LAHORE HIGH COURT

BULLETIN

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Message by Mr. Justice Muhammad Qasim Khan, Hon'ble The Chief Justice Lahore High Court, Lahore

"Wisdom is not a product of schooling but of the lifelong attempt to acquire it." (Albert Einstein).

With a long run perspective of sharing recent case law developments and precedents as enunciated by Superior Courts of Pakistan and other countries and with an aim to enlighten the judges with updated knowledge of law and its applicability, I appreciate the initiative of my learned brother Judge, **Mr. Justice Shahid Waheed**, the Administrative Judge of Research Center of this Court for issuance of the "*Case Law Bulletin*" on fortnightly basis. It is high time to resurrect good practice of the past in a manner which not only enhances its utility but also makes it in line with the modern pattern, so that the reader must be communicated about the issue under adjudication and decision of the court in a precise manner. A quality judicial service can only be delivered with passion, enthusiasm, knowledge, analytical application of laws and awareness of latest developments in legislation and most importantly with the knowledge of recent precedents. I hope that this *Bulletin* will facilitate the reader to keep abreast of latest principles of law as laid down by Constitutional Courts of the Country and of other parts of the globe. The object of circulating this Bulletin will be accomplished only when the readers will not only learn the correct law as laid down by the Courts but also unlearn the existing principles of law overruled through these judgments. As it was said by famous Chinese Philosopher Lao Tse: "To attain knowledge, add things everyday. To attain wisdom, remove things every day."

I hope that this Bulletin will serve as a handbook for both researchers at various levels of academic endeavors as well as a guidebook for Judges and lawyers working in the field of law.

FORTNIGHTLY CASE LAW BULLETIN

(01-10-2020 to 15-10-2020)

A Summary of Latest Decisions by the superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

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1. **Supreme Court of Pakistan**
Civil Petition No.2129 of 2020
Khawaja Anwer Majid v. National Accountability Bureau
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2129_2020.pdf

Facts: The petitioner, a septuagenarian sought bail primarily on the ground of his cardiac conditions that required replacement of aortic valve with permission to go abroad to undertake cardiac surgery.

Issue: Whether bail can be granted for offshore treatment to a sick and infirm person?

Analysis: An accused all that he can claim is "due process of law" through a fair trial so as to possibly vindicate his position; it is a right equally extendible to all the accused without distinction of stature, status or station. As a sick and infirm person, as he appears to be, the petitioner is entitled to the concessions that the law provides to all and sundry; these do not include offshore treatments. Equality before law and equal protection thereof are not one sided affairs; these equally empower the State through its prosecuting agencies to effectively prosecute the alleged offenders and for that physical custody/presence of an accused to bring the prosecution to its logical end is a sine qua non.

Conclusion: Bail allowed without permission to go abroad for treatment.

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2. **Supreme Court of Pakistan**
Jail Petition No.499 of 2015
Muhammad Abbas v. The State
https://www.supremecourt.gov.pk/downloads_judgements/j.p._499_2015.pdf

Facts: The petitioner was tried and convicted for the qatl-iamd (murder) of his wife under Section 302(b) of the Pakistan Penal Code ('PPC') and sentenced to death. His version was that deceased was a woman of bad character. Having seen her in the company of a man, he was provoked. Hence under grave and sudden provocation, he shot her once. He submits that such circumstances bring the petitioner's case within the ambit of section 302(c) PPC

Issue: Whether killing in the name or pretext of honour falls within ambit of section 302(c)?

Analysis: The law specifically states that under no circumstances can a killing in the name or under the pretext of honour be brought within the ambit of section 302(c) PPC. A proviso was added after clause (c) of section 302 in the year 2005 to this effect. This proviso was then replaced by another proviso in the year 2016 which when read with the definition of fasad-fil-arz reiterated that killing in the name or under the pretext of honour cannot be brought within the ambit of section 302(c) PPC.

Conclusion: Killing in the name or on the pretext of honour cannot be brought within the ambit of section 302(c) PPC. Leave declined.

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Supreme Court of Pakistan
Criminal Petition No.682 of 2020
Abbas Raza v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._682_2020.pdf

Facts: It is alleged that the petitioner was selling narcotics while sitting in the "Baithak" adjacent to his house. He was taken into custody. During his personal search a polythene shopper was found containing opium weighing 1300 grams held in his right hand at the time of raid. The raiding party also took into possession one electric weighing machine and sale proceeds amounting to Rs.2129290/-.

Issue: Question of post arrest bail in case of 1300 gram opium?

Analysis: In the month of February, when the weather is cold, selling of narcotics while sitting in the "Baithak" seems to be something astonishing, when there is remote possibility of attracting any customer at that odd time. Otherwise when it is the allegation that the petitioner is selling narcotics substance "opium" a contraband the use of which makes the consumer affected through central nervous system pouring negative impact in the body while making him dull, depressed, of impaired reflexes, lacking sharpness turning into a sluggish entity. All these aspects when evaluated conjointly, it lends support to the arguments advanced by the learned counsel for the petitioner qua prosecution story being result of fabrication

Conclusion: Bail granted.

4.

Supreme Court of Pakistan
Criminal Petition No.290 of 2020
Muhammad Uzair Jamal v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._290_2020.pdf

Facts: A student of M.Phil, was shot dead in a family function scheduled to fix her marriage date by the petitioner who wanted to marry the deceased. accused/petitioner moved an application contending that he was suffering from different mental ailments from the last so many years and was unable to defend himself within the parameter of the law during the course of trial.

Issue: Whether a mental illness like Depressive illness is a ground recognized by law for seeking immunity from prosecution on the ground that accused is unable to defend himself?

Analysis: Depression is a natural concomitance of the crime and one may hardly find a prisoner facing corporal consequences, possibly the gallows to stay unperturbed; it is a state of mind primarily governed by a variety of factors including fear, regret or remorse; such inevitable disequilibriums are not recognized by law to

hold the process of justice in abeyance. An offender can claim immunity from prosecution on the basis of unsound mind if at the time of commission thereof, he by reason of unsoundness of mind, was incapable of knowing the nature of the act or lacked knowledge on account thereof about its being wrong or contrary to law ….. "Depressive Illness" is not a disease or incapacity recognized by law as a justification to deny justice to the victims of crimes or their families nor does it allow digging out of acclaimed incapacity by a Physician of offender's own choice, other than the designated medical officers.

Conclusion: Depressive illness is governed by a variety of factors including fear, regret or remorse. It is a natural concomitance of the crime. Such like illness is not recognized by law to hold the process of justice in abeyance. Application dismissed.

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5. **Supreme Court of Pakistan**
Civil Appeal No. 324 of 2020
District Police Officer v. Muhammad Hanif.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._324_2020.pdf

Facts: In the inquiry, an allegation of receiving bribe of Rs. 20000/- stood proved. Respondent was dismissed from service. In appeal the major penalty was converted to compulsory retirement. However, service tribunal treating, it a minor act, reinstated the respondent and imposed minor penalty upon him.

Issue: Whether taking illegal gratification is a minor act?

Analysis: Taking of illegal gratification is itself a heinous offence requiring imposition of major penalty. A civil servant found guilty cannot be retained in service and major penalty has to be imposed upon him.

Conclusion: Taking of illegal gratification was held to be a heinous offence requiring imposition of major penalty The modus operandi adopted by the Member Service Tribunal was highly deprecated. He was directed to be replaced. Judgment of the Tribunal was set aside.

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6. **Lahore High Court**
Munir Aftab v. The State & Others
W.P.No.6076 of 2020
2020 LHC 1813
https://sys.lhc.gov.pk/appjudgments/2020LHC1813.pdf

Facts: Magistrate while granting physical remand of the accused directed the investigation officer to add section 452 PPC in the FIR which was registered under section 354 PPC.

Issue: Whether Magistrate is empowered to direct addition of particular offence in an FIR at the stage of investigation?

Analysis: While deciding the question of grant of remand, the concerned court is not expected to act blindly and such orders are expected to be passed with due application of judicial mind. In an appropriate case and at an appropriate stage, the area magistrate can require the investigation officer to consider addition or deletion of any penal provision. If the Court mechanically accepts the prosecution version it may cause miscarriage of Justice.

Conclusion: At the time of remand, a magistrate may very well direct the investigating officer to consider addition, deletion or substitution of an offence mentioned in the FIR if the circumstances warrant. However, he cannot ask the IO to submit report under Section 173 Cr.P.C in a particular manner.

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7. **Lahore High Court**
Muhammad Shahid v. Aqeel and 5 others
Crl. Revision No. 01/2020/BWP
2020 LHC 1805
https://sys.lhc.gov.pk/appjudgments/2020LHC1805.pdf

Facts: Petitioner challenged dismissal of his application in a private Complaint for re-examination of medical officer to clarify certain ambiguities, which arose during cross-examination of said witness.

Issue: Whether petitioner could have moved application for re-examination of witness or it was the domain of Public Prosecutor being in-charge of Prosecution; and whether re-examination of witness can be allowed for the purpose of clarifying the fact about duration of time between injuries and death of the victim when doctor narrated it differently during his examination in chief and cross examination?

Analysis: The Public Prosecutor is in-charge of only those trials before Sessions Court which are initiated on behalf of State and in the form of registration of FIR and not in the matters of private complaint. The purpose of Article 133 (3) QSO, 1984 is to clear an ambiguity or clarify or explain a matter which has cropped up during cross-examination and the party who has produced the witness has the absolute right to re-examine him where explanation of an issue is required.

Conclusion: Petition is allowed and trial court is directed to recall the Medical Officer for re-examination.

8. **Lahore High Court**
W.P. No.1421 of 2020.
Syed Amjad Hussain Shah v. Ali Akash alias Asima Bibi
2020 LHC 1825
https://sys.lhc.gov.pk/appjudgments/2020LHC1825.pdf

Facts: Allegedly daughter of petitioner was seduced to marriage by respondent, who, according to petitioner, was also a female. Hence, petitioner claimed the issuance of direction to recover the detenue daughter from the illegal and improper detention and custody of respondent and hand her over to petitioner.

Issue: Whether questioning of status of relationship falls within the scope of section 491 CrPC and whether a sui juris can be sent to Dar-ul-Aman against her wishes?

Analysis: The Court, while deciding an application under section 491, Cr.P.C. is not required to go into the question of the status of the relationship of the parties by holding full-fledged trial of the counterclaims and it should concern itself only with the free will of the detenue. …… A detenue can be sent to "Dar-ul-Aman" when she has shown apprehension of danger to her life if she is sent with either of the parties. A free person, cannot be put to physical restraint or confinement in "Dar-ul-Aman" for an indefinite period and that too not based on any concrete fact or allegation……When a woman makes a prayer for security to her life, she can be lodged at "Dar-ul-Aman" but still the woman has the right to make a prayer at any stage to the Superintendent of "Dar-ul-Aman" or to the competent Court on whose order she has been sent to "Dar-ul-Aman" to release her and restore her right of liberty. In such a course, she cannot be further kept in "Dar-ul-Aman" under the law of the land.

Conclusion: Status of relationship cannot be questioned in proceedings under section 491 CrPC. A free person cannot be sent to Dar-ul-Aman against her wish.

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9. **Lahore High Court**
Writ Petition No. 37861 of 2020.
Shell Pakistan Limited v. Punjab through the Secretary Ministry of Finance
2020 LHC 1776
https://sys.lhc.gov.pk/appjudgments/2020LHC1776.pdf

Facts: Petitioner challenged recovery notice issued by Additional Commissioner under Punjab Sales Tax Services Act, 2012 and prayed for restraining the recovery till finalization of petitioner's appeal pending before Commissioner Appeal?

Issue: Whether proceedings in the form of notice for recovery of sales tax issued by Additional Commissioner can be restrained as a stop-gap arrangement U/A 199 of the Constitution when the appeal of petitioner is pending before Commissioner Appeal?

Analysis: The appeal of the petitioner is pending with the Commissioner Appeal and the case has not yet ripened since two further remedies to the Appellate Tribunal and a reference to learned Division Bench are available to the petitioner under the law; and if the matter is not yet ripened with the authorities, no recovery can be made.

Inbuilt interim stay mechanism under the statutory appeals is provided in all general laws especially in tax matters. The law of Sales Tax Services Act, 2012 has itself provided a time bound mechanism for expeditious disposal with inbuilt statutory right of appeal with inbuilt stay mechanism provided under the Statute in which both the Commissioner (Appeals) and the Tribunal have inbuilt mechanism of passing interim orders and then confirming it within a period of sixty days.

The appeal of the petitioner has not been decided despite lapse of statutory deadline. Therefore this Court has to protect the Petitioner's right under Article 18, 4, 10-A of the Constitution as a stop-gap arrangement. The stop-gap arrangement under tax laws is derived from Article 199(1)(4)(a) read with Section 66, 67 and 68 of the Act coupled with judgments of the Courts as a stop gap measure.

Conclusion: Temporary relief was granted as stop-gap arrangement and Commissioner was directed to decide the pending stay application and appeal within one and two months respectively and no coercive measure for recovery of disputed amount be taken till then.

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10. **Lahore High Court**
Case No. ICA No. 18 of 2002.
Chairman, Federal Land Commission v. Mst. Sanam Iqbal
2020 LHC 1978
https://sys.lhc.gov.pk/appjudgments/2020LHC1978.pdf

Facts: Deputy Land Commissioner issued notices in pursuance of order by the Chairman, for resumption of the land, which were challenged through the writ petition. The writ petition was allowed and the impugned judgment was assailed through intra court appeal.

Issue: Whether in view of availability of appeal, review and revision under the Ordinance of 1972, the writ petition was liable to be dismissed?

Analysis: The notices by DLC, were challenged on the ground of jurisdiction, against which no appeal, review or revision was available. It is by now settled that a show cause notice can be challenged in constitutional jurisdiction, for lacking jurisdiction. An action through a show cause notice, found to be without jurisdiction, patently illegal or with mala-fide intent, had to be nipped in the bud.

Conclusion: An action through a show cause notice found to be without jurisdiction, patently illegal or with mala-fide intent, had to be nipped in the bud.

11. **Lahore High Court**
Writ Petition No.32414 of 2015
Mst. Balqees Begum v. Addl. District Judge
2020 LHC 1996
https://sys.lhc.gov.pk/appjudgments/2020LHC1996.pdf

Facts: Suit for specific performance of contract. Application by the petitioner to produce secondary evidence under Article 76 of the Qanun-e-Shahadat, 1984 in respect of agreement to sell and receipt of payment on the plea that they had been lost; was dismissed by the trial court. The order was upheld by the Revisional Court. The orders were challenged before the High Court in its Constitutional Jurisdiction.

Issues: Whether an opportunity to prove the loss of primary evidence should be granted after filing of application for secondary evidence?

Analysis: Clause (c) of Article 76 of the Qanun-e-Shahadat, 1984 provides for permitting the parties to adduce secondary evidence of the existence, condition or contents of a document when the original has been lost. However, such a course is subject to certain limitations as it is not intended to be utilized for the benefit of a person who deliberately or with sinister motives refuses to produce in Court a document which is in its possession, power or control. It is designed only for the protection of a person who, in spite of best efforts, is unable from circumstances beyond its control to place before the Court primary evidence as required by law. Thus the party tendering secondary evidence must prove the existence and execution of the document directly, if possible, or presumptively, where not and then establish its loss, either by the admission of the adversary or by proof that it cannot be found after diligent search. The Trial Court ought to have granted opportunity to the plaintiff to lead some positive evidence so as to satisfy the preconditions for giving secondary evidence relating to the agreement to sell and the receipt and then exercised its discretion.

Conclusion: The Court set aside the orders and directed the trial court to decide the application afresh after allowing the plaintiff to produce evidence thereon.

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12. **Lahore High Court**
Mst. Sadia Jamshaid v. Province of Punjab & another
R.F.A. No. 73473/2019
2020 LHC 1993
https://sys.lhc.gov.pk/appjudgments/2020LHC1993.pdf

Facts: The suit of the appellant was dismissed by trial court under order XVII rule 3 C.P.C for non-production of evidence despite availing numerous opportunities.

Issue: Whether trial court was justified to close appellant's right of evidence without affording her an opportunity to record her testimony.

Analysis: It is unbeatable right of a party present before the court to make a statement to prove the contents of his/her case. It was incumbent upon the trial Court, despite non-production of witnesses by appellant, to let her come out with her own version in witness-box instead of dismissing the suit forthwith, in that, such recourse to O.XVII is not warranted by law.

Conclusion: Impugned judgment is set aside and trial court is directed to re-adjudicate the matter by giving one last opportunity to the appellant to produce all her evidence subject to payment of cost and in case of failure, her right shall be deemed to have closed.

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13. **Sindh High Court**
Constitutional Petition No. D-4622 of 2020
Ms. Mashal Khalidi v. Fed. Of Pakistan and Others
2020 SHC 758
https://eastlaw.pk/cases/Ms.-MashalVSFed.-of.Mzk1ODMz

Facts: Due to the outbreak of the Covid-19 pandemic, a change was brought about in the Education Policy and all regular and private candidates appearing in class 10 & 12 examinations were declared pass, based on their class 9 & 11 examination result with an increase of 3% marks respectively. Petitioner contends that cancellation of the examinations amounts to an infringement of her fundamental right under Article 25 of the Constitution, as she was resultantly deprived of a fair chance to obtain a better percentage than that awarded in terms of the Impugned Policy.

Issue: How the cancellation of the examination or the implementation of the promotion policy offended Article 25 of the Constitution and how it even fell within the province of this Court under Article 199 of the Constitution to direct the PMDC to relax the eligibility criteria set out in the Regulations?

