important witnesses without any justifiable cause leads the Court to draw an adverse inference against the prosecution.

iv) Medical evidence is only supporting evidence.

v) Conviction cannot be made on the testimony of single witness.

vi) Oral testimony in this context may be classified into three categories (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable.

vii) The court naturally has to weigh carefully such a testimony and the time-honoured principle is that evidence has to be weighed and not counted.

viii) If there is a single circumstance which creates reasonable doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused.

ix) The rule of giving benefit of doubt to accused person is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted".

29. **Lahore High Court**
Muhammad Irfan etc. v. ASJ/Ex-officio Justice of Peace etc.
Writ Petition No. 46486/2021
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2022LHC7248.pdf

Facts: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioners lay challenge to order of Justice of Peace, whereby, he directed to register criminal case against the petitioners on the application of respondent No. 4 under section 22-A Cr.P.C.

Issues: i) Whether in official crimes a person may incur personal liability?
ii) Under what conditions a public functionary or an employee of an organization would incur criminal liability?

Analysis: i) An illegal conduct that is plainly beyond the scope of a person's duties does not pose serious problem for his prosecution. A person is personally liable when the unlawful act is relatable to his own weaknesses, passions and imprudence whereas the "official crime is better conceived as conduct authorized or supported by the organization, either formally through instructions and procedures or informally through the norms and practices of the organization." It is, however, pertinent to point out that even in the so-called official crimes a person may incur personal liability. He cannot take the plea that he was acting on the orders of his superiors.
ii) Insofar criminal liability for negligence is concerned, a public functionary or an employee of an organization would incur it subject to two conditions: (i) where he is grossly negligent and his conduct was so bad as to amount to a criminal act or omission in the court's judgment; (ii) the act occasioning the injury must be causa causans.

Conclusion: i) Yes, even in so-called official crimes a person may incur personal liability.
ii) A public functionary or an employee of an organization would incur criminal liability subject to two conditions: (i) where he is grossly negligent and his conduct was so bad as to amount to a criminal act or omission in the court's judgment; (ii) the act occasioning the injury must be causa causans.

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30. **Lahore High Court**
Mst. Shehla Tahir and another v.
Learned Judge Family Court, Lahore and another.
W.P. No.17989 of 2022
Mr. Justice Rasaal Hassan Syed
https://sys.lhc.gov.pk/appjudgments/2022LHC7231.pdf

Facts: The petitioners filed an application to summon the witnesses to prove the authenticity of a document which was dismissed by the learned judge Family Court, hence, this writ petition.

Issues: i) Whether the Family Courts have the jurisdiction to record the witnesses other than mentioned in the list of witnesses by parties?
ii) Whether father/husband is under obligation to disclose his actual income in suit for maintenance and what is effect in case of non-disclosure?

Analysis: i) The assumption that only the persons mentioned in the list of witnesses by the parties could be summoned and other than that the court did not have any power to summon any person or record was based on incorrect interpretation of law and non-consideration of the proviso to section 7(2) of the Act. To the contrary relevant provisions of the Family Courts Act, 1964 empower the Family Court to call any person or witness at any stage which is deemed necessary to do substantial justice and is also necessary for the effective decision of the case. In the presence of the proviso to section 7(2) read with sections 15 and 17(4) of the Act the Family Courts are clearly vested with the authority to summon any witness or record in the interest of justice for complete adjudication of the issue and, as such, their powers are not restricted to the record and witnesses as mentioned in the list tendered by the parties only.
ii) In suit of maintenance, husband/father must disclose present and past earnings because his financial status determines the amount of maintenance that should be awarded. In case husband/father claims limited resources and denied the income as claimed by the plaintiff, he will be under obligation to prove the actual income through evidence and that in case of non-disclosure an adverse inference can be drawn against him.

Conclusion: i) In the presence of the proviso to section 7(2) read with sections 15 and 17(4) of the Family Courts Act, 1964, the Family Courts are clearly vested with the authority to summon any witness or record in the interest of justice for complete adjudication of the issue.
ii) In suit of maintenance, husband/father must disclose present and past earnings and that in case of non-disclosure an adverse inference can be drawn against him.

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31. **Lahore High Court**
Tauheed Abbas v. The State, etc.
Criminal Appeal No.719 of 2017
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC6964.pdf

Facts: Through this Criminal Appeal, accused/appellant has assailed the order passed in a trial of case FIR registered under section 9-C of The Control of Narcotic Substances Act, 1997 whereby the learned trial court has deemed it appropriate to re-record his detailed statement under section 342 Cr.P.C on the ground that earlier statement was not recorded properly by the Predecessor of the Court.

Issue: i) What is the object and purpose of section 342 Cr.P.C?

ii) Whether statement of accused under section 342 Cr.P.C can be recorded more than once by the court?

Analysis: i) Section 342 Cr.P.C has two parts; first part authorizes the Court to ask questions at any stage of inquiry or trial without warning the accused and second part relates to questioning the accused generally after close of prosecution evidence. Though in stricto senso no express provision is available for recording of statement more than once in second part of the section 342 Cr.P.C yet first part authorizes to ask as many questions at any time as the court desires and wish of the court is obviously regulated not by whims but by the principle that any piece of evidence appearing against accused needs his reply or clarification before it is used against him, and it is the base line principle of natural justice borrowed from the maxim "Audi Alterum Partem", no one should be condemned unheard.

ii) The trial court is authorized to dilate upon all pieces of evidence for a reply of accused to be considered later in order to appreciate the evidence of prosecution, yet recording of statement u/s 342 Cr.P.C afresh in this case is not desirable rather court can put additional questions encompassing the evidence appearing against him and is intended to be used by the court for recording any observation relating to guilt or otherwise of the accused and this arrangement is in consonance with the spirit of first part of section 342 Cr.P.C.

Conclusion: i) The object and purpose of section 342 Cr.P.C is that any piece of evidence appearing against accused needs his reply or clarification before it is used against him.

ii) Recording of statement u/s 342 Cr.P.C afresh is not desirable rather court can put additional questions encompassing the evidence appearing against accused and is intended to be used by the court for recording any observation relating to guilt or otherwise of the accused and this arrangement is in consonance with the spirit of first part of section 342 Cr.P.C.

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32. **Lahore High Court**
Murder Reference No.47 of 2018.
Criminal Appeal No.547-J of 2018.
Abdul Aziz v. The State
CRIMINAL APPEAL No.551-J/2018.
Muhammad Ahmad v. The State
CRIMINAL APPEAL No.546-J/2018.
Abdul Rasheed v. The State
Mr.Justice Sadiq Mahmud Khurram, Mr.Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC6969.pdf

Facts: Against convictions and sentences appellants preferred independent criminal appeals whereas, Murder Reference was sent by the learned trial court for confirmation of death sentence, or otherwise.

Issues: what are the pre-requisites for convicting an accused under section 34 PPC?

Analysis Section 38 PPC can also be looked into with another angle particularly when in primary legislation of Penal Code, 1860 the words "in furtherance of common intention of all" were not part of section 34 PPC which were later introduced through an amendment by S.1 of Act XXVII of 1870; and thereby procured a

meaningful expression of section 34 PPC; therefore, what common intention implies and why the words "in furtherance of common intention of all" are used in section 34 PPC has been attended with circumspection by Honourable Supreme Court of Pakistan. It has been settled that until the evidence of pre-concert or pre-arranged plan is available, the offenders shall be liable for individual act played during the crime venture. (…) In the light of above presentation, we conclude that vicarious liability stands apart from sentencing liability; both have different regime under the law, though principle of sentencing liability, based on commission of certain offences conjointly, are part of Pakistan Penal Code, 1860 as reflected from sections 394 & 396 wherein all the offenders are liable for the same sentence, yet sections of PPC dealing with common intention or common object do not envisage any such sentencing liability except liability of commission of offence; therefore, sentences of different accused would be determined on the basis of evidence of sharing common intention and the role played by them during the occurrence. if the evidence of common intention is not available to show pre-concert or pre-arranged plan or if it is not made out from the evidence, then the principle of similar intention would come into play and offenders shall be liable for sentences according to the role played by them during a crime episode on the principle that every person has different reflexes in doing a criminal act and they sometimes are disassociated before the act is completed, or they retaliate differently compared to their co-accused sans knowledge to others, therefore, reflexes cannot be punished and the touch stone is material role played by them during the occurrence.

Conclusion: For application of section 34 PPC the evidence of pre-concert or pre-arranged plan should be available, otherwise the offenders shall be liable for individual act played during the crime venture.