Analysis: The individual interests of the petitioner cannot be accorded primacy over those of the public at large on that basis. It is speculative to say that upon being provided an opportunity through an examination the petitioner would do so; hence the plea taken on the ground of discrimination with reference to Article 25 of the Constitution appears to be misconceived.

Conclusion: Petition dismissed in *limine*.

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14. **Sindh High Court**
CP D-6006 of 2018
Pak Sarzameen Party v. E.C.P Etc.
2020 SHC 754
https://eastlaw.pk/cases/Pak-Sarzameen-PartyVSE.C.P.Mzk1ODAx

Facts: The Petitioner levelled certain allegations with respect to the conduct of the

General Elections 2018 and sought inter alia a forensic investigation into the allegations; a declaration that the 2018 elections may be declared void ab initio; and directions that the notifications of respondent Nos. 11 to 73, to be members of the national / provincial assemblies, be withdrawn and fresh elections be ordered in the respective constituencies.

Issue: Maintainability of the petition seeking forensic investigation into the allegations with respect to the conduct of the General Elections 2018 and de-notification of different members of respective constituencies by the High Court.

Analysis: Article 225 of the Constitution places a constitutional bar upon calling elections to the house or provincial assembly into question. However, the bar contained in Article 225 is not absolute and may be displaced under Article 199(1) (b)(ii) and/or Article 184(3). Facts about disqualification of a member of a house must be based on affirmative evidence and not upon presumptions, inferences and surmises and that interference may only be contemplated in the presence of admitted facts and / or irrefutable direct evidence available on the record to justify disqualification. Present petition does not qualify within the ambit of Article 199(1)(b)(ii). Article 199 specifically stipulates that jurisdiction is to be entertained upon invocation by an aggrieved person, an exception in such regard being a writ of quo warranto, however, this petition is not seeking such a writ.

Conclusion: Petition dismissed.

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15. **Sindh High Court**
Criminal Accountability Appeal No.29 of 2018 & C.P No.D-6233 of 2018 (2) Criminal Accountability Appeal No.30 of 2018 (3) Criminal Accountability Appeal No.31 of 2018 & C.P No.D-6331 of 2018
Aleemuddin v. The State (Nab)
2020 SHC 752
https://eastlaw.pk/cases/AleemuddinVSThe-State-NAB-.Mzk1NjY0

Facts: Allegedly the one of the accused persons was occupying precious Government land and was selling it to public and also handing over fake Sanads of Gothabad Scheme to the general public. Through this act the accused persons received an amount of Rs.186,959,000/- from over 500 persons; hence they were convicted and sentenced by the learned Accountability Court to suffer R.I. for 07 years each and disqualification for 10 years for seeking or from being elected, chosen, appointed or nominated as a member or representative of any public body.

Issue: Whether appreciation of evidence on the touchstone of production of documents and proof of documents are two different subjects?

Analysis: It is a settled principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of

unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the court of law in any manner from the due course to judge and make the appraisal of evidence in a let-down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the judges to patently wrong collusion. In that event, justice would be the casualty.

The burden to prove all the ingredients of the charge always lies on the prosecution and it never shifts on the accused, who can stand on the plea of innocence assail to him under the law, till it is dislodged prosecution would never be absolved from proving the charge beyond reasonable doubt and burden would shift to the accused only when the prosecution would succeed in establishing the presumption of the guilt against him. In the present case, the prosecution had failed to prove the charge against the accused beyond any shadow of a doubt.

Conclusion: Appeals were allowed. Accused persons were acquitted.

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16. **Sindh High Court**
Civil Revision Application No. S-85 of 2010
Safdar Hussain Jatt etc. v. Zafar Ali & Others
2020 SHC 746
https://eastlaw.pk/cases/Safdar-Hussain-JattVSZafar-Ali-.Mzk1NjEw

Facts: Plaintiff filed a suit for specific performance of an agreement to sell. In appeal, suit of plaintiff was decreed. Main contention of the present applicants was that the Appellate Court has failed to comply with the provision of Order 41 Rule 31, CPC, as no points for determination were settled.

Issue: (i) Whether a Civil Revision is not maintainable on the ground that the power of attorney annexed and placed on record is not in respect of present Civil Revision?
(ii) What remains the position about non-framing of points for determination during the appeal?

Analysis: It reflects that Muhammad Ismail Dahar was appointed by the present applicants on 05.09.2006 as their attorney purportedly after the demise of their father, the original owner of the property as *their special attorney for us, in our name and on our behalf in the "case" titled Zafar Ali v/s Province of Sindh*; however at the same time it needs to be appreciated that the proceedings of appeal and Revision are apparently in continuation of the said case and the word *"case"* would not only include only the suit but the adjudication of the case even thereafter. Moreover, it is also a settled proposition of law that if the attorney is acting in support of and to preserve the interest of the executants, whereas the executants have not come forward to object or dispute the authority so conferred, then the

presumption would be that the attorney is competent to act in the interest of the executants.

If the Appellate Court in each and every case, has not framed points for determination, such judgment would not be liable to be set aside on that ground alone. Particularly, when all the questions raised have been answered by the Appellate Court.

Unless the findings are reversed by the first Court of appeal which is not so in the present case, decision on each issue may not to be distinctly and essentially recorded, provided in substance compliance of the provisions of the Order XLI, Rule 31, C.P.C. has been made.

Conclusion: Appeal or revision are continuation of case, so , power of attorney in respect of case may also be used in revision or appeal.

If appellate court has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more-so, when all the questions raised have been answered by the Appellate Court.

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17. **Peshawar High Court**
W.P No. 1075-D/2019 & C.M No.1194-D/2019
Asif Raza Masih v. Mst. Sofia alias Pinky
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-No.-1075-D-of-2019-Non-Muslim-Jurisdiction-FC.pdf

Facts: A family court dissolved marriage between Christian couple on failure of pre-trial reconciliation. Husband challenged the order in writ jurisdiction of Peshawar High Court.

Issues: Has Family Courts jurisdiction under Family Courts Act 1964 to entertain matters belonging to other religions/personal laws? Was the Family Court justified in dissolving marriage between the Christian couple on their failure of pre-trial reconciliation?

Analysis: The scope of the Family Courts Act, 1964 is wider than that of the Muslim Family Laws Ordinance, 1961. The effect of the words in section 5 that the Family Courts shall have the jurisdiction to entertain suits relating to dissolution of marriage, etc. but subject to the provisions of the Muslim Family Laws Ordinance, 1961 imply only that where there is an inconsistency between Muslim Family Laws Ordinance, 1961 and the Family Courts Act, 1964, the provisions of the Muslim Family Laws Ordinance will prevail and shall be given effect to in their pristine form and no more. It is settled that the Muslim Family Laws Ordinance, 1961 applies only to Muslims as provided in its Section 1 Subsection (2). Suits of this nature filed by the parties other than Muslim citizens of Pakistan can be entertained by Family Courts but will be heard and tried not in accordance with

the provisions of the Muslim Family Laws Ordinance but by the proper law applicable to them.

Conclusion: Family court has jurisdiction even to try family cases of non-Muslims but not in accordance with the provisions of the Muslim Family Laws Ordinance but by the proper law applicable to them. Judicial separation between Christian couple is only possible in accordance with Provision of sec 10 and 22 of the Divorce Act 1869.

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18. **Peshawar High Court**
Crl. Appeal No.63-P/2018
Mukaram Khan v. The State
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Mukaram-Khan-vs-the-STate-_Abetment-of-appeal-to-the-extent-of-compensation_.pdf

Facts: The appellant, inter alia, was convicted u/s 302 PPC and sentenced to life imprisonment and Rs.4,00,000/, as compensation u/s 544-A Cr.P.C. But he died during pendency of his appeal before the High Court.

Issues: Whether on the death of the appellant, his appeal shall abate under section 431 Cr.P.C. only to the extent of his corporal punishment i.e. imprisonment for life or also to the extent of compensation under section 544-A Cr.P.C.?

Analysis: Under section 431 Cr.P.C on the death of appellant every appeal under chapter XXXI of the Code, except filed appeals u/s 411-A/417(2) Cr.P.C and appeal from a sentence of fine, is to abate on the death of the appellant. Compensation as a punishment is neither mentioned in Section 53 PPC nor in Section 302 PPC. The word “compensation” also does not a find mention in section 431 Cr.P.C, rather word “fine” has been specifically used therein. Had there been any intention of the legislature that the appeal on the death of the accused would not abate to the extent of compensation then, section 431 Cr.P.C., would have also been amended to this extent, but such is not the position. As per the golden principles of interpretation of statute the courts while interpreting a provision of law having penal consequences, follow the rule of strict interpretation, according to which words not used by the Legislature in a statue, cannot be inserted by the courts.

Conclusion: “Compensation” under section 544-A Cr.P.C., being neither a sentence under section 53 PPC nor under section 302 PPC, therefore, the appeal of the appellant on his demise shall stand abated to the extent of corporal punishment as well as compensation.

19. **Islamabad High Court**
Criminal Misc. No.215 of 2020 in Criminal Appeal No.121 of 2018
Mian Muhammad Nawaz Sharif v. State through Chairman NAB, Islamabad

Fact: The petitioner seeks personal exemption from court and decision of his appeal on merit in his absence.

Issue. Whether exemption from personal appearance can be granted to accused who is fugitive from law?

Analysis It is trite law that after a person has been declared as fugitive from law or an absconder, even in another case he loses his rights granted to him by procedural or substantive law.

Conclusion. First attendance of the appellant is to be procured and the decision regarding the disposal of the appeal on merit shall be rendered after the procedure is completed.

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20. **Islamabad High Court, Islamabad**
ICA. No.156 of 2020
Pakistan Sugar Mills Association and others v. Federation of Pakistan
http://mis.ihc.gov.pk

Facts: An inquiry committee was constituted by Prime Minister to probe in to dearth in the availability of sugar. Thereafter a summary was moved by the Interior Division for the Cabinet proposing that a Commission of Inquiry be constituted under the provisions of the Pakistan Commissions of Inquiry Act, 2017. So inquiry Commission was constituted. Later on representative of ISI was also added as member of Commission. Thereafter commission submitted its report. It was also decided by cabinet that the Special Assistant to the Prime Minister on Accountability and Interior ("Special Assistant") shall identify actions that are to be taken. The Prime Minister approved the 7-point action matrix proposed by the Special Assistant. The appellants, owners of sugar mills, aggrieved of report of commission and proposed actions.

Issues.

1. Whether the inquiry entrusted to the inquiry commission was a definite matter of public importance?
2. Whether the publication in the official gazette of the notifications constituting the inquiry commission after its inquiry report was submitted, rendered the proceedings before the inquiry commission coram non judice?
3. Whether the submission of the summary dated 10.03.2020 by the interior division in whose domain the subject of commissions of Inquiry Act, 2017 did not lay, rendered the cabinet's decision 10.03.2020 unlawful?
4. Whether the federal government could add members to the inquiry commission after it has been constituted?

Analysis: There is nothing on the record to show that any of the appellants had raised any objection regarding any procedural irregularity or illegality in the process culminating in the constitution of the Inquiry Commission until much after it had submitted its report. Now that the Inquiry Commission's report has been considered by the Cabinet in its special meeting held on 21.05.2020 and directions have been given on the basis of the recommendations in the said report, we are not inclined to exercise our discretion to undo the entire process from the stage of the moving of the summary and bring it to absolute naught. Such a course would be an irrational exercise of discretion and would most definitely not subserve the interests of justice.

Conclusion

1. The sharp increase in the price of sugar is without a doubt a definite matter of public importance warranting an inquiry into the causes for such increase.
2. On account of the non-publication in the official gazette of the notifications constituting the Inquiry Commission until after the said Commission had submitted its report, the proceedings before the Inquiry Commission prior to such publication are not coram non-judice.
3. The court refrained from invalidating the decision of the Cabinet to constitute an Inquiry Commission on the ground that the summary for the Cabinet was moved by the Ministry in whose domain the subject of the 2017 Act did not lay.
4. Since the report of the Inquiry Commission was unanimous, the court do not feel the need to interfere with the Inquiry Commission's report on the ground that one additional member was added to the Inquiry Commission nine days after it was constituted.

Therefore, it is our view that the inquiry report cannot be quashed on the ground that an opportunity of a hearing in the nature as a judicial or a quasi-judicial authority was not provided to all the appellants.

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21. **Supreme Court of Azad Jammu And Kashmir**
Civil PLA No.182 of 2020
Muhammad Rashad Sulehria…etc v. University of AJK through Vice Chancellor..etc
http://ajksupremecourt.gok.pk/wp-content/uploads/2020/09/Civil-PLA-No.182-of-2020.pdf

Facts: The petitioners challenged the act of the University authorities through writ petition before the Azad Jammu & Kashmir High Court on the ground that the examination of the students of the University (internal system) has been conducted online keeping in view the spread of coronavirus (covid 19) pandemic, whereas their examination has been scheduled under the conventional method in

the examination hall which is the clear violation of the current policy of the HEC, hence, they are discriminated.

Issue: When and where court can interfere in policy matter?

Analysis: Selection of the mode of taking/conducting the examination is the policy decision of the university authorities, which cannot be interfered with ordinarily. The interference in the policy decision of any authority is only justified when it is against the relevant statute or is discriminatory. No such eventuality is available in the case in hand. Making of the policy regarding mode of conducting the examination is the sole prerogative of the university authorities, therefore, the court cannot direct them to take examination under a particular manner. No violation of law or rules has been pointed out which is a condition prerequisite for interference of the Court in such like matters. No any legal question of public importance is involved in the case, therefore, leave cannot be granted as the same will hamper the functioning of the university and examination process.

Conclusion: The interference in the policy decision of any authority is only justified when it is against the relevant statute or is discriminatory.

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22. **Supreme Court of India**
Criminal Appeal No.688 OF 2013
Jeet Ram v. The Narcotics Control Bureau, Chandigarh
https://main.sci.gov.in/supremecourt/2013/9305/9305_2013_35_1502_23965_Judgement_15-Sep-2020.pdf

Facts: Appellant has sought setting aside judgment of High Court where his acquittal was converted into conviction by contending that High Court has not exercised its powers properly.

Issue: What are the principles of interfering with an order of acquittal?

Analysis: Supreme Court has delineated upon the proposition and has analyzed all the precedents on the point that it is always open to the appellate court to re-appreciate the evidence, on which the order of acquittal is founded, and appellate courts are vested with the powers to review and come to their own conclusion.

Conclusion: The following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerged:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

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23. **Supreme Court of the United States**
Trump vs. Vance
591 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/19-635_o7jq.pdf

Facts: The case pertains to the New York County District Attorney Cyrus Vance Jr.'s attempt to subpoena the tax records of President Donald Trump as part of the ongoing investigation into the Stormy Daniels scandal, which Trump has litigated to prevent their release.

Issue: May a New York grand jury requires President Trump's accountants and bankers to turn over records revealing his personal tax returns and financial dealings?

Analysis: The President enjoys no absolute immunity from state criminal subpoenas which are directed at his private papers and that he is also not entitled to a heightened standard for the issuance of such a subpoena. Moreover Justices Clarence Thomas and Samuel A. Alito Jr. dissented.

Conclusion: The Court affirmed the decision of the Second Circuit and remanded the case for continued review.

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24. **Supreme Court of the United States**
Bostock v. Clayton County,
590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

Facts: The plaintiff, Gerald Bostock, was fired after he expressed interest in a gay softball league at work. The lower courts followed the Eleventh Circuit's past precedent that Title VII did not cover employment discrimination protection based on sexual orientation

Issue: Whether the federal civil rights laws protect LGBTQ (Lesbian, gay, bisexual, transgender and queer) employees from discrimination in the workplace nationwide?

Analysis: Yes, the court said in a 6-3 ruling that the employers may not fire or refuse to hire employees based on their race, religion, sex or national origin. The court observed that the discrimination based on sexual orientation or gender identity is discrimination based on sex. It was further opined that the lawmakers in 1964 (CIVIL RIGHTS ACT 1964) may not have intended to protect gay, lesbian, bisexual, transgender or queer employees but the courts always rely on the words of the law and not the aims of the lawmakers. Justices Thomas, Alito and Kavanaugh dissented.

Conclusion: Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity.

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25. **Supreme Court of the United States**
Kelly v. United States,
590 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1059_e2p3.pdf

Facts: The case known as "Bridgegate" involved the 2013 Fort Lee lane closure scandal. The case revolved around the controversy whether Bridget Anne Kelly, the chief of staff to New Jersey Governor Chris Christie who was running for reelection at the time, and Bill Baroni, the Deputy Executive Director of the Port Authority of New York and New Jersey, improperly used lane closures on the George Washington Bridge to create traffic jams as a means of retaliation against Mark Sokolich, the mayor of Fort Lee, New Jersey when he refused to support Christie's reelection campaign. The lower courts had convicted Kelly and Baroni on federal fraud, wire fraud and conspiracy charges.

Issue: Whether lane closures on the George Washington Bridge to create traffic jams as a means of retaliation against political opponents came under the garb of public corruption?

Analysis: It was opined by the court that that the lane closures could be taken as an exercise of regulatory power – a reallocation of the lanes between different groups of drivers. Further the court observed that the prosecution in the case had failed to show that the actions taken by the government were an "object of fraud" and concluded that as the scheme here did not aim to obtain money or property, Baroni and Kelly could not have violated the federal-program fraud or wire fraud laws.

Conclusion: The decision reversed the convictions and remanded the case to the lower courts for additional review based on the decision.

26. **Supreme Court of United Kingdom**
MS (Pakistan) (Appellant) v. Secretary of State for the Home Department (Respondent) Human Right [2020] UKSC 9
https://www.bailii.org/uk/cases/UKSC/2020/9.html

Facts: Supreme Court gave the appellant permission to appeal in February 2019. He was later able to resolve his immigration status by other means and applied to withdraw his appeal. However, the Equality and Human Rights Commission had applied to intervene in the case and wished to take over the appeal. This was resisted by the Secretary of State on the grounds that the Commission had no power to take over a case and that the Court had no power to allow it.

Issue: Whether Equality and Human Rights Commission (EHRC), as intervener, can take over the case, if the appellant wishes not to pursue it.

Analysis: An intervener is a party to an appeal (Rules of the Supreme Court 2009 (SI 2009/1603 (L 17)), rule 3(2)). It is clearly open to the Court to consider that the question should be decided even though one of the parties no longer wishes to pursue it.

Conclusion: The commission was allowed to take over the main conduct of the Appeal as intervener.

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27. **Supreme Court of Canada**
Canadian Coalition for Genetic Fairness (Appellant) v. Attorney General of Canada and Attorney General of Quebec (Respondent)
2020 SCC 17 (CanLII)
https://www.canlii.org/en/ca/scc/doc/2020/2020scc17/2020scc17.html

Facts: The Government of Quebec referred the constitutionality of ss. 1 to 7 of the (Genetic Non-Discrimination Act) to the Quebec Court of Appeal, asking whether these provisions were *ultra vires* to the jurisdiction of Parliament over criminal law under s. 91(27) of the *Constitution Act, 1867*. The Court of Appeal answered the reference question in the affirmative, concluding that ss. 1 to 7 of the Act exceeded Parliament's authority over criminal law. The Canadian Coalition for Genetic Fairness, which had intervened in the Court of Appeal, appeals to the Court as of right.

Issue: How **'Pith and Substance'** of the Act may be determined to characterize it as a provincial or a federal legislation?

Analysis: To determine whether a law falls within the authority of Parliament or a provincial legislature, a court must first characterize the law and then, based on that characterization, classify the law by reference to the federal and provincial heads of power under the Constitution. At the characterization stage, a court must identify the law's pith and substance.

Identifying a law's pith and substance requires considering both the law's purpose and its legal and practical effects… Legal effects flow directly from the provisions of the statute itself, whereas practical effects flow from the application of the statute [but] are not direct effects of the provisions of the statute itself"…While a statute's title can be helpful to identify its pith and substance…where the impugned legislation potentially relates to several different topics, the leading feature of the statute will be its pith and substance, meaning that the secondary purposes and effects effectively stand outside a precise characterization of the law's true character…a law will be valid criminal law if, in pith and substance, (1) it consists of a prohibition (2) accompanied by a penalty and (3) backed by a criminal law purpose… There is a general consensus that legislative debates are useful in the determination of pith and substance because they give context to the statute, explain its provisions, and articulate the policy of the government that proposed it… However, courts must remain mindful of the fact that legislative debates "cannot represent the 'intent' of the legislature, an incorporeal body"

Conclusion: With the majority of 5 to 4, the court held that the appeal should be allowed and the reference question answered in the negative.

LIST OF RESEARCH ARTICLES

1. JUSTICE QUARTERLY

i. Assessing Public Perceptions of Police Use-of-Force: Legal Reasonableness and Community Standards. (Scott M. Mourtgos & Ian T. Adams)
https://www.tandfonline.com/doi/full/10.1080/07418825.2019.1679864

ii. Police Misconduct, Media Coverage, and Public Perceptions of Racial Profiling: An Experiment. (Lisa Graziano, Amie Schuck & Christine Martin)
https://www.tandfonline.com/doi/full/10.1080/07418820902763046

iii. Procedural Justice for Victims and Offenders?: Exploring Restorative Justice Processes in Australia and the US. (Susan L. Miller & M. Kristen Hefner)
https://www.tandfonline.com/doi/full/10.1080/07418825.2012.760643

2. STANFORD LAW REVIEW

i. Why the Constitution Was Written Down *by (Nikolas Bowie)*

ii. Disaggregating Ineffective Assistance of Counsel Doctrine Four Forms of Constitutional Ineffectiveness by (Eve Brensike Primus)
https://www.stanfordlawreview.org/print/article/disaggregating-ineffective-assistance-of-counsel-doctrine/

3. YALE LAW REVIEW

i. Political Wine in a Judicial Bottle: Justice Sotomayor's Surprising Concurrence in Aurelius *(Christina D. Ponsa-Kraus)*
https://www.yalelawjournal.org/forum/political-wine-in-a-judicial-bottle-justice-sotomayors-surprising-concurrence-in-aurelius

ii. Disability Law and the Case for Evidence-Based Triage in a Pandemic *(Govind Persad)*
https://www.yalelawjournal.org/forum/evidence-based-triage-in-a-pandemic-

iii. The New Oil and Gas Governance *(Tara K. Righetti, Hannah Jacobs Wiseman & James W. Coleman)*
https://www.yalelawjournal.org/forum/the-new-oil-and-gas-governance

4. HARVARD LAW REVIEW

i. Expungement of Criminal Convictions: An Empirical Study (Article by J.J. Prescott & Sonja B. Starr)
https://harvardlawreview.org/2020/06/expungement-of-criminal-convictions-an-empirical-study/

ii. Implicit Bias in the Age of Trump (Charles R. Lawrence III)
https://harvardlawreview.org/2020/05/implicit-bias-in-the-age-of-trump/

iii. The Intellectual History of Unjust Enrichment 'Developments in the Law' Chapter One

5. PUBLIC LAW (Issue 2 April 2020)

i. The "Public element" test for amenability to judicial review: R. (on the application of Holmcroft Properties Ltd.) v KPMGLLP *(Kevin Costello)*

ii. Equality Before the Law: A Substantive Constitutional Principle *(Michael P. Foram)*

6. THE AMERICAN JOURNAL OF 'COMPARATIVE LAW'

i. Preservative or Transformative? Theorizing the U.K Constitution Using Comparative Method *(Jo Eric Khushal Murkens)* Volume 68. Number 2, Summer 2020

7. LAW, TECHONOLOGY AND HUMANS

Artificial Intelligence and the Transformation of Humans, Law and Technology Interactions in Judicial Proceedings" by Contini, Francesco published in [2020] LawTechHum 2; (2020) 2(1) Law, Technology and Humans 4

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/journals/LawTechHum//2020/2.html

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FORTNIGHTLY CASE LAW BULLETIN

(15-10-2020 to 31-10-2020)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Civil Appeal No. 1698 of 2014
Manzoor Hussain (deceased) through L.Rs v Misri Khan v. Misri Khan.
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1698_2014.pdf

Facts: In a suit for pre-emption, the plaintiff produced copies of acknowledgement receipt of the Talb-i-Ishhad notice and revenue documents in evidence through his counsel and he did not produce postman to establish delivery of notice.

Issue: Whether copies of acknowledgment receipt and revenue documents could be produced by the counsel in his statement and was there no need to produce the postman?

Analysis: Copies of documents were produced and exhibited by the pre-emptor's counsel, but without him testifying. Copies of documents, having no concern with counsel, are often tendered in evidence through a simple statement of counsel but without administering an oath to him and without him testifying. Ordinarily, documents are produced through a witness who testifies on oath and who may be cross-examined by the other side. The defendant had not admitted receipt of the said notice; therefore, the acknowledgement receipt (exhibit P4) could not be stated to be an admitted document and did not constitute an admitted fact. Therefore, delivery to and/or receipt by the respondent of the notice had to be established.

Since the defendant denied the receipt of the Talb-i-Ishhad notice it was necessary for the plaintiff to have established its delivery or receipt of it by the defendant. The defendant was not confronted with the acknowledgement receipt to establish that he had received the said notice. Even if it is accepted that the pre-emptor's counsel had received back the acknowledgement receipt, it would still not establish that the addressee (the defendant) had received it. The postman was also not produced to establish the delivery of Talb-i-Ishhad notice.

Conclusion: Documents which are not admitted cannot be produced by counsel in his statement.

When receipt of acknowledgment is denied by the defendant, it is necessary to produce postman to establish its delivery.

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2. **Supreme Court of Pakistan**
Civil Appeals No.1476 To 1485 Of 2018 etc
Federal Government Employees Housing Foundation (FGEHF), Islamabad v Malik Ghulam Mustafa & others
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1476_2018.pdf

Facts: The case is about the compulsory acquisition of land in the area of the Islamabad Capital Territory by the Federal Government Employees Housing Foundation in terms of the Land Acquisition Act, 1894. Some of the land owners challenged the

acquisition proceedings on the ground that the acquisition of the Land was not for a 'public purpose' and since the Land was situated in Islamabad its acquisition could only take place under the Capital Development Authority Ordinance, 1960 and not under the Land Acquisition Act, 1894.

Issue:

(i) How to determine the repeal, overriding effect, repugnancy, vires, intra-vires or otherwise of any competing or comparable statutes, or analogous provisions contained therein?

(ii) How implied repeal may be inferred by necessary implication?

(iii) When doctrine of occupied field, pith and substance and incidental encroachment may be invoked?

(iv) What is the Eminent Domain?

(v) Whether the acquisition of land for a housing society is recognized as a public purpose?

(vi) Whether the Capital Development Authority Ordinance, 1960 overrides the Land Acquisition Act, 1894

Analysis:

(i) To determine the repeal, overriding effect, repugnancy, vires, intra-vires or otherwise of any competing or comparable statutes, or analogous provisions contained therein, several litmus tests, tools of interpretations, and legal doctrines are applied. These accessories of interpretation are harvests of long drawn jurisprudential expositions and judicial interpretational wisdom culled by the superior courts. The tests to determine the validity of legislation are applied, inter-alia, on the touchstone of Constitution, legislative competency, limitation and distribution of legislative authority between Federal and Provincial legislature, doctrine of occupied field, pith and substance, special and general law, earlier and later law, delegated and subordinate legislation, directory or mandatory enactment or provisions, effect of obstante or non-obstante provisions in any enactment or otherwise. These are some of the illustrative and non-exhaustive tools of interpretation and doctrines applied by the superior courts to adjudge the legitimacy, vires, ultra-vires, repeal, overriding, or supremacy of one statute over the other……..In addition to the Constitutional filter, other tools such as legislative history, statement of object, and the preamble of a statute are important in deciphering intention, legitimacy, repugnancy, validity, and overriding or dominance of competing statutes, or provisions contained therein, which is relevant in the instant case.

(ii) Implied repeal is inferred by necessary implication when the provisions of the later law are so inconsistent with, or repugnant, to the provisions of the earlier law that the two cannot stand together. Although, if the two can be read together and some application can be made of the words in the earlier Act, repeal will not be inferred. The necessary questions to be asked are; (i) Whether there is direct conflict between the two provisions; (ii) whether the legislature intended to lay down an exhaustive Code in respect of the subject matter replacing the earlier law and (iii) whether the two laws occupy the same field.

(iii) When two or more competing laws or provisions contained therein, are seemingly similar or overlapping, then legislative intent of the parliament may be discernible from examining the Preamble, legislative history, doctrine of pith and substance, incidental encroachment, and occupied field to adjudge their co-existence in their respective domain or for one to nudge out and claim dominance over the other. The superior courts have expounded such doctrines, amongst others, as interpretive techniques, which are used to adjudge the predominance and constitutionality of a statute or of any provision contained therein….Doctrine of occupied field, which is auxiliary to the larger doctrine of pith and substance, and incidental encroachment, may be invoked by the courts to determine the extent of legitimacy only in cases where the competing statutes or any of the provisions contained therein are by different tiers of legislature.

(iv) In essence, the principle of Eminent Domain provides for the acquisition of land by the State for a Public Purpose or for company in exchange for compensation…….Eminent Domain of State over private property is subjected to three concomitant limitations. Firstly, that no person can be deprived of his property except in accordance with law, meaning thereby that, no property could be acquired through executive orders and actions. Secondly, a person could only be deprived of his property for public purpose. Thirdly, that acquisition of property of a person must be against compensation………………

(v) The acquisition of land for a housing society is recognized as a public purpose.

(vi) In absence of overriding or superseding or 'non-obstante' provision within the CDAO, 1960, it does not override the provisions of the LAA, 1894.

Conclusion: Decision is intra court appeal was set aside.

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3. **Supreme Court of Pakistan**
Civil Petition No. 2231 of 2020
Abdul Rehman Malik v. Cynthia D. Ritchie
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2231_2020.pdf

Facts: Justice of Peace declined to issue direction for registration of case. High Court remanded the application under section 22-A Cr.P.C to Justice of Peace for decision afresh. Petitioner contended that since the Superintendent of Police reasonably suspected the veracity of the accusation, hence, under rule 24.4 of Police Rules, 1934 Officer Incharge of Police Station could decline to investigate the matter.

Issue: Whether Officer Incharge of Police can refuse to investigate the accusation of cognizable offence under Rule 24.4 of Police Rules, 1934 without recording F.I.R?

Analysis: Rule 24.4 of Police Rules, 1934 possibly suspends the mechanism to be followed under section 154 of Code of Criminal Procedure, 1898, however, commanding unambiguously to record a First Information Report upon receipt of information disclosing commission of cognizable offence… It does not tyrannically foreclose door to a complainant to voice his/her grievance nor it dogmatically empower Officer Incharge to terminate a prosecution before its inception on his subjective belief of its being false; its application is subservient to the scheme laid down in Part V of the Code ibid and thus has to be essentially read in conjunction with section 169 thereof. Therefore an Officer Incharge can possibly invoke the Rule, that too, for reasons strong and manifest after registration of First Information Report….However the said Rule certainly empowers the Officer Incharge to decline to take adverse action against an accused whom he justly and fairly considers being hounded on a trump up charge for motives obliquely calculated.

Conclusion: Officer Incharge of Police Station cannot refuse to investigate under Rule 24.4 before recording of F.I.R. However, he may decline to take adverse action against an accused that he justly and fairly considers being hounded on a trump up charge for motives obliquely calculated

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4. **Supreme Court of Pakistan**
Civil Appeal No. 1522 of 2013
Haji Wajdad v. Provincial Government
https://www.supremecourt.gov.pk/downloads_judgements/c.a._1522_2013.pdf

Facts: Appellant filed a suit for declaration with all consequential relief validating his title and possession over the suit property. The learned trial court decreed the suit, which was maintained by the appellate court. However, on the revision petition the High Court set aside the judgments of the two courts passed in favour of the present appellant.

Issue: Whether the High Court while exercising revisional jurisdiction could set aside the determination made by the learned trial and appellate courts?

Whether limitation would run even against void order affecting rights of any person?

Analysis: There is no cavil to the principle that the revisional court, while exercising its jurisdiction under section 115 of the Civil Procedure Code, 1908 ("CPC"), as a rule is not to upset the concurrent findings of fact recorded by the two courts below. This principle is essentially premised on the touchstone that the appellate court is the last court of deciding disputed questions of facts. However, the above principle is not absolute, and there may be circumstances warranting exception to

the above rule, as provided under section 115 CPC: gross misreading or non-reading of evidence on the record; or when the courts below had acted in exercise of its jurisdiction illegally or with material irregularity.

It has by now been settled that, limitation would run even against void order affecting rights of any person. And no one can seek condonation of delay by challenging solely on the said basis. The aggrieved person who files a belated claim against an alleged void order would have to first plead his knowledge thereof, and then prove the same by cogent and reliable evidence, so as to legally justify his such claim to be within the period of limitation from the date of his knowledge

Conclusion: In the present case, it is noted that the revisional court was correct in pointing out serious non-reading and mis-reading of evidence.

Limitation would run even against void order.

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5. **Supreme Court of Pakistan**
Civil Petition No. 686-K of 2019
Muhammad Jawed v. First Women Bank Ltd
https://www.supremecourt.gov.pk/downloads_judgements/c.p._686_k_2019.pdf

Facts: Suit for recovery of finance facility was decreed. In execution, mortgaged property was ordered to be auctioned. Just two days before auction, judgment debtor deposited the cheque of decretal amount and prayed for suspension of auction, however, his application could not be taken up due to leave of presiding officer. Auction was held and petitioner offered highest bid. Offer was placed before the court for confirmation but due to deposit of cheque/decretal amount by judgment debtor, court refused to accept offer of bidder/petitioner. Petitioner remain unsuccessful in High Court.

Issue: Whether the deposit of earnest money and the balance amount by bidder within stipulated time, created a vested interest in the auctioned property prior to confirmation of sale by court?

Analysis: Once a bid is accepted by the Court as adequate and thereafter the full purchase money is deposited in terms of Order XXI Rule 85 CPC, a qualified sale of the auctioned property comes into being which can only be defeated through an application made under Order XXI Rule 89, 90, or 91 CPC. If, however, no such application is made within the time limit prescribed by law, the Court mandatorily confirms the qualified sale under Order XXI Rule 92 CPC, thereby making it absolute and transferring the title of the auctioned property in the name of the successful bidder/purchaser, unless a delayed application is entertained in the circumstances. Once the sale is confirmed and made absolute, the Court grants a sale certificate to the successful bidder/purchaser under Order XXI Rule 93 CPC and gives the sale proceeds necessary for the satisfaction of the decree to the

decree holder under Order XXI Rule 64 CPC, thereby bringing the execution proceedings to an end…

The nature of a bid made in such auctions, notwithstanding whether it is the highest or the lowest, is that of an offer which does not by itself give rise to any rights, as the same is always subject to acceptance by the Court after proper application of its judicial mind followed by the deposit of full purchase-money under Order XXI Rule 85 CPC…….Since a bid, being an offer, standing alone does not create any such relationship, and neither does the aforesaid deposit, it logically follows that no rights can be said to arise out of the same……..in cases involving court auctions of immovable properties "the contract/sale comes into being when the bid is accepted by" the Court

Conclusion: Vested/third party rights accrue in favour of a bidder when the auction-sale becomes complete, i.e. when a bid is accepted by the Court and thereafter the full purchase-money is deposited in terms of Order XXI Rule 85 CPC. However, such vested rights again are defeatable and would not take away the right of the mortgagor to redeem his/her property if s/he brings his/her case within the parameters of Order XXI Rule 89, Rule 90, or Rule 91 CPC. If, however, no application under these provisions is made within the time limit prescribed by law or the same is rejected, the Court mandatorily confirms the qualified sale and makes it absolute under Order XXI Rule 92 CPC, transferring the title of the property in the name of the successful bidder/purchaser, unless a delayed application to set aside the sale is entertained. The property is then deemed to have been vested in the purchaser, per Section 65 of the CPC, since the time when sale became complete. Petition dismissed.