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33. **Lahore High Court**
Imran v. The State
Criminal Appeal No.1065-J/2019
Hasnain v. The State
Criminal Appeal No.691/2019
Murder Reference No.96/2019
Mr. Justice Sadiq Mahmud Khurram, Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC7077.pdf

Facts: Appellants Imran and Hasnain were convicted by the trial court, in case FIR No.155 under sections 302/324/34 PPC registered at police station Kala, District Dera Ghazi Khan. They have assailed their above conviction/sentence through independent Criminal Appeals, whereas, Murder Reference has been sent by the learned trial court with regard to confirmation of death sentence of Imran accused.

Issues: i) What a first responder is required to do at the place of occurrence?
ii) When a statement under section 161 Cr.P.C is reduced into writing, is it mandatory to make a separate record of such statements?

iii) When the witnesses are examined orally or their statements are reduced into writing, a brief note in the body of case diary is to be given by the investigating officer?

Analysis: i) Rule 22.10 of the Police Rules 1934 authorizes that first responder can perform number of functions at the site like (1) to preserve the scene of crime from disturbance; which means to secure the spot recoveries and draft the crime scene as it looked like at his first sight. (2) he can record particulars of and secure the presence of potential witnesses and obtain information relating to case.
ii) Section 161 Cr.P.C says that a witness may be examined orally whereas under section 161(3) Cr.P.C a statement so made may be reduced into writing which shows that reducing the statement into writing is optional but once the statement is reduced into writing it is mandatory to make a separate record of such statements, therefore, use of word 'may' in first part and 'shall' in second part of section 161 (3) Cr. P.C. is meaningful.
iii) Rule 25.18 of the Police Rules 1934 requires that when the witnesses are examined orally or their statements are reduced into writing, a brief note in the body of case diary is to be given by the investigating officer.

Conclusion: i) Rule 22.10 of the Police Rules 1934 authorizes that first responder can perform number of functions at the site like (1) to preserve the scene of crime from disturbance; (2) he can record particulars of and secure the presence of potential witnesses and obtain information relating to case.
ii) Once a statement under section 161 Cr.P.C is reduced into writing it is mandatory to make a separate record of such statement.
iii) When the witnesses are examined orally or their statements are reduced into writing, a brief note in the body of case diary is to be given by the investigating officer.

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34. **Lahore High Court**
Numan alias Nomi v. The State
Criminal Appeal No.364/2020
Asif v. The State
Criminal Appeal No. 380/2020
Awais v. The State
Criminal Appeal No. 382/2020
Muhammad Akbar v. The State
Criminal Appeal No. 407/2020
Mr. Justice Muhammad Amjad Rafiq
https://sys.lhc.gov.pk/appjudgments/2022LHC7201.pdf

Facts: The convicts / appellants lodged the Criminal appeals assailing the judgment of the learned Trial Court whereby they were convicted and sentenced in case FIR registered under sections 376(ii)/509 PPC.

Issue: i) What is the status of an audio/video clip including snaps/photographs in law of

evidence?

ii) How evidence in the form of audio/video clip/snap can be exhibited and produced in court?

iii) Whether it is necessary to provide copy of evidence in shape of audio/video clip/snap to the accused before using the same?

Analysis: i) An audio/video clip including snaps/photographs (in digital form) is treated as digital evidence and it does carry information that includes expression, gestures, voice and video… As evidence it maintains a dual character in the law of evidence; it is termed as electronic document as well as a material thing (physical evidence), also known as real evidence. Electronic document in the senses that 'information' contained therein are the evidence of facts, and oral account of which is to be presented through the words of a witness and not the document alone, while as material thing it is to be produced for the inspection of court.

ii) Evidence in the form of audio/video clip/snap as material thing/real evidence would only be exhibited and produced for the inspection of court in the statement of an investigating officer who has collected it during the course of investigation albeit through secondary evidence as well. It shall be accepted and used as evidence if it confirms to the requirement and standards as highlighted in a case reported as Ishtiaq Ahmed Mirza (PLD 2019 Supreme Court 675) Supra, which standard is apparently available in this case.

iii) It is trite that before using such evidence in any form i.e., as document or as material thing/real evidence, copy of it must be supplied to accused to avoid using it as surprise evidence which is against the principles of fair trial and due process… It is trite that every statement of a witness contains information and such information are regarded as evidence, therefore, every information contained in audio/video clip, tapes, photographs, films etc. are also statements in documentary form which are required to be given to the accused u/s 265-C Cr.P.C. as held in case reported as "Nazim Ali versus Additional Sessions Judge and others" (2016 MLD 25).

Conclusion: i) An audio/video clip including snaps/photographs (in digital form) is treated as digital evidence and it does carry information that includes expression, gestures, voice and video.

ii) Evidence in the form of audio/video clip/snap as material thing/real evidence would only be exhibited and produced for the inspection of court in the statement of an investigating officer who has collected it during the course of investigation.

iii) It is necessary that before using such evidence in any form i.e., as document or as material thing/real evidence, copy of it must be supplied to accused to avoid using it as surprise evidence which is against the principles of fair trial and due process.

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35. **Lahore High Court**
Muhammad Mohsin Raza v. Additional District Judge, Jatoi, District Muzaffargarh & 03 others.
W. P. No. 12505 / 2020
Mr. Justice Abid Hussain Chatta
https://sys.lhc.gov.pk/appjudgments/2022LHC7184.pdf

Facts: This constitutional Petition assailed the Judgments and Decrees passed by learned Judge Family Court, and Learned Additional District Judge, respectively.

Issue: i) What are the principles governing the surrender or return of dower in case of dissolution of marriage or Khula in the light of Imran Anwar Khan case?
ii) Whether Nikah is civil contract and fixation of dower is essential part of Nikah ?
iii) What are different modes for the dissolution of Muslim Marriage?
iv) What are the circumstances, when wife is required to surrender the part of dower in case of dissolution of marriage?
v) Whether court has discretion to determine the quantum of return or surrender of dower in a case of dissolution of marriage or Khula?

Analysis: i) The following conclusions are extracted from the reading of the Imran Anwar Khan case:- (i) There is no prescribed specific ceiling in Islam regarding payment of compensation for seeking Khula in terms of return or surrender of dower in cash or kind just as there is no prescribed upper ceiling for fixation of dower; (ii) It is an established principle of Sharia that payment of dower and undertakings of Nikah become due on consummation of marriage and if not paid earlier are payable at the time of death, divorce or dissolution of marriage; (iii) Dower is wholly payable at the time of dissolution of marriage except where in a case of Khula, the Court orders return or surrender of whole or part of dower; (iv) As a general rule, if a husband pronounces divorce to his wife himself, he is not entitled to seek return or surrender of dower, gifts or any other benefit given by him to his wife during the subsistence of marriage; (v) More specifically, if a husband divorces his wife on his own accord without any fault on the part of wife, the husband does not have any right to demand return or surrender of dower or gift; (vi) A wife is entitled to seek Khula on any ground under Section 2 of the Act of 1939 by filing a suit in the Court of competent jurisdiction; (vii) If it is proved that there was no fault of the wife and she was compelled to seek Khula, the Court should not order return or surrender of any amount of dower in cash or kind; (viii) If it is proved that there was no fault of the husband and the wife sought Khula solely and merely on the basis of her personal dislike for her husband, the Court should order return or surrender of entire amount of dower in cash or kind; (ix) If it is proved that the husband and the wife are proportionally at fault for dissolution of marriage, the Court may order proportionate return or surrender of dower in cash or kind; (x) The order of return or surrender of dower in cash or kind shall not exceed the dower fixed in the Nikahnama (xi) The Court

is empowered to determine the quantum of return or surrender of dower in cash or kind, keeping in view the facts and circumstances of the case on the touchstone of fault of each spouse triggering dissolution of marriage; and (xii) The quantum of return or surrender of dower shall be decided in the light of aforesaid principles without resort to statutory upper ceiling stipulated in Section 10 (5) & (6) of the Act having been struck down as repugnant to injunctions of Islam after the cutoff date declared in the Imran Anwar Khan case.

ii) Nikah is regarded as a civil contract which is solemnized against fixed dower or Mehr which is a denomination of property or a consideration in cash or kind paid or undertaken to be paid by the husband to his wife in the nature of gift in acknowledgment and recognition of her consent to marry him. Some dower is liable to be fixed but no limit is prescribed on the higher side. If dower is not mentioned in the Nikahnama, customary amount is payable. Unpaid dower operates as a debt and takes precedence over all rights acquired under a „will" or by inheritance..

iii) A marriage between Muslim spouses can be dissolved by Talak, Mubarat or Khula. Talak is an arbitrary and unilateral act of the husband, whereby, he may divorce his wife. The spouses may agree to dissolution of marriage through their mutual consent which is termed as Mubarat. Corresponding to the right to divorce accorded to a man, a Muslim woman is granted the right to obtain divorce through the Court by filing a suit which is called Khula. It denotes the right of a Muslim woman to seek dissolution of her marriage in which she gives or consents to give a consideration to the husband for her release from marriage as determined by the Court. Section 2 of the Act of 1939 stipulates that a Muslim woman can seek dissolution of marriage or Khula based on a variety of grounds listed therein. Ground (ix) of Section 2 of the Act of 1939 is a catch all provision which entitles a Muslim woman to file a suit for Khula on any ground recognized under Muslim personal law. Such grounds delineate such instances where a woman may not be at fault for seeking divorce by instituting a case for Khula but may be forced or compelled to do so when she arrives at a conclusion that she can no longer perform her obligations of Nikah within the limits prescribed by Allah, the Almighty.