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6. **Supreme Court of Pakistan**
Criminal Petition No.105-K of 2020
Sidra Abbas v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._105_k_2020.pdf

Facts: In a case of double murder High Court enlarged the accused on bail by holding that the case was of further inquiry. Petitioner sought the cancellation of bail.

Issue: Whether bail can be cancelled on some other ground when the accused has not misused the concession of bail?

Analysis: It should not be ignored that the concept of setting aside the unjustified, illegal, erroneous or perverse order to recall the concession of bail is altogether different than the concept of cancelling the bail on the ground that the accused has misused the concession or misconducted himself or some new facts requiring cancellation of bail have emerged………it is a settled principle of law that a bail granting order can be cancelled if the same is perverse. In legal parlance, a perverse order

is defined as an order which is, inter alia, entirely against the weight of the evidence on record.

Conclusion: The impugned order, therefore, is found to be perverse and accordingly set aside.

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7. **Supreme Court of Pakistan**
Constitution Petition No.17 & 19 of 2019 etc
Justice Qazi Faez Isa v. The President of Pakistan etc
https://www.supremecourt.gov.pk/downloads_judgements/const.p._17_2019_detailed_reasoning.pdf

Facts: The petitioner was alleged to have certain undeclared properties in the name of his wife in the United Kingdom. On confirmation of this fact, a reference was filed against the petitioner in Supreme Judicial Council **(SJC)** alleging misconduct due to violation of Section 116 of the Income Tax Ordinance, 2001. The SJC issued a show cause notice to petitioner. Petitioner admitted that the properties were owned by his wife, who he claimed was a financially independent taxpayer, and his adult children. The petitioner categorically rejected being the owner, both actual and ostensible of said properties and further denied all knowledge of their particulars. Meanwhile petitioner filed a petition in Supreme Court under Article 184(3) of the Constitution for quashing the Reference inter alia on the grounds of it being illegal and based on mala fide claiming that there was no legal obligation on him to disclose the properties of his wife and children.

Issue: **i)** Whether under any circumstance proceedings before the Supreme Judicial Council can be called into question in any court despite the bar placed by Article 211 of the Constitution?

ii) Whether a Reference against a judge can be struck down on ordinary judicial review grounds?

iii) Whether in view of Marcel Principle, searches made by ARU were a breach of the petitioner's and his family's right to privacy enshrined in Article 14(1) of the Constitution and thus amounted to covert surveillance?

iv) What the term "misconduct" imply?

v) Whether there is an obligation on a Judge to keep himself informed about the financial interests of his family members?

vi) What is mala fide and its nature? What proof is required to establish it?

vii) Whether publication of a notification in gazette is mandatory or directory?

viii) Whether the judges of superior courts are public servant?

ix) What consideration should weigh with the President to form an opinion for sending reference against a judge?

x) Whether approval of President is necessary for commencing an investigation into a complaint made against a Judge of the Superior Court?

xi) Who should be consulted by the President to form an opinion about reference against a judge?

xii) Whether Prime Minister or Cabinet shall advice the President to file a reference against a judge?

xiii) Whether reference against petitioner suffered from malice in fact or malic in law?

Analysis: **i)** The ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts taken without jurisdiction…. However, the Court neither adjudicated upon the process of the SJC nor quashed its SCN issued to the petitioner. In fact, in view of the findings recorded in this judgment, the court has simply abated the SCN…….. Accordingly, Article 211 has no application to the available facts of the present case.

ii) A reference, which is an executive action under the Constitution, forwarded to the SJC cannot be struck down on ordinary judicial review grounds such as unreasonableness and proportionality. Holding so will be belittling its status, ignoring its competence and pre-empting its decisions based on appreciation of the record…..Even giving the power of judicial review to this Court to set aside pre-reference proceedings will be tantamount to rejecting the capacity and jurisdiction of the SJC to adjudicate upon any question of unreasonableness, proportionality or suitability raised in relation to the merits of the President's actions.

iii) (Marcel Principle: It is a well-established principle of the law of confidentiality that where information of a personal or confidential nature is obtained or received in the exercise of a legal power or in furtherance of a public duty, the recipient will in general owe a duty to the person from whom it was received or to whom it relates not to use it for other purposes)…. the 'Marcel Principle' is not absolute and can be deviated from… where information has been obtained under statutory powers the duty of confidence owed on the Marcel principle cannot operate so as to prevent the person obtaining the information from disclosing it to those persons to whom the statutory provisions either require or authorise him to make disclosure.

iv) The Code of Conduct primarily provides guidance to Judges of Superior Courts on the exemplary qualities they must possess. Therefore, conduct that diverges from these qualities would constitute misconduct…… Misconduct is any conduct of the Judge which damages the public perception about his ability to discharge his duties or which undermines public confidence in the institution of the judiciary regardless of whether such conduct occurs in the professional arena

or in the private life of a Judge……Word "misbehaviour" must be understood in its ordinary sense, viz. as implying misconduct, that is to say, conduct which is unbecoming of a Judge or renders him unfit for the performance of the duties of his office, or is calculated to destroy public confidence in him… Court cannot therefore accept the respondent's contention that it is only on proof of misconduct in respect of a judicial proceeding or in respect of office or on proof of conviction that a High Court Judge may be removed and that no other conduct, however infamous or scandalous, or whatever defect of character it might disclose, can ever be a ground for his removal."

v) It, therefore, becomes clear that Judges are supposed to have knowledge of the financial interests of their family members. However, if they do not, then they are expected to make reasonable efforts to acquire such information, more so when they are questioned by a competent forum to explain the financial interests of their family members. What constitutes 'reasonable effort' on the part of Judges will no doubt depend upon the circumstances of each case. However, a plea of lack of knowledge by a Judge in relation to the financial affairs of his family members is untenable in light of the general trend in international practice, the obligations imposed on a Judge under the CoC and the law relating to public office holders including Judges. Accordingly, there is a continuing obligation on a Judge to keep himself informed about the financial interests of his family members……. the family members of a Judge are required to be careful (financially, socially and politically), moderate and fair in their dealings and exchange with others so that no controversy arises which may embarrass the Judge.

vi) Traditionally, an action actuated with an ulterior purpose to harm another or benefit oneself is classified as an act that is malicious or malice in fact. However, in (relatively) recent times, this Court has recognised another category of mala fides, namely, mala fide in law. Even though both are a species of mala fide, yet each has distinct ingredients and consequences…….apart from the generally recognised category of actions driven by a foul personal motive described here as malice in fact, there is another category of reckless action in disregard of the law termed as mala fide in law. The first type of mala fide is attributed to a person whereas the second is leveled against the impugned action. While the former is concerned with a collateral purpose or an evil intention to hurt someone under the pretence of a legal action, the latter deals with actions that are manifestly illegal or so anomalous that they lack nexus with the law under which they are taken. Thus it becomes clear that malice in fact and mala fide in law have different ingredients, the former being comprised of factual elements with the latter being composed of legal features, that need to be established as such for the respective consequences to ensue. Secondly, it is clarified that an accusation of mala fide in law involves more than errors of misreading the record or non-application of the law or lack of proportionality in the impugned action. Instead, this is a serious allegation of wanton abuse or disregard of the

law……………imputing mala fide of either kind to a person or an action is a grave accusation. It should not be made lightly but can only be done when the facts or legal defects justify its use……………a plea of malice in fact requires a high standard of proof. The rationale behind such an approach is that a plea of malice in fact frustrates the process of justice. After a complainant establishes malice in fact against a person, the entire proceeding by the latter is brought to an end. This results in the merits of the case being ignored. Moreover, the reputation of the person, against whom an allegation of malice in fact is made, becomes tarnished and if the said allegation is proved then his repute is forever ruined. He is made out to be a vicious individual who harbours ill-intentions against others.

vii) In ordinary circumstances, the non-publication of a Notification in the gazette does not affect its validity except for in limited situations such as when a statute makes publication in the gazette mandatory or where the rights and liabilities of other persons are involved.

viii) There are five main ingredients present in the office of a public servant. These are: **a**. The office is a trust conferred for a public purpose; **b**. The functions of the office are conferred by law; **c**. The office involves the exercise of a portion of the sovereign functions of Government whether that be executive, legislative or judicial; **d**. The term and tenure of the office are determined by law; and **e.** Remuneration is paid from public funds….When the office of a Judge of the Supreme Court is scrutinised against these ingredients, it becomes obvious that Judges of this Court are indeed public servants for the purposes of Income Tax Ordinance.

ix) Article 209(5) of the Constitution only requires the President to form an opinion that a Superior Court Judge may have been guilty of misconduct. He does not need to be certain that a Judge is guilty of the conduct alleged. Nevertheless, his opinion must be based on positive and affirmative material and on the assurance that necessary legal and procedural safeguards have been observed in the preparation of the reference. Therefore, for the President to even form a prima facie opinion about a Judge's guilt, the President needs to verify that there has been compliance with the settled rules on authorisation; he needs to obtain proper advice on the contents of the reference from competent persons; and he needs to ascertain that there is sufficient material before him which satisfies the high thresholds of care and proof expected in the preparation of a reference……….a reference sent by the President must contain authorised, serious, considered and verified information in both respects, legal and factual, in order to possess the gravity that should accompany a Presidential action.

x) The approval by the President of the advice of the PM is necessary for commencing an investigation into a complaint made against a Judge of the Superior Court…….The initial authorisation by the President on the advice of the PM to commence an investigation against a Judge in a complaint falling under

Article 209(5) is a legal requirement for sustaining the validity of a Presidential reference that is ultimately filed with the SJC.

xi) Although it is not for this Court to specify a list of persons from whom legal advice may be sought by the President, however, we can set out the persons who should not be approached by the President for legal advice on a reference under Article 209 of the Constitution. Fairness and objectivity dictate that those involved in the investigation and framing of the reference may brief the President but cannot advise him on whether it is maintainable and appropriate for inquiry by the SJC. This is because there is a clear conflict of interest for the architects of the reference to opine on the weaknesses of their work.

xii) Consequently, keeping in view the nature of cases which are deliberated upon by the Cabinet and the fact that the PM is consistently the single Constitutional authority who advises the President with regards to the removal of persons in Constitutional Posts, we hold that in the filing of a reference the President is bound to act on the advice of the PM and not the Cabinet.

xiii) Although the preparation and framing of the Reference against the petitioner is not patently motivated with malice in fact, the scale and degree of the illegalities are such that the Reference is deemed to be tainted with mala fide in law.

Conclusion: **i)** The ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts done without jurisdiction.

ii) A Reference against a judge cannot be struck down on ordinary judicial review grounds such as unreasonableness and proportionality.

iii) Searches made by ARU were not a breach of the petitioner’s and his family’s right to privacy.

iv) Misconduct is any conduct of the Judge which damages the public perception about his ability to discharge his duties or which undermines public confidence in the institution of the judiciary regardless of whether such conduct occurs in the professional arena or in the private life of a Judge.

v) There is a continuing obligation on a Judge to keep himself informed about the financial interests of his family members.

vi) Apart from the generally recognized category of actions driven by a foul personal motive described here as malice in fact, there is another category of reckless action in disregard of the law termed as mala fide in law. A plea of malice in fact requires a high standard of proof.

vii) The non-publication of a Notification in the gazette does not affect its validity except for in limited situations.

viii) Judges of Supreme Court are indeed public servants.

ix) Opinion must be based on positive and affirmative material and on the assurance that necessary legal and procedural safeguards have been observed in the preparation of the reference.

x) The approval by the President of the advice of the PM is necessary for commencing an investigation into a complaint made against a Judge.

xi) Those involved in the investigation and framing of the reference may brief the President but cannot advise him on whether it is maintainable.

xii) In the filing of a reference the President is bound to act on the advice of the PM and not the Cabinet.

xiii) Reference is deemed to be tainted with mala fide in law.

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8. **Supreme Court of Pakistan**
Civil Appeals No. 353-355/2010 etc
Gul Taiz Khan Marwat v. The Registrar Peshawar High Court, Peshawar & others
https://www.supremecourt.gov.pk/downloads_judgements/c.a._353_2010.pdf

Facts: A number of petitioners resorted to Supreme Court in constitutional jurisdiction with respect to their service relating grievances against High Courts, Federal Shariat Court and Punjab Judicial Academy after dismissal of their constitutional petitions. Of those one case was taken up suo motu and another one was contempt petition.

Issue: **i)** Whether the administrative, executive and consultative actions of the Chief Justices or Judges of the High Court were amenable to constitutional jurisdiction of High Court under Article 199 of the Constitution of 1973.

ii) Whether the judges of High Court in their administrative capacity act as persona designata?

iii) Whether the principle of comity overrides the provisions of the Constitution from which two fundamental principles emerges i.e power of judicial review and power to enforce the fundamental rights

iv) Whether the Federal Shariat Court does not fall within the definition of person under Article 199(5) of the Constitution.

Analysis: **i)** Article 192(1) and 176 of the Constitution describe what constitutes a High Court and the Supreme Court respectively….It is clear from their provisions that a High Court and Supreme Court both comprise the respective Chief Justices and judges, therefore, the reverse that there can be no court without the Chief Justice and judges is necessarily true. Furthermore the definition does not draw any distinction between judicial orders of a court and its administrative, executive

or consultative orders….Keeping in view of Articles 176, 192, 199 and 208 of the Constitution and upon a harmonious interpretation thereof, in the opinion of court, no distinction whatsoever has been made between various functions of the Supreme Court and the High Courts in the Constitution and the wording is clear, straightforward, clear and unambiguous. There is no sound basis on which judges acting in their judicial capacity fall within the definition of person and judges acting in their administrative, executive and consultative capacity do not fall within such definition….To bifurcate the functions of Court on the basis of something which is manifestly absent is tantamount to reading something in the Constitution.

ii) The Chief Justices or the judges of high courts exercising their administrative, executive or consultative actions in the context of instant matters do not act as persona designata, rather act for and on the behest of and as a High Court and are not amenable to constitution jurisdiction under Article 199.

iii) Principle of comity, albeit informal and discretionary is essentially the respect and deference that one court shows to another……Its purpose is to stimulate a national interest in the finality of judicial decisions through a concerted effort by the judiciary of maintaining their hierarchy. This instills faith in the public regarding the judiciary and in turn bolsters the rule of law which is essential for the functioning of any democracy. The importance of this principle cannot be understated.

iv) When the Constitution was enacted and brought into force in 1973, Article 199(5) thereof, as it reads to day was part of it. However, the Federal Shariat Court did not exist in the Constitution as originally passed and that explains why such court did not find mention in Article 199(5)…..The Federal Shariat Court alongwith the Supreme Court and High Courts forms part of superior judiciary and the principle judicial comity is fully applicable, thereto, the court considers the failure to add Federal Shariat Court in Article 199(5) to be of no real significance considering the meaning, scope and purpose of the said Article….there is absolutely no basis or reasonable justification for Federal Shariat Court to be treated differently when it undoubtedly forms part of superior judiciary.

Conclusion: **i)** Such actions and orders would be protected by Article 199(5) of the Constitution and thereby be immune to challenge under writ jurisdiction of High Court.

ii) Judges of High Court in their administrative capacity do not act as persona designata in the instant matters.

iii) This principle is invoked only as an aid to interpretation by explaining the purpose underlying the exclusion of the High Courts and Supreme Court from the

definition of person as given in Article 199(5) of the Constitution and not in derogation of true meaning of the said provision.

iv) Federal Shariat Court falls within the definition of person under Article 199(5) of the Constitution.

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9. **Lahore High Court**
Silk Bank Ltd v. SNGPL etc
W.P.No.27720/2019
2020 LHC 2182
https://sys.lhc.gov.pk/appjudgments/2020LHC2182.pdf

Facts: The petitioner assailed attachment order passed in execution of ex-parte judgment against it by Gas Utility Court Lahore for the recovery of amount Rs. 191,589,685/-, equal to the sum for which it issued Performance Bond Guarantee with reference to the agreement between the respondent and another party, and that other party filed a declaration against the respondent before Sindh High Court in which the interim order was passed and the matter was still pending.

Issue: Whether the Gas Utility Court has the jurisdiction in the case where guarantee issued by the petitioner under a contract was sought to be encashed and the matter is not about gas theft or for recovery of amount for the consumption of gas?

Analysis: The preamble of the Act and its provisions are clear that the Act seeks to vest jurisdiction in the Gas Utility Courts to recover amounts due to the Gas Utility Company for the consumption of gas and to prevent misuse of the supply of gas and any offence related to the supply, transmission and distribution of gas. *Ejusdem generis* is the rule of interpretation applicable in the case and the words should be interpreted in the same context with reference to the things provided for in the definition and the general words should not be given the widest meaning but should be applied in the context of the specific things provided in the definition.
The terminology 'sums due' will be seen in the context of any default by a consumer or a producer of gas or an offender as the case may be. However it does not give jurisdiction to the Gas Utility Court with respect to contractual disputes between SNGPL and any party and in this case specifically with respect to encashment of the Guarantee issued by the Petitioner in a supply contract for another party.

Conclusion: The Gas Utility Court only has got jurisdiction regarding supply, distribution and due amount with respect to consumption of gas and offenses related to the supply, transmission and distribution of gas only and it does not have jurisdiction with respect to contractual disputes between SNGPL and other parties.

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10. **Lahore High Court**
Prof. Dr. Asad Aslam Khan v. Government of Punjab & others
W.P. No. 256002 of 2018
2020 LHC 2407 (Full Bench)
https://sys.lhc.gov.pk/appjudgments/2020LHC2407.pdf

Facts: The first petitioner assailed the appointment of pro-vice chancellor in KEMU with assertion that he was eligible for appointment as pro-vice chancellor but was not considered for the post because he did not have three further years of service left on his record as held by Lahore High Court in Shoib's case as a mandatory requirement, which is not a good law.
The second petitioner sought a declaration that he was appointed as pro-vice chancellor of UOA despite having less than three years of remaining service in the light of judgment of Lahore High Court in Iqbal Zafar's case and since the tenure of post of pro-vice chancellor is three years, so now he be allowed to complete three years of the term despite his superannuation as per section 15-A of the University of Agriculture Faisalabad Act, 1973.

Issue: Whether view expressed in Shoib's case was correct and a senior professor who is otherwise eligible but doesn't have three years of service career to his credit does not meet the statutory requirements for appointment as pro-vice chancellor or the view expressed in Iqbal Zafar's case was true interpretation of the law and having less than three years service does not disqualify an otherwise eligible candidate?

Analysis: The language of Section 15-A of the University of Agriculture Faisalabad Act, 1973 is identical with that of Section 15 of the KEMU Act but nevertheless the interpretation made in the case of Muhammad Iqbal Zafar was contrary to the one which was expressed in Shoaib's case. Eligibility criteria for the post of Pro-Vice Chancellor is twofold: firstly, that a candidate should be a Professor; and, secondly, he should be amongst three senior most Professors of the University. This eligibility being in plain and clear words admits no further condition that the three senior most Professors must also have at least three years of remaining service and no principle of interpretation or statutory construction approves injection of a word of one's own choice where the language of the statute unmistakably points to the meaning and presents no difficulty in understanding. The post of Pro-Vice Chancellor is a tenure post and once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure but no right is conferred to hold the post for the entire period. The tenure could be curtailed on attaining the age of superannuation by the incumbent of the post.

Conclusion: Muhammad Iqbal Zafar's case reflects correct interpretation and having at least three years of remaining service is not an eligibility criteria for appointment as pro-vice chancellor. However, the fixed tenure attached to the office of Pro-Vice Chancellor, the incumbent thereof on attaining the age of superannuation before

the expiry of three years will have to retire. The first petition is accepted while the other is dismissed.

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11. **Lahore High Court**
Shumail Waheed v. Rabia Khan
R.F.A No. 764 of 2011
2020 LHC 2425
https://sys.lhc.gov.pk/appjudgments/2020LHC2425.pdf

Facts: Appellant challenged judgment of trial court, wherein his plaint under Defamation Ordinance, 2002 was rejected being beyond the prescribed period of limitation.

Issue: Whether limitation is always a mixed question of law and it must be decided after recording of evidence and not otherwise?

Analysis: Section 12 of the Ordinance laid down period of limitation as six months from the date of publication of defamatory matter or knowledge thereof but appellant filed the same after more than six months from the date of notice sent by him to the respondent, which manifest his date of knowledge.
Recording of evidence is not mandatory when the averments of the plaint are silent regarding the factum of suit being barred by limitation and recording of evidence cannot be permitted when the plaint did not disclose any disputed question of fact for application of mixed question of fact and law nor was there any factual controversy as to the limitation period, to be set at rest in the suit.

Conclusion: The appellant did not aver any disputed questions of facts in his plaint concerning the institution of suit beyond the limitation period, therefore, being a pure question of law, the suit of the plaintiff was barred by limitation and the plaint was liable to be rejected under Order VII Rule 11 C.P.C. Appeal dismissed.

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12. **Lahore High Court**
Mst. Sughran Begum etc. v. Malang Khan etc.
R.S.A. No. 103 of 1971
2020 LHC 2189
https://sys.lhc.gov.pk/appjudgments/2020LHC2189.pdf

Facts: Applicant through application sought permission to redeposit decretal amount in the court, which she deposited initially when her suit for preemption was decreed by trial court in 1969 but first appellate court reversed the decree and during the pendency of R.S.A before high court, she withdrew the deposited amount with permission of the court after giving undertaking that the same will be re-deposited when directed by the court.

Issue: What would be the effect of withdrawal of pre-emption money during the pendency of appeal in terms of Section 22(5)(a) of the Punjab Pre-emption Act, 1913 and whether he can re-deposit the amount?

Analysis: It is trite law that no court either court of first instance or appellate court is vested with the jurisdiction to pass an order for redeposit of *"zar-e-panjum"* or pre-emption money after withdrawal. Since the decree in the suit for pre-emption was conditional to deposit of the pre-emption money within prescribed period, therefore, the same can only remain in field, if the amount remained intact as per dictates of the decree. Soon after the withdrawal of the amount either with or without order of the court, decree would no more remain in field.

Conclusion: Effect of withdrawal of pre-emption money though with permission of the court but non-submission thereof despite lapse of more than a decade after decision of High Court is that the decree, which was conditional in nature, does not remain in field. Appeal dismissed.

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13. **Lahore High Court**
Al-Bakio International v. Federation of Pakistan and 8 others
W.P.No.27720/2019
2020 LHC 2439
https://sys.lhc.gov.pk/appjudgments/2020LHC2439.pdf

Facts: The petitioners being in the business of publishing textbooks for children assailed letters issued by Director Curriculum Punjab Curriculum & Textbook Board etc. to other related departments as a step towards preparation of Single National Curriculum for grade pre-I to V, an initiative taken by Federal Government, as being against the dictates of provincial autonomy after passing of Eighteenth Constitutional amendment wherein concurrent legislative list was abolished and education became an exclusive provincial subject.

Issue: **i)** Whether Federal Government can take initiative for preparation of Single National Curriculum which is within the exclusive domain of provinces after Eighteenth Amendment in the Constitution?
ii) Whether Writ is maintainable against apprehension of any adverse order or policy, which could probably affect fundamental right of business of the petitioners?

Analysis: Definition of State given under Article 7 of the Constitution, includes Federal Government and thus it has not been absolved from taking initiatives to secure the fundamental rights for the children or to promote their education and well-being as enshrined under Article 25-A. Moreover, "*inter-provincial matters and co-ordination*" is within the legislative and policy competence of the Federal Government under Entry 13, Part II, Fourth Schedule, Federal Legislative List and though education and preparation of curriculum is within exclusive domain of the provinces after abolition of concurrent legislative list from the constitution post Eighteenth Amendment yet co-operative and consultative federalism is a way

forward and if all the Provinces desire or agree to bring a sort of uniformity in curriculum for specified classes, such an idea can only be made to work through a well-articulated and comprehensive inter-provincial co-ordination and objective consultation which can be performed by the Federal Government while functioning within its domain as per Entry 13 of the Federal Legislative List.
Petitioners assailed letters of correspondence between the departments which are of consultative nature and no action detrimental to the interests of the Petitioners have been taken so far and the High Court in constitutional jurisdiction does not act upon mere apprehension.

Conclusion: **i)** Federal Government within its legislative competence under Entry 13, Part II, Fourth Schedule, Federal Legislative List is empowered to take initiatives for "*inter-provincial matters and co-ordination*" and taking steps for securing fundamental rights of compulsory education under Article 25-A through initiating Single National Curriculum is a step towards consultative federalism in matters, which falls within exclusive domain of provinces after the Eighteenth Amendment but are of national importance.
ii) The High Court in constitutional jurisdiction does not act upon mere apprehension.
Petition was disposed of with direction to the Secretary, School Education Department, Government of the Punjab, to convene a meeting with the Petitioners to hear and resolve their legitimate concerns within one month.

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14. **Lahore High Court**
Mehar Ali v. Karim Bakhsh
R.S.A 27 of 2012
2020 LHC 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC2019.pdf

Facts: The appellant filed second regular appeal against the judgment of first appellate court wherein decree of specific performance on the basis of agreement to sell passed in his favor by the trial court was set aside on the ground that the appellant failed to prove agreement to sell within the domain of Article 78 of QSO despite of the fact that he produced affidavit of the respondent, which was given by him before the court in bail petition of the appellant and the whole claim was admitted therein.

Issue: Whether an affidavit given by the respondent in bail petition of the appellant allegedly admitting the agreement to sell and receiving of consideration amount is sufficient to prove the case for specific performance of appellant when the respondent was not confronted with the said affidavit during cross-examination?

Analysis: The omission to confront the respondent with contents of affidavit and alleged signatures thereupon is fatal in terms of Article 140 of QSO 1984. Where a party

has gone into the witness-box on the point in issue and in the witness-box has made a statement inconsistent with the admission or the statement made in the witness-box involves the denial of the previous admission or runs counter to that admission, then the previous admission cannot be used as legal evidence in the case against that party unless the attention of the witness during cross-examination was drawn to that statement and he was confronted with the specific portions of that statement which were sought to be used as admissions. When the contents of the plaint and evidence led do not support each other, evidence beyond the pleadings was irrelevant and ineffective.

Conclusion: Mere submitting affidavit of respondent, which was given in another matter of bail wherein the whole claim of the appellant was allegedly admitted, cannot be made foundation of proof of agreement since the same was not put for confrontation to the respondent during cross examination and thus it does not form an admission in terms of Article 81of QSO 1984. Appeal dismissed.

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15. **Lahore High Court**
M/s. Digital Links (Pvt) Ltd, etc. v. M/s. Hangzhou Hikvision Digital Technology Co, etc.
R.F.A.No.258418 of 2018
2020 LHC 2027
https://sys.lhc.gov.pk/appjudgments/2020LHC2027.pdf

Facts: The appellant assailed the order of trial court wherein his suit was dismissed under order VII rule 10 of CPC that neither the court has jurisdiction to hear the parties nor the appellant could present their plaint to any court in Pakistan without recording evidence to determine the question of jurisdiction. As per appellant there was a clause in first agreement between the parties wherein it was mentioned that only court in China will have jurisdiction to adjudicate upon the dispute between the parties but subsequently second agreement was executed between the parties and there is no mentioning of exclusion of such jurisdiction, so local court has the jurisdiction to adjudicate upon the lis.

Issue: Whether second agreement between the parties, where there is no specific clause regarding exclusion of jurisdiction of courts in Pakistan to adjudicate upon the disputes, is a sequel of the first agreement where an exclusion clause stated that only courts in China will have jurisdiction in case of dispute and not a novation of contract so suit was rightly dismissed under Order VII rule 10 CPC by the trial court without recording of evidence?

Analysis: The question of returning the plaint under Order VII rule 10 CPC arises only when there is another Court in which the suit should have been instituted and when there is no other Court where the plaint can be presented, the suit will be dismissed. To prove a novation, four elements must be shown, that is, (a) the

existence of a previous valid agreement; (b), the agreement of the parties to cancel the first agreement; (c) the agreement of the parties that the second agreement replaces the first one; and, (d) the validity of the second agreement. The burden was upon the plaintiff to prove not only the alleged second agreement but also the place where it was accepted so as to establish the territorial jurisdiction of the Court through clear satisfactory evidence.

Conclusion: Appeal accepted. The question of jurisdiction, in the attending circumstances, was a mixed question of facts and law, which could only be resolved upon appraisal of evidence to be led by the parties to the suit. Case was remanded to the trial court with direction to decide the issue of jurisdiction after framing issues and allowing parties to lead evidence thereon. The trial court would also examine the exclusion of jurisdiction clause in first agreement in the light of section 28 of the Contract Act, 1872.

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16. **Sindh High Court**
C. P. NO. D-1329 / 2016
Byco Petroleum Pakistan Ltd v. Pakistan And Ors
2020 SHC 798
https://eastlaw.pk/cases/Byco-Petroleum-PakistanVSPakistan-and-Ors.Mzk2MTU2

Facts: Before issuance of the impugned Notice under Section 72-B of the Sales Tax Act, 1990 the Petitioner was confronted by the Department on various issues pursuant to some analysis report. The Petitioner responded to such notice and thereafter, on 17.04.2015 a Show Cause Notice was issued after which order in original dated 27.05.2015 was passed against the Petitioner; hence the petitioner impugned selection for audit being without jurisdiction and lawful authority.

Issue: Once the Petitioner was already subjected to audit and some analysis pursuant to which a Show Cause Notice and an order was passed; what remains the position of selection of the Petitioner's name for random balloting by FBR?

Analysis: Show Cause Notice and the order in original reflect that the tax period involved is the same i.e. July, 2013 to June 2014 and such fact has been admitted in the comments. The Petitioner thereafter, filed an Appeal before the Tribunal which also stands decided in favour of the Petitioner and again it is admitted in the comments that no further proceedings are pending. Basis of such proceedings was pursuant to some analysis as well as audit observations of the Department. While collecting data of the tax payers for random selection, such fact has apparently been ignored and not taken into consideration. The tax period involved is same, whereas, the department cannot be permitted to have benefit of their inefficiency or negligence, as apparently they have admitted in comments that no Reference Application was filed against the order of Appellate Tribunal; but only a rectification application. Therefore, if the impugned selection for audit is

maintained or permitted to be acted further, it would add premium to the casual attitude of the department.

Conclusion: Petitioner was subjected to a double jeopardy. The Hon'ble Court allowed this Petition and set aside the impugned Notice of selection and the proceeding(s) if any, conducted thereafter.

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17. **Sindh High Court**
C. P. NO. D-2983 / 2018
M/S Ahsan Enterprises v. Fed. Of Pakistan And Others
2020 SHC 790
https://eastlaw.pk/cases/M-s-Ahsan-EnterprisesVSFed.-of.Mzk2MTM2

Facts: Petitioner claimed that property in question was purchased by him through auction from the Evacuee Trust Property Board and thereafter, a proper Lease was executed and possession was handed over and construction was being raised when Karachi Development Authority (KDA) sought assistance and protection as well as security by the relevant department for demolition of the construction on the plot of the Petitioner. The petitioner has sought declaration about lawful possession over the plot in question under a lawful lease deed hence KDA are not legally competent to interfere in to lawful possession of petitioner over plot in question nor can interfere in lawful construction over plot in question unless and until the KDA get its title over plot in question adjudicated clear from proper and competent forum. KDA's stance is that the property belongs to them.

Issue: Property in question vested in the Evacuee Trust Board and was never challenged before the Federal Government; hence the position of KDA about notice in question?

Analysis: Lease of the property still subsists and vests in the petitioner and no steps have been taken by anyone to get it cancelled. When a valid, legal and unchallenged instrument in the form of a registered Lease duly executed in favor of the Petitioner after auction in accordance with law still subsists; no occasion arises for KDA to interfere in the matter including possession.

Conclusion: Impugned letter / Notice issued by KDA were set aside and petition was allowed.

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18. **Sindh High Court**
C.P. No. D – 8633 of 2017, C.P. No. D – 4165 of 2015, C.P. No. D – 8634 of 2017 Ghulam Ali Bhatia & Others v. Federation of Pakistan & Others
2020 SHC 784
https://eastlaw.pk/cases/Ghulam-Ali-BhatiaVSFederation-of-Pakistan.Mzk1OTk2

Facts: Petitioners are the manufacturers of steel products and importers of its raw material such as re-rollable and re-meltable iron and steel scrap. They have challenged the discriminatory treatment accorded to importers of re-rollable and re-meltable scrap viz-a-viz, the ship breakers, who according to the petitioners,

are allowed to pay the duty and taxes only on 72.5%, which is the "re-rollable scrap", whereas there is Nil duties and taxes on the "re-meltable scrap" pursuant to amendment in Rule 58H(4) of the Special Procedure Rules, 2007 vide SRO 583/2017 dated 01.07.2017.

Issue: Besides pressing the ground of discrimination, allegedly enunciated through Import Policy Order the authority to issue Notification/SRO with the approval of Federal Minister-in-Charge instead of Federal Government was also challenged for being ultra vires to the Constitution.

Analysis: Admittedly, re-rollable and re-meltable scrap imported by the petitioners is classifiable under PCT Heading 7204.4910, whereas, the ship (vessel) is classifiable under PCT Heading 8909.0000, therefore, prima facie it appears that both imported entities in its original form and stage of import are not of the same class, hence not comparable. Therefore, the element of discrimination among the same class, as alleged by the petitioners, is not attracted in the instant case. Moreover, while challenging the vires of any Law, Rule, Regulation or Notification on the ground of discrimination, particularly in tax matters, an aggrieved party has to establish that any tax, duty or levy imposed by the legislature or the Government is unjust and creates discrimination amongst the same class of persons, hence violative of Article 25 of the Constitution of Islamic Republic of Pakistan. It is a simple case of granting reduction of tax liability and to give incentive to ship breaking industry as a matter of Policy decision, whereas, there is no legal impropriety while making such amendment through above SRO.

Conclusion: Any incentive granted to the ship breaking industry, as in the instant case, does not amount to create any discrimination amongst the same class of persons. Accordingly, we do not find any substance in the instant petitions, which are hereby dismissed along with listed application(s).