vi) The jurisprudence of Islamic law ordains that when a wife in her case of Khula proves that she was not at fault for dissolution of marriage but was compelled to seek Khula for circumstances beyond her control, despite her best efforts to make the marriage successful, she does not require to surrender dower at all and would retain her complete entitlement to dower in a decree for dissolution of marriage. In contrast, if marriage is dissolved by the Court at the instance of the wife without any valid reason or without any fault of her husband, the wife is invariable required to surrender her complete dower. If both the parties are partly at fault, the amount of surrender of dower can be reduced, proportionately by the Court as the facts and circumstances of the case may warrant.

v) The Court had the discretion to determine the quantum of return or surrender of dower in a case of dissolution of marriage or Khula depending upon the facts and

circumstances of the case. Therefore, when divergent pleadings regarding entitlement or surrender of dower are taken by the parties in a suit for dissolution of marriage, the proper course is to decide the same after recording of evidence.(…) However, Section 10 (5) & (6) of the Act were introduced in 2015 to regulate the question of surrender of dower in the case of Khula which prescribed a discretionary upper limit for the Court to order surrender of dower up to fifty percent of deferred dower or up to twenty-five percent of admitted prompt dower of the wife in favour of the husband. The Courts generally invoked Section 10 (5) of the Act even in a case of Khula where either the suit was decreed summarily or otherwise when it was proved that Khula was obtained by the wife for no fault of the husband.

Conclusion: i) The Judgment in the Imran Anwar Khan case was rendered in this context. It struck down the prescribed upper ceiling with respect to surrender of dower encapsulated in Sub-sections (5) & (6) of Section 10 of the Act being repugnant to Islam and as such, declared the same to be ineffective from 01.05.2022. .

ii)) Nikah is regarded as a civil contract which is solemnized against fixed dower or Mehr which is a denomination of property or a consideration in cash or kind paid or undertaken to be paid by the husband to his wife in the nature of gift in acknowledgment and recognition of her consent to marry him .

iii) A marriage between Muslim spouses can be dissolved by Talak, Mubarat or Khula.

vi) If marriage is dissolved by the Court at the instance of the wife without any valid reason or without any fault of her husband, the wife is invariable required to surrender her complete dower.

v) The Court had the discretion to determine the quantum of return or surrender of dower in a case of dissolution of marriage or Khula depending upon the facts and circumstances of the case.

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36. **Lahore High Court**
Board of Intermediate & Secondary Education,
Multan through chairman v. Muhammad Afzal
Civil Revision No. 50-D of 2022
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2022LHC7195.pdf

Facts: The petitioner has filed this Civil Revision to call into question the concurrent Judgments & Decrees passed by Civil Judge and Additional District Judge respectively and decreed the suit in favour of the Respondent.

Issues: i) Whether it is necessary to implead both Board of Intermediate & Secondary Education and NADRA for correction of date of birth in the Matriculation certificate?

ii) What is the degree of authenticity of Matriculation certificate?

Analysis: i) It is necessary to implead both Board of Intermediate & Secondary Education and NADRA for correction of date of birth in the Matriculation certificate. In case a party first files a suit against NADRA and obtains a decree merely on the strength of his birth certificate and after changing his date of birth in his CNIC files another suit for correction of his date of birth in the Matriculation certificate against the Board of Intermediate & Secondary Education. Then mala fide of the said party in filing separate suits against NADRA speaks volume regarding his intentions and refutes his assertion that the wrong date of birth was inadvertently recorded in the Matriculation certificate.

ii) The Matriculation certificate is regarded as an authentic document. The changes in the said document can only be allowed on the basis of cogent and irrefutable evidence when it becomes apparent that there was a bona fide, just and inadvertent mistake in recording of date of birth or any other personal particular. Otherwise, the sanctity of the document would be grossly compromised.

Conclusion: i) It is necessary to implead both Board of Intermediate & Secondary Education and NADRA for correction of date of birth in the Matriculation certificate.

ii) The Matriculation certificate is regarded as an authentic document.