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19. **Sindh High Court**
C.P. No.S-438 of 2020
Dheraj @ Wanio v. Sht. Surma & Others
2020 SHC 770
https://eastlaw.pk/cases/Dheraj-WanioVSSht.-Surma.Mzk1OTY4

Facts: The petitioner and respondent No.1 married in 2004. Out of said wedlock, three children were born. Their matrimonial life could not be flourished, compelling the respondent No.1 to institute Family before the learned Family Court for maintenance. Petitioner has impugned the judgment, whereby the learned Family Court disposed of the suit of the respondent No.1 for maintenance. The petitioner challenged the Judgment after lapse of limitation period and sought condonation of delay for filing of appeal due to prevailing COVID-19, but the learned appellate Court did not appreciate the reasons for delayed filing of appeal and dismissed it.

Issue: without discussing about delayed filing of first appeal due to prevailing COVID-19 the Hon'ble High Court decided the petition on merits. The moot point before the Hon'ble High Court was as if mere statement of a father that he is not earning much discharges him from the responsibility to pay maintenance allowance to the dependent children and wife?

Analysis: 'Maintenance' means and includes food, clothing, and lodging which is the responsibility of the father to pay to his children and wife. Object of determining maintenance is to ensure in all respect that the minor(s) is / are maintained by the father in a dignified manner with reasonable comfort, and the mother is not left to bear the financial burden of the minor(s). It is the responsibility of the Petitioner (father) to take care of his minor children as well as his estranged wife. The mere statement of Petitioner that he is not earning much does not discharge him from the said responsibility.

Conclusion: Decision of learned Family as well as Appellate Court was declared fair and just hence, the same was maintained and consequently, Petition was dismissed.

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20. **Sindh High Court**
CP No. S- 372 of 2020
Mst. Majdan & Another v. Province Of Sindh & Others
2020 SHC 772
https://eastlaw.pk/cases/Mst.-MajdanVSProvince-Of-Sindh.Mzk1OTY5

Facts: The petitioner contracted marriage with petitioner No.2 under valid Nikah nama on 29.7.2020. On the same day, petitioner No.1 also executed an affidavit of free-will, in which she stated that nobody had kidnapped / abducted her and she had married with petitioner No.2 as per her wish but due to this un-ceremonial marriage, the private respondents are not happy and have lodged FIR under Section 365-B PPC and the concerned police is chasing to arrest them. On inquiry, the petitioner No. 1 categorically stated that she does not want to join her parents; hence this petition.

Issue: Whether an extraordinary constitutional jurisdiction of High Court under Article 199 of the Constitution can be invoked by a person alleging harassment against private individuals or police officials, without availing the remedy provided under the law.

Analysis: The Hon'ble High Court relied upon the case titled ***Abdul Hameed & another vs. the Province of Sindh through the Secretary Home Department & 8 others (PLD 2019 Sindh 168)***; and directed the office to entertain only such petitions in which: i) the petitioner has already approached Ex-Officio Justice of Peace and his application / complaint has been finally decided by Ex-officio Justice of Peace, provided certified true copy of the final order is filed with the petition ; and ii) F.I.R. has been lodged against the husband in case of free will marriage, provided true copy of the F.I.R. is filed with the petition etc. Learned Ex-Officio Justice of Peace of all districts are directed that if any order of protection etc. is

passed by them in future on an application / complaint of a party, the S.H.O. concerned should be directed by them to submit compliance report to them within seven (07) days."

Conclusion: Captioned petition was disposed of in terms of the statement of petitioner with direction to the Investigation Officer to submit a summary report to the concerned Magistrate for disposal of the case as per law. The learned Magistrate on receipt of the summary report shall pass speaking order after hearing the parties within a reasonable time, leaving the aggrieved party to approach the proper forum for redressal of their grievances. Meanwhile, the official respondents shall act strictly as per law and ensure that no harassment shall be caused to the petitioners.

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21. **Sindh High Court**
Constitution Petition No. S- 363 of 2010
Pir Muhammad Hassan Qadir v. Muhammad S/O Amoon & Another
2020 SHC 774
https://eastlaw.pk/cases/Pir-Muhammad-HassanVSMuhammad-s-o-Amoon.Mzk1OTcw

Facts: According to the Petitioner he owns the properties viz. shops, open plot, rice factory and an open plot total admeasuring 02-13 acres situated in Deh Badin near Kazia wah Bridge, Badin Town; that the rice factory of the Petitioner was abandoned, as such Respondent No.1 approached and obtained the open area in front of the gate of rice factory on rent for fishing business. Subsequently, Respondent No.1 constructed shops on the demised premises and also failed to pay rent to the Petitioner. The Respondent No.1 filed his objection / written statement, wherein inter alia he denied the allegation of default in payment of rent and requirement of the rented premises by the Petitioner for personal use. The Petitioner has impugned Judgment passed by learned Additional District Judge, Badin, whereby the Appeal was allowed and order passed by learned Rent Controller, was set aside.

Issue: Point involved in this matter is about personal bonafide use of the subject premises by the Petitioner.

Analysis: Respondent No.1 blocked the main gate of the Petitioner's rice factory by erecting a shop in front of the gate of rice factory without any permission from the Petitioner. He also failed to pay monthly rent to the Petitioner since July 2008 and personal bonafide use of the subject premises by the Petitioner. Sole testimony of landlord is sufficient to establish personal bonafide need of the rented premises if the landlord's statement on oath is consistent with the averments made in the Ejectment Application. Testimony of the landlord if not rebutted in cross-examination discharges him from the burden of proof.

Conclusion: Petition was allowed. Decision of learned Appellate Court was set aside and the judgment of learned Trial Court was maintained. Resultantly, Respondent No.1 was directed to vacate the subject premises and hand over its vacant and peaceful

possession to the Petitioner within sixty (60) days from the date of receipt of the order.

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22. **Sindh High Court**
Criminal Misc. Appln. No.S-311 of 2020
Mst. Iqra and others v. Zubair Khan Jakhrani
http://202.61.43.34:8056/caselaw/view-file/MTQ3MzEwY2Ztcy1kYzgz

Facts: Through instant Criminal Miscellaneous Application, filed under section 561-A Cr.P.C, the applicants have called in question the orders, passed by Judicial Magistrate, moved by respondent No.1 for exhumation/disinterment of deceased and order passed by Additional Sessions Judge, whereby both the learned courts were pleased to direct D.G Health Services, Hyderabad for constitution of Medical Board for the post-mortem of deceased (after disinterment). The applicants pray that record and proceedings of both the courts below be called and after scrutinizing the legality, propriety and correctness, the said orders may be set-aside/quashed.

Issue: Is it legitimate right of every single person to know the ***'cause of death'*** of his loved one?

Analysis: For making an application under section 176(2) of the *Code,* nothing is necessary except that of satisfaction of Magistrate *only* to extent that ***'exhumation is expedient for knowing cause of death'.*** Since such order is always meant to remove the ***clouds*** therefore discretion needs to be exercised as such *even* if a single reasonable circumstance / suspicion so justifies because ***'cause of death'*** would do nothing but determines whether to set the criminal machinery into motion or otherwise?. The exercise, *even,* be not denied merely on count of request being made by a ***stranger*** if, otherwise, circumstances so justifies because for bringing the law into motion the requirement of *move* by blood-relation is never insisted.

Conclusion: Finding no illegality or infirmity in the impugned order, same was maintained and petition in hand was dismissed.

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23. **Peshawar High Court**
W.P No.4636-P/2019 with I.R
Bahramand Khan v. Govt. of Khyber Pakhtunkhwa
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/WP-4636-2019-Bahramand-Khan-Dismissed.pdf

Facts: Petitioner had challenged the notification of the government through which it had detached a village council from a Tehsil and included that in the other.

Issues: Can decision of the government to detach any area of an existing Tehsil and its inclusion in another be challenged in constitutional jurisdiction of the High Court?

Analysis: According to Section 6 of the Land Revenue Act, 1967, each district may be divided into such Tehsils or Sub-Tehsils with such limits and such areas, as the government may by Notification specify. As per sub-section (2) of Section 6 of the Act ibid, the government may, by Notification, vary the number and limits of District and Tehsil in the province. As the government has been conferred an authority by the provisions of the Land Revenue Act, 1967 to carve out new Districts, Tehsils and Sub-Tehsils through a Notification, therefore, the respondents were well within their competence to detach any area of an existing Tehsil and include it in another or newly created Tehsil.

Conclusion: The creation of new Districts and Tehsils is purely a policy decision of the Government legality or otherwise of which cannot be questioned before this Court, through a writ petition which has a very limited scope.

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24 **Supreme Court of the United Kingdom**
Enka Insaat Ve Sanayi AS (Respondent) v OOO Insurance Company Chubb (Appellant) [2020] UKSC 38
https://www.bailii.org/uk/cases/UKSC/2020/38.html

Facts: The parties agreed that disputes between Russian insurance company (Chubb) and Turkish construction company (Enka) were to be finally and exclusively resolved by arbitration in accordance with the provisions of article 50.1 of the construction contract. The parties had chosen England as the seat of the arbitration in the contract.

Issue: Which system of national law will govern the validity and scope of the arbitration agreement when the law applicable to the contract containing it differs from the law of the seat of the arbitration?

Analysis: The Supreme Court of England in this judgment has laid down following principles, which determine the law applicable to the arbitration agreement.

i) Where a contract contains an agreement to resolve disputes arising from it by arbitration, the law applicable to the arbitration agreement may not be the same as the law applicable to the other parts of the contract and is to be determined by applying English common law rules for resolving conflicts of laws rather than the provisions of the Rome I Regulation.

ii) According to these rules, the law applicable to the arbitration agreement will be (a) the law chosen by the parties to govern it or (b) in the absence of such a choice, the system of law with which the arbitration agreement is most closely connected.

iii) Whether the parties have agreed on a choice of law to govern the arbitration agreement is ascertained by construing the arbitration agreement and the contract

containing it, as a whole, applying the rules of contractual interpretation of English law as the law of the forum.

iv) Where the law applicable to the arbitration agreement is not specified, a choice of governing law for the contract will generally apply to an arbitration agreement which forms part of the contract.

v) The choice of a different country as the seat of the arbitration is not, without more, sufficient to negate an inference that a choice of law to govern the contract was intended to apply to the arbitration agreement.

vi) Additional factors which may, however, negate such an inference and may in some cases imply that the arbitration agreement was intended to be governed by the law of the seat are: (a) any provision of the law of the seat which indicates that, where an arbitration is subject to that law, the arbitration will also be treated as governed by that country's law; or (b) the existence of a serious risk that, if governed by the same law as the main contract, the arbitration agreement would be ineffective. Either factor may be reinforced by circumstances indicating that the seat was deliberately chosen as a neutral forum for the arbitration.

vii) Where there is no express choice of law to govern the contract, a clause providing for arbitration in a particular place will not by itself justify an inference that the contract (or the arbitration agreement) is intended to be governed by the law of that place.

viii) In the absence of any choice of law to govern the arbitration agreement, the arbitration agreement is governed by the law with which it is most closely connected. Where the parties have chosen a seat of arbitration, this will generally be the law of the seat, even if this differs from the law applicable to the parties' substantive contractual obligations.

ix) The fact that the contract requires the parties to attempt to resolve a dispute through good faith negotiation, mediation or any other procedure before referring it to arbitration will not generally provide a reason to displace the law of the seat of arbitration as the law applicable to the arbitration agreement by default in the absence of a choice of law to govern it.

Conclusion: Applying these principles, the Court concluded that the contract from which a dispute has arisen in this case contains no choice of the law that is intended to govern the contract or the arbitration agreement within it. In these circumstances the validity and scope of the arbitration agreement (and in our opinion the rest of the dispute resolution clause containing that agreement) is governed by the law of the chosen seat of arbitration, as the law with which the dispute resolution clause is most closely connected. We would therefore affirm - albeit for different reasons - the Court of Appeal's conclusion that the law applicable to the arbitration agreement is English law.

25. **Supreme Court of India**
Criminal Appeal No.659 of 2020
Miss 'A' v. State of Uttar Pradesh and Anr.
https://main.sci.gov.in/supremecourt/2019/40475/40475_2019_34_1501_24291_Judgement_08-Oct-2020.pdf

Facts: Appellant, being victim of sexual assault case, had filed special leave petition against order of High Court, where High Court had allowed a certified copy of her statement recorded u/s 164 of Cr.P.C but certified copy was handed over to the respondent/accused before hearing of this appeal and counsel for the appellant requested to withdraw his appearance as no instructions were received by him from the appellant after issuance of certified copy of her statement.

Issue: Whether appeal may be withdrawn by a party if a question of law is involved?

Analysis: Supreme Court has delineated upon the proposition and has held that since the matter raised questions of law, we reject the prayer and proceed to hear the learned counsel for the parties.

Conclusion: Supreme Court has declined to allow such withdrawal and decided the matter on merit after hearing both the counsels.

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- *Police Officers as Warriors or Guardians: Empirical Reality or Intriguing Rhetoric? Kyle McLean, Scott E. Wolfe, Jeff Rojek, Geoffrey P. Alpert & Michael R. Smith Pages: 1096-1118*

2. STANFORD LAW REVIEW
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LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(01-11-2020 to 15-11-2020)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. **Supreme Court of Pakistan**
Criminal Petition No.1067/2020
Khair Muhammad v. The State.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1067_2020.pdf

Facts: Petitioners are allegedly involved in a murder case. Their pre-arrest bail was dismissed by High Court. They approached the Supreme Court by filing petition for leave to appeal.

Issue: Whether the merits of the case can be touched while deciding the pre-arrest bail?

Analysis: In the salutary judgment of Hon'ble Supreme Court reported as "Meeran Bux Vs, The State and another" (PLD 1989 SC 347), the scope of the pre-arrest bail has been widened and as such while granting pre-arrest bail even the merits of the case can be touched upon..

Conclusion: While granting pre-arrest bail even the merits of the case can be touched upon.

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2. **Supreme Court of Pakistan**
Jail Petition No.14 of 2016 and Criminal Petition No.180 of 2016
Shaukat Ali v. The State.
https://www.supremecourt.gov.pk/downloads_judgements/j.p._14_2016.pdf

Facts: Petitioner was alleged to have fired a single shot on the deceased. However the empty could not be recovered from the spot.

Issue: Whether the absence of empty has any bearing upon case of prosecution when it otherwise stood proved?

Analysis: Absence of empty from the spot in the face of single shot without repetition cannot be viewed as a circumstance intriguing upon the prosecution case.

Conclusion: Appeal dismissed.

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3. **Supreme Court of Pakistan**
Criminal Petition No.907 of 2020 and Civil Petition No.1965 of 2020
Mian Haroon Riaz Lucky v. The State.
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._907_2020.pdf

Facts: Petitioners were allegedly found to have committed theft of natural gas for their ice factory and F.I.R was registered against them under section 462-C of the Pakistan Penal Code, 1860 without any reference or adhering to the procedure provided in the Gas (Theft, Control and Recovery) Act, 2016.

Issue: (i) Whether the Gas (Theft, Control and Recovery) Act, 2016 bars registration of F.I.R, carry out search or arrest an accused suspected for the commission of theft

of gas when it (Act) conditions the taking of cognizance of an offence under the Act ibid by the Court on the complaint of authorized person?

(ii) Whether provisions of section 23 of the Act ibid authorizing the officer not below the BPS-17 to make a search are mandatory or directory?

Analysis: (i) There is a wide variety of offences both under the Pakistan Penal Code, 1860 as well as under various special laws that require prior sanction for prosecution for the purposes of assumption of cognizance by the trial Court, the requirement does not stand in impediment to the registration of First Information Report, arrest of an offender or commencement of investigation thereof as the clog of sanction transiently relates to the steps preparatory thereto by the authority designated under the Statute.

(ii) Restriction placed by section 23 of the Act ibid is merely directory in nature, to be followed having regard to the exigencies of a particular situation, as far as practicable; non-compliance whereof, cannot be interpreted to have vitiated the process of law

Conclusion: The Gas (Theft, Control and Recovery) Act, 2016 does not bar registration of F.I.R, carry out search or arrest an accused suspected for the commission of theft of gas despite the condition of complaint of offence by authorized person.

Restriction placed by section 23 of the Act ibid is merely directory in nature

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4. **Lahore High Court**
Writ Petition No. 13063 of 2020
Fozia Mazhar v. Additional District Judge
https://sys.lhc.gov.pk/appjudgments/2020LHC2499.pdf

Facts: Defendant challenged the decree for dissolution of marriage by filing application u/s 12(2) C.P.C alleging fraud.

Issue: Whether application under section 12(2) C.P.C can be filed to challenge a decree of a Family Court when (except section 10 & 11) provisions of Code of Civil Procedure are not applicable in proceedings before Family Court?

Analysis: If for the sake of arguments this Court considers that application section 12(2) of the Code of Civil Procedure, 1908 was not maintainable due to non applicability of C.P.C., even then the learned Judge Family Court in a case where a decree or order has been obtained through fraud, deceits, misrepresentation or on any of such grounds, the learned Judge Family Court can competently entertain such an application under the inherent jurisdiction, which is presumed and considered to be vesting in all Courts, Tribunals or authority of even limited jurisdiction, because it is a settled principle of law that fraud vitiates the most solemn

proceedings even and the decrees, orders or the judgments obtained in pursuit of these intentions or actions are to be reviewed, reversed, recalled or upset.

Conclusion: Family Court has inherent jurisdiction to set aside its orders/judgments obtained due to fraud, misrepresentation or suffering from lack of jurisdiction. Wrong mentioning of provision of law is of no consequence provided the court has jurisdiction.

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5. **Lahore High Court**
Writ Petition No.55193/2019
Latif Ahmed v. The Chief Secretary Punjab
https://sys.lhc.gov.pk/appjudgments/2020LHC2594.pdf

Facts: Petitioner a Senior Special Education Teacher (H.I. Field/BS-17), had applied for the post of Headmaster (H.I. Field/BS-18) through proper channel in the same department. He was selected and offer of appointment was duly accepted by him, yet the respondents denied the issuance of his appointment letter inter alia on the premise that he failed to furnish the medical certificate as a pre-requisite for the purpose.

Issue: Whether production of medical certificate is necessary for fresh appointment in respect of another post by a person who is already in service?

Analysis: Petitioner was already in government service when he was declared eligible and recommended by PPSC to be appointed for new assignment as Headmaster. The respondents have overlooked their authority in utter breach of law, in that, the petitioner was not obliged to provide another medical certificate, being already in government service. It is obvious and clear from the bare perusal of SOR.IV(S&GAD)-5-16/84 dated 18th April, 1984, that demand of fresh medical fitness certificate was negligent act on part of the respondents.

Conclusion: The act of the respondents was patently in derogation to the law and, on the face of it, was illegal, unlawful and without any legal justification inasmuch as no fresh medical fitness certificate was required for appointment to another post particularly when the applicant/candidate was already performing the duties and holding a post as civil servant in same department of the Government

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6. **Lahore High Court**
ICA No.530 of 2014
Muhammad Yousaf v. Secretary Finance etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC2581.pdf

Facts: The appellant was retired from service of Government of Punjab on 08-09-2013 and granted pensionary benefits. Later on, the Federal Government amended

Revised Leave Rules 1980 and the period for leave preparatory to retirement was extended from 180 days to 365 days w.e.f. 01.07.2012 and the same notification was adopted by Secretary Finance Punjab on 09-09-2013 and made it applicable w.e.f. 01-09-2013. The appellant filed a constitutional petition after he failed to get redressal from Ombudsman, which directed respondent to review its rules, but to no avail and sought declaration that if the Provincial Government has adopted the notification of Federal Government then it must have given it effect from the date when Federal Government did so and not from a different date of its choice His petition was, however, dismissed by Single Judge in Chamber.

Issue: (i) Whether it is obligatory upon the Provincial Government while adopting a policy notification of the Federal Government regarding a matter, which is within its competence and domain after Eighteenth Constitutional Amendment, to follow and give effect the same from the very date as given by the Federal Government?

(ii) Whether the judgment of Ombudsman is binding on the Court?

Analysis: (i) After the 18th Amendment made to the Constitution in the year 2010, the concept of Provincial Autonomy stands heightened and accentuated in the context of the Federation of Pakistan and what was previously not within the domain of the federating units and was not do-able for the Provinces now falls within the ambit and purview of their executive authority and legislative competence.

In relation to the service matters, the employees of Federal Government are regulated under the Civil Servants Act, 1973 while the employees of Provincial Government are regulated under the Punjab Civil Servants Act, 1974. For the service of Pakistan, the Federal Government can make laws under Article 240(a) of the Constitution while sub-section (b) of Article 240 empowers the Provincial Government to make laws for the service of the province. Furthermore, after 18th Amendment, in set up of service matters, the Constitution has drawn a line between the services of Pakistan with Federation and Provinces hence they are distinguished from each other in respect of making laws.

(ii) The findings of Mohtasib/Ombudsman are of recommendatory nature and not a judgment/decision and such performance of quasi-judicial functions by itself does not convert an Authority into Court.

Conclusion: (i) It is therefore within the exclusive domain of Provincial Government to adopt a policy/Notification of the Federal Government, which falls within its legislative competence and made its applicability within the Province from that date, which it finds appropriate and mere adopting such Notification of the Federal Government does not made the same *ipso facto* applicable in entirety unless directed so by the Provincial Government as it is within its competence to limit or extend such applicability and it is not obligated upon provincial government to adopt a policy on the same date as made applicable by the Federal Government.

(ii) In order to constitute a Court in stricto senso, it should have power to give a decision or a definitive judgment, which has authoritative finality, therefore, office of Wafaqi Mohtasib is neither a Court nor Judicial Tribunal within the scope of Article 175 of the Constitution. Intra Court appeal dismissed.

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7. **Lahore High Court**
Khatoon Bibi v. The State
2020 LHC 2463
Crl.Misc.No.2231-H of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC2463.pdf

Facts: The petition u/s 491 CrPC was moved for the recovery of three detenus allegedly picked up by the police and locked up in the police station. The bailiff deputed by the court recovered all the three detenus and reported that the detenus were in custody for the last four days without being produced in any court. No Daily Diary/Rozenamcha was maintained at the police station and the police were making requisite entries in the computer on the front desk.

Issue: (i) Can police dispensed with the responsibility of maintaining a Daily Diary/Roznamcha by making requisite entries in a computer?
(ii) What are the parameters within which the fate of a petition under Section 491 Cr.P.C is to be decided and how a victim of unlawful detention is to be consoled?

Analysis: (i) The language of rule 22.48 of Police Rules 1934 is explicit in its contents, hardly leaving any ambiguity as to how, in what manner, by whom and for what purpose Station Diary/Rozenamcha is to be maintained. A wade through the afore-quoted Rule unveils that the Daily Diary/Rozenamcha is to be maintained through a carbon copying process and one of its copy is to be forwarded to the Superintendent of Police at fixed hour of every day. Likewise, each entry in the Register of Daily Diary/Rozenamcha is to be made either by the Station Clerk/Moharrar or by the Station House Officer. Movements and activities of all officials posted in the police station along with the visits of outsiders are incumbently required to be incorporated in Daily Diary/Rozenamcha. Last but not the least, the opening entry of each day must give the name of every person in police custody, the detail of offence with which he is charged along with date and hour of his arrest. Rule 22.49 elaborates further, the matters which are required to be entered in Daily Diary/Rozenamcha……………The delinquency to maintain Daily Diary in terms of Article 167 of Police Order entails consequences of initiation of proceedings under Article 155 of Police Order, 2002 and punishment of three years is provided therein.
(ii) While deciding the fate of a habeas petition, the High Court has to carefully scan the record so as to ascertain that the victim is deprived of his liberty in accordance with law or otherwise. For achieving this objective, the Court can examine the facts of case, information forming basis of detention and the counter

defence put forth against such plea..............If sufficient material is discernible from the facts and record of the case that an individual is kept in captivity unlawfully by a police official, the Courts have to come forward with a pragmatic approach for the protection of fundamental rights guaranteed under Articles 9,10 & 14 of the Constitution and must not hesitate in awarding even cost/compensation to the victim, to be paid by the delinquent police officials and in appropriate cases, Court may pass an order for registration of criminal case as well as initiation of departmental proceedings against the delinquents.

Conclusion: The Court set the detenus at liberty and burdened the SHO and the police official—who had illegally arrested and confined the detenus—to pay them compensation of Rs.20,000/- and 40,000/- respectively.

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8. **Lahore High Court**
2020 LHC 2509
Civil Revision No.4782 of 2015
Muhammad Riaz v. Province of Punjab through Collector & others.
https://sys.lhc.gov.pk/appjudgments/2020LHC2509.pdf

Facts: Plaintiff, after the death of his first wife, married Fatima Bibi. Through a mutation the plaintiff gifted land to his wife. Ten years later, Fatima Bibi sold a portion of gifted land to defendant No.5. Plaintiff brought a suit for the revocation of gift and cancellation of sale deed on the ground that gift was result of collusion and essential ingredients of gift were missing. These two transactions were found to be valid by two courts below. Plaintiff filed revision against the concurrent findings.

Issue: (i) When burden to prove a gift shifts on beneficiary in case where collusion is alleged by donor/plaintiff?
(ii) What presumption arises regarding dealing with property by donor-husband after a gift in favour of wife?
(iii) When a gift stands proved, then whether a husband can revoke a gift in favour of wife?

Analysis: **(i).** When collusion is alleged by plaintiff in respect of a gift, he as per Article 117 of the Qanun-e-Shahadat, 1984 had the burden to prove it; and until such burden was discharged, the Court could not proceed on the basis of weaknesses of the defendants............It is to be noted that initial burden to prove the said negative fact was to be discharged the moment the plaintiff would have substantiated his allegation prima facie by making a statement on oath before the Trial Court.

(ii). It is now well settled that once mutation of names has been proved, the natural presumption arising from the relation of husband and wife existing between them is that the husband's subsequent acts with reference to the property were done on his wife's behalf and not on his own . This principle indicates that

the theory of constructive possession is very well applicable to gifts between husband and wife.

(iii). When a gift has been made in favour of wife to make more congeniality in view of her love, care and services, then the law does not give the plaintiff (husband) any right to revoke the gift.

Conclusion: (i). Plaintiff has the burden to prove collusion…when plaintiff makes his statement on oath, he discharges this burden this burden then onus shifts on the beneficiary to prove the gift.

(ii). Husband's subsequent acts after gift with reference to the property were done on his wife's behalf and not on his own.

(iii). Such a gift cannot be revoked

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9. **Sindh High Court**
M/S. U & I Garments Private Limited v. Federation of Pakistan & Others
2020 SHC 848
Const. P. 1079, 1080/2020
https://eastlaw.pk/cases/M-s.-UVSFederation-of-Pakistan.Mzk2MzQw

Facts: Petitioner assailed Show Cause Notices issued in terms of section 11 of the Customs Act, 1969 by contending that no audit was conducted; that until and unless an audit is conducted under Section 25 of the Sales Tax Act 1990 ("Act") no Show Cause Notice can be issued under Section 11(2) of the Act.

Issue: Whether a Show Cause Notice could be challenged directly before the High Court in constitutional jurisdiction?

Analysis: The Court observed that the Special Law provides a complete mechanism of appeals up to the level of Special Tribunals and then by way of a reference before the High Courts, and therefore, ultimately such question of law has to come before the High Court for its final adjudication. Ordinarily a tax payer must respond to such Show Cause Notice and contest the matter before the departmental hierarchy inasmuch firstly. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi-judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time

Conclusion: No case for indulgence is made out to exercise constitutional jurisdiction; hence dismissed.

10. **Sindh High Court**
Hakim Ali VS The State
2020 SHC 904
Cr. Misc. Appln. No. S-25 of 2019
https://eastlaw.pk/cases/Hakim-AliVSThe-State.Mzk2NDEw

Facts: Licensed Repeater gun of the applicant was involved in a criminal case. Trial Court while recording acquittal of the accused involved in that case ordered for destruction of his Repeater gun without providing him a chance of hearing. On coming to know of such fact, the applicant filed an application u/s 517 Cr.P.C but it was dismissed. Such order was impugned by way of filing a revision application but it too was dismissed without assigning cogent reasons.

Issue: Whether after lapse of period provided for appeal any order for destruction of the weapon of offence passed without hearing the acquitted person is justified?

Analysis: Admittedly, the applicant was not heard by trial court when the subject Repeater gun was ordered to be destroyed. In that situation, the dismissal of the application of the applicant for restoration of his Repeater gun only for the reason that appeal period has expired was not justified and even against the principle of natural justice.

Conclusion: Orders passed by courts below were set-aside with direction to trial Court to pass fresh order on merits on application of the applicant for restoration of his Repeater gun.

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11. **Sindh High Court**
Gas & Oil Ltd. Pakistan v. Collector, Model Customs Collectorate of Preventive & Others
2020 SHC 808
C.P No. D-1650 OF 2020
https://eastlaw.pk/cases/Gas-OilVSCollector-Model.Mzk2Mjcz

Facts: Petitioner imported a consignment of Motor Spirit, which was allowed into Bonding in the warehouse by the Customs as per practice against various Goods Declarations ("GDs") and thereafter, Ex-bond Bills of Entries were filed and till the date of filing of the Petition, was released, whereas, the remaining quantity was withheld and the Customs Department started to demand certain additional amount of petroleum levy pursuant to Notification dated 01.03.2020. Petitioner inter alia requested for release of his goods on payment of the duty that was applicable prior to the issuance of disputed notification.

Issue: Whether the petroleum levy can be equated or termed as a customs duty specified under the First Schedule to Act so as to attract application of s.30 read with s.104 of the Act.

Analysis: Customs duty is a duty under the First Schedule of the Act, whereas, Petroleum levy per se is not a customs duty and merely for the reason that it is being collected in the same manner as a customs duty pursuant to Section 3A(2) (a) 3 & (3) of the 1961 Ordinance, would not make it a customs duty by itself. Law in this regard is now well settled pursuant to various judgments of this Court in the context of collection of sales tax and income tax chargeable under the Sales Tax Act and the Income Tax Ordinance, by the Customs Authorities under the Act. Delegation conferred through section 37(2)(i) of the Central Excises Act on the Central Board of Revenue is only with regard to 'assessment' and collection and not imposition or 'charge' of the duty. Section 31-A of the Customs Act introduces a new charge and is not merely a machinery provision. The use of the word 'charge' in the fifth proviso to Rule 9 of the Central Excise Rules is thus ultra vires the power conferred on the C.B.R. under section 37(2)(1) of the Central Excises Act, even if the subject or items of rulemaking mentioned in section 37(2) are not exhaustive, the general rulemaking power has to be read as ejusdem generis with the items or subject listed in section 37(2)……..the general rule-making power delegated under section 37 cannot be extended to creation of a charge. Even if section 37 had delegated to the F.C.B.R., the power to introduce a charge or a levy, the said delegation would be bad since it is pretty much settled that the power to impose or introduce a tax, levy or a fee is only legislative function which cannot be delegated. In this manner the term 'charge' used in the fifth proviso of rule 9 of the Central Excise Rules is read down and found to be unenforceable. Merely by providing the manner and time of collection of tax under any tax enactment, the nature of the tax shall not be changed, meaning thereby that if the advance tax under section 50(5) of the Ordinance can be collected as customs duty and can be recovered by the customs officials under section 202 of the Customs Act, it will not change the nature of tax and the income-tax shall not become the customs duty. Likewise when the income-tax shall not be changed into customs duty, the applicability, of section 156 of the Customs Act, shall be excluded as a logical conclusion.”........ Although it is provided in section 6 of the Sales Tax Act, that the tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969, but this provision shall not change the nature of tax and therefore, except the provisions pertaining to the collection of sales tax no other provision in the Customs Act, is attracted and particularly the provisions pertaining to the assessment or exemption of sales tax shall still be dealt with under the provisions of the Sales Tax Act....”

Conclusion: Petition was dismissed as being meritless.

12. **Peshawar High Court**
W.P No.4636-P/2019
Bahramand Khan v. Government of Khyber Pakhtunkhwa etc.
https://peshawarhighcourt.gov.pk/PHCCMS/judgments/WP-4636-2019-Bahramand-Khan-Dismissed.pdf

Facts: The petitioner prayed that notification of Board of Revenue be declared illegal and void whereby a particular village council was detached from Tehsil Mardan and included in a newly created Tehsil within District Mardan on the plea that it has caused inconvenience to the residents.

Issue: Whether Writ is maintainable against creation of new tehsil within the same district by Board of Revenue on the ground of inconvenice to residents?

Analysis: According to section 6 of the Land Revenue Act, 1967, each district may be divided into Tehsils or Sub-Tehsils with such limits and areas, as the government may by Notification specify and it has conferred authority to carve out new districts, Tehsils and Sub-Tehsils through a notification.

Conclusion: The Court cannot determine in its constitutional jurisdiction that inclusion of an area into newly created tehsil caused inconvenience to residents or not as such is a policy decision of the government legality or otherwise of which cannot be questioned before High Court in limited scope of Article 199. Petition dismissed.

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13. **Supreme Court of India**
Civil Appeal No. 3441 of 2020
C. Bright v. The district collector & Ors.
https://main.sci.gov.in/supremecourt/2019/46087/46087_2019_35_1501_24580_Judgement_05-Nov-2020.pdf

Facts: Whether Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 mandating the District Magistrate to deliver possession of a secured asset within 30 days, extendable to an aggregate of 60 days upon reasons recorded in writing, is a mandatory or a directory provision.

Issue: Whether, a time limit fixed for a public officer to perform a public duty will be directory or mandatory?

Analysis: When the provisions of a statute relate to the performance of a public duty and the case is such that to hold acts done in neglect of this duty as null and void would cause serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, the practice of the courts should be to hold such provisions as directory.

The Court distinguished between failure of an individual to act in a given time frame and the time frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory. It is a well settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.

Conclusion: Supreme Court upheld the decision of Kerala High Court to declare the said provision as directory.

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14. Supreme Court of Canada
1688782 Ontario Inc. v. Maple Leaf Foods Inc., 2020 SCC 35 (CanLII)
https://www.canlii.org/en/ca/scc/doc/2020/2020scc35/2020scc35.html

Facts: Mr. Sub **(appellant)** is a chain of restaurants and Maple leaf **(respondent)** is a supplier of ready-to-eat meat on all the franchisees of Mr. Sub through an exclusive supply agreement. Maple Leaf had to recall meat products that had been processed in one of its factories in which a listeria outbreak had occurred. The franchisees brought an action and claimed to have suffered economic loss and reputational injury due to their association with contaminated meat products and advanced claims in tort law, seeking compensation for lost past and future sales, past and future profits, capital value of the franchises and goodwill. The trial court accepted the action while holding that Maple Leaf owed the franchisees a duty to supply a product fit for human consumption, and that the contaminated meat products posed a real and substantial danger, so as to ground a duty of care. The Court of Appeal reversed the decision, and found that no duty of care was owed to the franchisees.