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37. **Lahore High Court**
Ehsan Ullah Chaudhry v. The State, etc.
Writ Petition No.52999/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2022LHC7240.pdf

Facts: Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has challenged the order passed by learned Magistrate, Section-30, through the impugned order cancellation report prepared by the local police in respect of case FIR registered under Section 489-F PPC was agreed with.

Issues: i) What is mode and grounds of submission of the cancellation report of a criminal case?

ii) Who is competent officer to file cancellation report in a criminal case?

iii) Whether preparation of a cancellation report after a thorough investigation of a criminal case is altogether different from the case in which investigation can be dispensed with?

iv) What is role of a "Supervisory Officer" as per Police Order (Amendment) Act, 2013?

v) Whether it is mandatory that where a statute provides for something to be done in a particular manner it can be done in that manner alone?

vi) Whether both parties have right of hearing in court while deciding cancellation report?

Analysis: i) Rule 24.7 of the Police Rules, 1934 (hereinafter 'the Rules') prescribes a self-explanatory procedure for submitting a cancellation report of a criminal case. It is

specified that if after collecting information and evidence the Investigating Officer is of the opinion that the report is maliciously false or false owing to a mistake of law or fact or to be noncognizable or matter for a civil suit, the Superintendent shall send the first information report and any other papers on record in the case with the final report to a Magistrate having jurisdiction. After considering those documents, the Magistrate will pass the final order…This Rule provides not only the mode of submission of the cancellation report of a criminal case but also the grounds on which such a report should be prepared by the investigating officer.

ii) The words used in Rule 24.7 'Superintendent shall send' clearly indicate that it is mandatory and requires due compliance. Consequently, it becomes abundantly clear that no subjective, as well as objective, discretion has been left with the investigating agency to deviate from the above-referred Rule and submit the cancellation report of a criminal case through SHO or even DSP/SDPO. Rules have a force of law and have not been replaced despite the enforcement of Police Order, 2002 (hereinafter 'the Order'). Cancellation of an F.I.R. is not provided in the Cr.P.C but it has been provided in Rule 24.7 of the Rules. 5 Chapter 11, Part D, Vol. III of The Rules and Orders of The Lahore High Court, Lahore, also provides guidelines to the Magistrates dealing with the cancellation reports and adherence to Rule 24.7 of the Rules has also been provided therein… The rationale underlying the aforementioned Rule is that a cancellation report in a criminal case should be filed through the senior supervisory officer to preclude the possibility of malpractice and arbitrariness on the part of the investigating officer. This precautionary measure has been provided in the Rules to ensure fairness and impartiality in the investigation process because if a cancellation report of a criminal case is agreed with by the concerned Magistrate, it amounts to the termination of that criminal case. Unlike any other report under Section 173 Cr.P.C a cancellation report shall be sent through the concerned Superintendent of Police for the safe administration of the Criminal Justice System. To send the cancellation report under Section 173 Cr.P.C through the Superintendent of Police concerned, is neither a formality nor that office is merely a post office, instead he must forward that cancellation report after applying his independent mind, otherwise, the very purpose of Rule 24.7 of the Rules shall be defeated.

iii) It shall not be out of place to clarify that the preparation of a cancellation report after a thorough investigation of a criminal case is altogether different from the case in which investigation can be dispensed with or where investigating officer sees no sufficient ground for investigation as envisaged under proviso (a) & (b) to Section 157(1) Cr.P.C.

iv) This Court is of the considered view that the Order provides a complete structure, guidelines and a detailed mechanism for the effective and smooth functioning of the police department. In the year 2013, Police Order (Amendment) Act, 2013, was introduced and that amendment has some relevance to the proposition at hand… A bare perusal of the aforementioned provision of law reveals that a "Supervisory Officer" has been introduced in the new system of

investigation for timely "completion" & "verification" of investigations. The said officer i.e., Deputy Superintendent of Police (DSP) may call upon investigating officer to review the case and if it is deemed appropriate, he can write a police diary in that regard. This enhanced level of supervision is bestowed upon DSP as a check on the investigating officers to improve the quality of investigations as well as to clog up aberrant investigations. On the ther hand, by virtue of Rule 24.7 of the Rules, which in unequivocal terms exclusively deals with the subject of cancellation report, it is the Superintendent of Police who is solely authorized to send the cancellation report of a criminal case to the Magistrate concerned. The use of the word 'may' in Article 18(10) of the Order and the word 'shall' in Rule 24.7 of the Rules clearly reflects the legislature's intent and the mandatory nature of the Rule.

v) It is a time-honoured principle as early as the decision in Taylor7 that where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden.

vi) The principle of natural justice (audi alteram partem) is enshrined in our Constitution and forms the bedrock of any decision-making process which affects the right of any party. The right to be heard is read as an integral part of every statute affecting the rights of a person, especially after the insertion of Article 10-A of the Constitution. All the pre-trial proceedings including investigation are covered under the right to a fair trial as guaranteed under Article 10-A of the Constitution. The fundamental right to have a fair trial and due process should be read into every statute affecting the rights of a person… In fact, after the insertion of Section 24-A of General Clauses Act, 1897, it casts an affirmative duty upon Court/Authority/Forum to pass an order or judgment with reasons by giving all the parties an opportunity to present their submissions. Even otherwise, Honorable Supreme Court of Pakistan in a pile of judgments endorsed the principle of "audi alteram partem". Consequently, a Magistrate when receives the cancellation report, duly forwarded by the Superintendent of Police, is not only duty bound to hear both the parties but also pass a speaking and well-reasoned order.

Conclusion: i) When officer found that the report is maliciously false or false owing to a mistake of law or fact or to be non-cognizable or matter for a civil suit, the Superintendent shall send the first information report and any other papers on record in the case with the final report to a Magistrate having jurisdiction .

ii) Superintendent of Police is competent to file cancellation report in a criminal case.

iii) A cancellation report after a thorough investigation of a criminal case is altogether different from the case in which investigation can be dispensed with.

iv) Supervisory officer may call upon investigating officer to review the case and if it is deemed appropriate, he can write a police diary in that regard.

v) It is mandatory that where a statute provides for something to be done in a particular manner it can be done in that manner alone.

vi) Both parties have right of hearing in court while deciding cancellation report.

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38. **Lahore High Court**
Muhammad Abbas v. Additional District Judge & 2 others.
Writ Petition No.3377 of 2022/BWP
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2022LHC7068.pdf

Facts: The petitioner has assailed the order passed by Additional District Judge who upheld the order of civil judge whereby the civil court being an executing court rejected the objection raised by the petitioner regarding payment.

Issues: (i) Whether an acknowledgement under Order XXI Rule 1(1)(b) CPC must bear revenue stamps as a valid proof of payment?
(ii) Whether it is incumbent upon an executing court to frame issues and record evidence under Order XXI Rule 2 CPC in case of denial of the decree-holder from acknowledgement of payment?

Analysis: (i) Order XXI, Rule 1(1)(b) of the *Code* permits out of Court payment by the judgment-debtor through (i) bank or (ii) postal money order or (iii) payment which is evidenced in writing and signed by the *decree-holder* or his authorized agent… There is no requirement in Order XXI, Rule 1(1)(b) of the *Code* that the acknowledgment must bear the revenue stamps. In this regard aforesaid rule merely requires that the out of Court payment should be evidenced in writing and signed by the decree-holder or his authorised agent.
(ii**)** Order XXI, Rule 2(1) of the *Code* makes it obligatory upon the decree holder to certify such payment or adjustment before the learned Court whose duty it is to execute the decree. However, under Order XXI, Rule 2(2) of the *Code* judgment debtor can also inform the Court and apply the learned Court to issue notice to the decree-holder as to show cause as to why such payment or adjustment should not be recorded as certified… Apparently, it also escaped the view of the learned revisional Court that accepting the bare denial by the *decree- holder* regarding his signatures on the *acknowledgment,* without further probe, inquiry or assistance of expert is highly unsafe… Denial of the *decree-holder* from the *acknowledgment,* in the given circumstances of the case, clearly requires framing of issue(s) and recording of evidence.

Conclusion: (i) There is no requirement under Order XXI Rule 1(1)(b) CPC that an acknowledgment must bear revenue stamps as a valid proof of payment.
(ii**)** It is incumbent upon an executing court under Order XXI Rule 2 CPC to frame issues and record evidence in case of denial of the decree-holder from acknowledgement of payment.

SELECTED ARTICLES

1. **Menupatra**
   Capital punishment By Rushil Gupta
   https://articles.manupatra.com/article-details/Capital-punishment

   Abstract:

   When a person violates a legal prohibition by committing a specific crime, the court may impose the legal penalty of capital punishment. According to the Indian Penal Code and the Code of Criminal Procedure, it is only granted in the rarest of rare situations in India. In the United Nations (UN), where the death penalty is viewed as a violation of human rights, the term "Abolition of Death Penalty" is one of the most frequently discussed subjects, capital punishment is the most divisive criminal practice.

2. **Menupatra**
   Issue of Shares on Private Placement basis by Bijesh Kumar Gupta
   https://articles.manupatra.com/article-details/Issue-of-Shares-on-Private-Placement-basis

   Introduction

   Any offer of securities or invitation to subscribe for securities made by a corporation to a small group of people (other than through a public offering) through the issuance of a private placement offer letter is referred to as a private placement. Debt, equity, and hybrid instruments are all included in private placements of securities. Sec 42 of companies Act of Companies Act, 2013. However, carrying them out entail's disclosures, strict procedures, and compliances. Additionally, few businesses can meet the requirements to take on these concerns. Companies find the private placement route to be practical in these circumstances.
   Private placements are covered in Part II of Chapter III of the 2013 Companies Act. During a private placement, stocks are sold to a limited, carefully chosen group of people in order to raise funds (Investors).A public issue, in which securities are offered for sale on the open market to any sort of investor, is not the same as a private placement.

3. **Wiley Online Library**
   An Empirical Analysis of Patent Citation Relevance and Applicant Strategy By W. Michael Schuster,Kristen Green Valentine
   https://onlinelibrary.wiley.com/doi/full/10.1111/ablj.12206

   Abstract

   Patent examination should ensure that only novel and nonobvious technologies are patented. This evaluation requires comparing the invention to technologies described in public documents—called "prior art." Examiners and applicants have obligations to cite known prior art that is material to whether the patent is issued. Beyond documenting examination, citations are used as metrics in a significant body of research. The importance of citations as a predictive metric rests on the assumption that they provide evidence of continued development in the relevant field. Research indicates that some citations are, however, made for reasons beyond technological similarity. This undermines the notion that citations show continued growth of a technology. We analyze this assumption—and correct for inaccuracies—by employing similarity metrics to

characterize the "relatedness" of technologies described in two patent documents (i.e., citing and cited references). To this end, we use a "Jaccard Index" to quantify textual similarity—and thus technological relatedness—of two documents. Using this method, we empirically analyze strategic behaviors in patent law that were previously only theoretically described in the literature. For example, some patent applicants "bury" relevant references—submitting many irrelevant references and a few relevant ones to hinder review of the important ones. Our Jaccard Index analysis is the first to empirically evaluate whether this practice benefits the applicant. Moreover, we improve upon patent value and grant rate analyses and demonstrate that citation relevance has a significant impact above and beyond a count of citations made.

4. **THE YALE LAW JOURNAL**
The Separation-of-Powers Counterrevolution By Nikolas Bowie & Daphna Renan
https://www.yalelawjournal.org/article/the-separation-of-powers-counterrevolution

Abstract

Most jurists and scholars today take for granted that the U.S. Constitution imposes unwritten but judicially enforceable limits on how Congress and the President may construct their interrelationships by statute. This "juristocratic" understanding of the separation of powers is often regarded as a given or inherent feature of American constitutionalism. But it is not. Instead, it emerged from a revanchist reaction to Reconstruction. As an ascendent white South violently returned to power in Washington, its intellectual supporters depicted a tragic era in which an unprincipled Congress unconstitutionally paralyzed the President in pursuit of an unwise and unjust policy of racial equality. Determined to prevent Reconstruction from reoccurring, historians, political scientists, and a future Supreme Court Justice by the name of William Howard Taft demanded judicial intervention to prevent Congress from ever again weaving obstructions around the President. This Lost Cause dogma became Supreme Court doctrine in Myers v. United States. Authored by Chief Justice Taft, the opinion was the first to condemn legislation for violating an implied legal limit on Congress's power to structure the executive branch. It is today at the heart of an ongoing separation-of-powers counterrevolution.

That counterrevolution has obscured, and eclipsed, a more normatively compelling conception of the separation of powers—one that locates in representative institutions the authority to constitute the separation of powers by statute. This "republican" conception accepts as authoritative the decision of the political branches as to whether a bill validly exercises the Necessary and Proper Clause to carry into execution the powers and interrelationships of Congress, the President, and the executive branch. Where the juristocratic separation of powers undermines both the legal legitimacy of the Court and the democratic legitimacy of the political branches, the republican separation of powers sustains an inherently provisional constitutional order—one grounded in deliberation, political compromise, and statecraft.