Issue: Franchisees not in contractual privity with supplier but bound to purchase meat products exclusively from it through chain of indirect contracts. Whether supplier owed duty of care to franchisees for the economic losses in tort in the absence of Privity of Contract?

Analysis: Pure economic loss may be recoverable in certain circumstances, but there is no general right in tort protecting against the negligent or intentional infliction of pure economic loss…Pure economic loss is economic loss that is unconnected to a physical or mental injury to the plaintiff's person, or physical damage to property. It is distinct from consequential economic loss, being economic loss that results from damage to the plaintiff's rights, such as wage losses or costs of care incurred by someone injured.

The current categories of pure economic loss between private parties are: (1) negligent misrepresentation or performance of a service; (2) negligent supply of

shoddy goods or structures; and (3) relational economic loss. The distinguishing feature among each of these categories is that they describe how the loss occurred. However, a duty of care cannot be established by showing that a claim fits within one of these categories, as they are but mere analytical tools. Invoking a category offers no substitute for the necessary examination that must take place into whether the parties were at the time of the loss in a sufficiently proximate relationship. Proximity is and remains the controlling concept.

In the present case, proximity cannot be established by reference to a recognized category of proximate relationship, nor by conducting a full proximity analysis. Though the franchise agreement worked a vulnerability upon the franchisees, it did not have the effect of establishing a proximate relationship between them and Maple Leaf. The franchisees were not consumers, but commercial actors whose choice to enter into that arrangement substantially informed the expectations of their relationship with Maple Leaf. As there is no relationship of proximity between Maple Leaf and the franchisees under the Winnipeg Condominium rule, there is also no proximity for the purposes of recognizing a novel duty of care.

Conclusion: Maple Leaf does not owe a duty of care to the franchisees in respect of these matters. The appeal was dismissed.

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15. **Supreme Court of the United States**
Chiafalo v. Washington 591 U.S. _ (2020)
https://www.supremecourt.gov/opinions/19pdf/19-465_i425.pdf

Facts: It is a case on the issue of "faithless electors" in the Electoral College arising from the 2016 United States presidential election. The Party appointed presidential electors voted contrary to Washington state law requiring that they cast their electoral college ballots for the winner of the popular vote. The appellants appealed against the fines imposed arguing that the fines were unconstitutional. On appeal to the Washington Supreme Court, the appellants moved for direct review. The state supreme court affirmed the ruling of the trial court.

Issue: Whether the enforcement of a Washington state law that threatens a fine for presidential electors who vote contrary to how the law directs i.e. to a candidate who won the most popular support in the state is unconstitutional for the following reasons: (1) a state has no power to legally enforce how a presidential elector casts his or her ballot ; (2) a state penalizing an elector for exercising his or her constitutional discretion to vote violates the First Amendment?

Analysis: The US Supreme Court in a unanimous ruling (9-0) observed that a state may enforce an elector's pledge to support their party's nominee and the state voters' choice for President of the United States. It was opined that the Electors'

constitutional claim had neither text nor history on its side and the electors were not free agents.

Conclusion: The US Supreme Court affirmed the Washington Supreme Court's decision.

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2. **OXFORD JOURNAL OF LEGAL STUDIES**
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   Constitutional democracy in the time of elected authoritarians
   By Wojciech Sadurski

4. **PUBLIC LAW** (Issue 4 October 2020)

   The dawn of proportionality in Singapore by Marcus Teo

LAHORE HIGH COURT

BULLETIN

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FORTNIGHTLY CASE LAW BULLETIN

(16-11-2020 to 30-11-2020)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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Civil Petition No. 4-P of 202
https://www.supremecourt.gov.pk/downloads_judgements/c.p._4_p_2020.pdf

Facts: Respondent was convicted under sections 364-A, and 452, PPC, read with section 6 of the Anti-Terrorism Act, 1997, 13 of the West Pakistan Arms Ordinance, 1965 and 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. He sought the grant of the remissions provided under the law, which was positively considered by the High Court.

Issue: Whether the respondent convicted and sentenced under Anti-Terrorism Act, 1997 ("ATA") and the Offences of Zina (Enforcement of Hudood) Ordinance, 1979 ("Ordinance") is entitled to be awarded remissions in his sentence under the law or otherwise?

Analysis: As far as the ATA is concerned, section 21-F of ATA bars the award of any remission in the sentence of a person convicted under the said enactment… The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, on the other hand, provides no such bar on the grant of remission in the sentence of a person convicted for any offence thereunder. The remission granted under Article 45 of the Constitution would not be extended to convicts serving sentence under section 10 of the Ordinance. However, he is entitled to remission granted under the relevant prison rules but after serving his sentence for the conviction under the ATA.

Conclusion: ATA bars grant of remissions to persons convicted under any provision of said law. Similarly, the convict cannot be extended benefit of remissions granted under Article 45 of the Constitution, however, he is entitled to remissions granted under Prison Rules and that too after serving his sentence for conviction under ATA.

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2. **Lahore High Court**
Nadeem Ahmad v. Saif ur Rehman
RFA No.29853 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC2834.pdf

Facts: The F.I.R for alleged theft of electricity against plaintiff was cancelled by the Area Magistrate on the recommendation of police which order was upheld in constitutional petition. Plaintiff filed a suit for recovery of damages against defendants. Issues were settled. Defendants filed an application u/o 7 rule 11 CPC. On this application, court again framed issues and without affording the oppertunities plaintiff to lead his evidence on issues framed earlier rejected the plaint by holding that it did not meet the essential ingredients to claim damages on account of malicious prosecution.

Issue: Whether the term "prosecution" as used in essential ingredients of "malicious prosecution" means criminal trial?

Analysis: Nowhere in the precedents on which the Trial Court has relied it has been stated that the term "prosecution" refers to a criminal trial, but in fact, no interpretation of "prosecution" has been made…. In order to curb the social evil of false complaints, it would be expedient to read and interpret the word "prosecution" in the sense of criminal proceedings instead of its technical sense which it bears in criminal law. Such use of the term "prosecution" will result that the foundation of the action for damages for malicious prosecution would lie, not in the abuse of the process of court, but in the abuse of the process of law. From this consideration, to found an action for damages for malicious prosecution based upon criminal proceedings the test would not be whether the criminal proceedings instituted on false and frivolous allegations had reached the court; the test would be whether such proceedings had reached a stage at which damage to the plaintiff resulted.

Conclusion: The test expounded has yet to be applied by the Trial Court and, therefore, prior to that stage it can neither be held that the plaintiff had no cause of action nor the suit was premature and thus not proceedable. Hence, application for rejection of plaint was dismissed and case was remitted for decision after evidence.

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3. **Lahore High Court**
Muhammad Kashif v. Defence Housing Authority
2020LHC2754
Writ Petition No.22681 of 2017
https://sys.lhc.gov.pk/appjudgments/2020LHC2754.pdf

Facts: Suit by plaintiff for cancellation of sale deed in favor of defendant. The plaintiff claimed himself owner of the suit land by virtue of sale deed and mutation sanctioned thereafter. The respondent's application for rejection of plaint was dismissed by the trial court but the order was reversed by the revisional court. Said order was assailed by the plaintiff in writ jurisdiction of the High Court on the ground that the court has to confine itself to the averments made in the plaint and it is not supposed to consider other material while deciding an application for rejection of plaint.

Issue: While considering the plea of rejection of plaint, should the court confine itself to the averments made in the plaint or can it also consider other material present on record?

Analysis: By invoking provisions of law especially, Order 7 Rule 11 of CPC, the learned revisional court rejected the plaint on the principle that as soon as the cause for rejection appears, the plaint should be rejected straightaway and such suit should be taken off the file at its very inception and defendant be relieved of vexatious litigation by discussing the averments of plaint alongwith other materials available on the record which on its own strength are legally sufficient to completely refute the claim of the plaintiff/petitioner.

Conclusion: Writ was dismissed.

4. **Lahore High Court**
Raheel Bahadur v. Province of Punjab
2020 LHC 2759
ICA No. 77 0f 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC2759.pdf

Facts: Appellants' brick kilns, built on old methodology were stopped from operating from the 1st week of November till the end of December, by the Relief Commissioner, Punjab, in exercise of the powers vested under section 4 (2)(h) of the Punjab National Calamities (Prevention and Relief Act,1958). The appellants challenged that order through writ which was dismissed, against which the intra court appeal was filed.

Issue: i) Whether there is any illegality in the impugned order?
ii) whether the instant Intra Court Appeal is maintainable?

Analysis: i) The learned counsel for the appellants has been unable to point out any illegality or excess of jurisdiction having been committed by the learned Single Judge in Chambers while passing the impugned order, which is based on record and the facts and circumstances of the case. The Relief Commissioner Punjab has stopped operation the brick kilns built on old methodology for a limited period in accordance with the decision of the Punjab cabinet, section 4 (2)(h) The Punjab National Calamities (Prevention & Relief), Act 1958 (the Act), and orders of this court in Writ Petition No. 227807/2018. Since the Air Quality index of the province has deteriorated to polluted levels, there is a need to take all possible measures to control the rapid deterioration of air quality, which is responsible for multiple diseases. The Zigzag technology is relatively environment friendly; that's the rationale behind stopping operation of the brick kilns only on old methodology and not the ones on zigzag technology.

ii) In respect of words "original order" and "proceedings" used in section 3 of the Law Reforms Ordinance,1972 with reference to the maintainability of Intra Court Appeal, it has been settled in case of "Mst. Karim Bibi and others v. Hussain Bakhsh and another" (PLD 1984 Supreme Court 344) that word 'proceeding' would include every step taken towards further progress by which the machinery of law is put to motion and original order may be the order passed by the lowest officer or authority in the hierarchy. Therefore, the test is that as to whether the original order passed in proceedings is subject to an appeal or a revision under the relevant law, irrespective of fact whether the remedy of appeal or revision so provided was availed or not. The section 8 of the Punjab National Calamities (Prevention and Relief) Act, 1958 itself provides that a revision shall lie against the order of the Relief Commissioner, Punjab passed under section 4 of the said Act. As a revision is provided against the orders passed by the Relief Commissioner, Punjab, therefore, no Intra Court Appeal can be filed under section 3 of Law Reforms Ordinance, 1972.

Conclusion: ICA was dismissed in limine.

5. **Lahore High Court**
Defence Housing Authority v. Lubna Nizami
2020 LHC 2768
I.C.A. No. 142 of 2014
https://sys.lhc.gov.pk/appjudgments/2020LHC2768.pdf

Facts: Civil Appeal of the applicant was dismissed for non-prosecution on 30-10-2015. The applicant through the instant application prayed for setting aside the order for dismissal on the sole ground that he had substituted his counsel a few months earlier, but as no cause list was ever delivered to his counsel; no intimation about the fixation of the appeal was made to his counsel through any mode therefore he could not appear on the 26-10-2015 and then on 30-10-2015, when his appeal was finally dismissed for non-prosecution. During arguments it came to light that counsel for the applicant has not filed his affidavit along with the application.

Issue: i) Whether application for restoration can be filed without affidavit of the counsel?
ii) Whether the ground for non-appearance taken by the applicant is justified in law?

Analysis: i) The applicant has failed to append affidavit of his learned counsel with the application. It was necessary for the learned counsel to file his affidavit to explain his absence on the date when appeal was dismissed for default but only an official of applicant felt contended by filing his affidavit in routine. Affidavit of the official of applicant is of no avail to the applicant and he cannot depose about the alleged non-receipt of cause list by his counsel. In cases of dismissal for non-prosecution law is very much settled that counsel for the applicant is equally responsible to explain his absence as held in PLD 2008 SC 130.
ii) Law helps those who are vigilant and not those who are indolent (vigilantibus, non dormientibus, jura subsveniunt). Mere fact that a litigant has engaged a counsel to appear on his behalf does not absolve the litigant from all responsibilities. Litigant as well as his counsel was bound to see the appeal properly and diligently pursued and in case of any inaction on their part, opposite party cannot be made to suffer rather valuable right accrues in favour of opposite party/respondents. Moreover service of providing cause list to the Advocates by the Bar is only complementary and has no legislative backing. Counsel in a case is supposed to check the list of the cases fixed for hearing, displayed in the office, outside the Court Room or in the Bar Room. The applicant/appellant has failed to explain as to why the fixation of case was not checked up by him, his counsel or by any of the persons from the office of his counsel.

Conclusion: Both the issues were decided against the applicant and the application was dismissed.

6. **Lahore High Court**
Waseem Sajjad v. The District Health Authority
2020 LHC 2820
W.P.NO.6563 OF 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC2820.pdf

Facts: The petitioners being employees of Education and Health Department challenged their transfers, postings, departmental proceedings through various writ petitions. It was the stance of the petitioners that after the establishment of District Education and Health Authorities under Punjab Local Government Act 2013 (the Act), they had ceased to be civil servants; hence bar created by article 212 of the Constitution will not apply on them. The Law officer representing the government refuted any change in the status of the petitioners.

Issue: Whether with the establishment of District Heath and Education authorities under the Act, the petitioners have ceased to be government servants?

Analysis: Indubitably before the establishment of District Education and Health Authorities, the petitioners being regular employees of Education or Health Departments were treated as civil servants. With the promulgation of the Act, District Education and Health Authorities were constituted. In terms of Section 2 (a) of the Act, Authority shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property and enter into any contract and may sue and be sued in its name. Sub-Section (2) of Section 92 bestows a power upon the government to appoint the Chief Executive Officer of an Authority through open competition on such terms and conditions as may be prescribed and until so appointed the Government may appoint an officer not below the rank of BS18 to look after the functions of the Chief Executive Officer, who shall be the Principal Accounting Officer of the Authority and shall perform such functions as are mentioned in the Act or as may be prescribed or as may be delegated by the Authority or as the Government may assign. Sec 93 of the Act enumerates the functions of District Education Authority whereas Section 94 illuminates the functions of the District Health Authority. Analysis of these sections makes it abundantly clear that District Education Authority and District Health Authority were constituted for administrative purposes to make the imparting of education as well as health more effective, transparent and beneficial. It is undeniable fact that no change in the status of the employees of the District Education Authority and District Health Authority was introduced expressly or impliedly in the Act or anywhere else. Though the Act was repealed through Punjab Local Government Act, 2019, however in Sec 312 of the latter Act, a saving clause was inserted with regard to the previous operation of the Act or anything duly done or suffered thereunder but District Education Authority as well as District Health Authority was excluded and omitted therefrom.

Moreover the definition of a “Civil Servant” given in sec 2 (b) of the Punjab Civil Servants Act, 1974 makes it clear that a person, who is a member of civil service of the Province or who holds a civil post in connection with the affairs of the Province is a “Civil Servant. Hon’ble Supreme Court in its judgments PLD 1996

SC 222, 1992 SCMR 1213 & 2013 SCMR 896 has interpreted the term 'Civil Servant' and the fact of their maintaining the status of the Civil Servant despite transfer corporations.

After having an overview of the principles laid down hereinabove, it is held that no change occurred with regard to the status of the petitioners, being civil servants. After holding so, no cavil left that all these petitions arise out of matter relating to the terms and conditions of service and as such bar under Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 shall attract with its full force and rigors.

Conclusion: Dismissed being hit by Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.

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7. **Lahore High Court**
F.A.O.No.111235/2017
Bahoo Dying Industries (Private) Limited v. SNGPL etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC2799.pdf

Facts: The appellant assailed the order of trial court wherein his plaint against SNGPL for declaration and recovery of Rs. 1,088,398/-, an amount charged against it as arrears without any justification, was returned under Order VII Rule 10 CPC. It was held by the trial court that since the bill of appellant against the gas connection was generated by Sheikhupura Division of SNGPL, as per notified arrangement of the department, therefore the Gas Utility Court Lahore did not have territorial jurisdiction to try the suit.

Issue: Whether territorial jurisdiction of Gas Utility Court can be determined according to departmental notification of the SNGPL, which divided areas into zones for the purposes of management and generating gas bills, or the Gas Utility Court Lahore shall have jurisdiction to try the suit since the premises of appellant exist and cause of action accrued within the bound of district Lahore?

Analysis: Section 20 of the CPC lays down general rule regarding the legal fora for institution of suits relating to personal actions. It confers territorial jurisdiction upon a Court to decide all the cases in which the defendant resides, carries on business or personally works for gain, or in which the cause of action arises wholly or partly within the local limits of such Court. So, this provision brings forth choice for the Appellant and a right to select a forum out of the alternatives provided under this provision.

Section 4 of the Gas (Theft Control and Recovery) Act, 2016 provides that a Gas Utility Court shall have exclusive jurisdiction with respect to all matters covered by the Act and such jurisdiction can be determined on the basis of four elements i.e. Gas Utility Company, consumer, gas producer or offender. So, a Court within whose jurisdiction any one of the four elements exist, has jurisdiction to deal with the matter. As in the instant case, it is the consumer who has a grievance against

the Gas Utility Company, hence, the Appellant Company was entitled to file its suit in a Court where its premises is situated and cause of action accrued i.e. District Lahore.

The jurisdiction of the Gas Utility is decided as per Sections 3 and 4 of the Gas (Theft Control and Recovery) Act, 2016 and the same cannot be bestowed or taken away by departmental notification issued for the purposes of internal working arrangement since the province of Punjab is divided into civil districts and only the Government can fix the limits of such districts and determine the headquarters of each such district as per Section 4 of The Punjab Civil Courts Ordinance 1962 to exercise jurisdiction thereon.

It is settled law that an administrative notification cannot take away the rights conferred upon a person by a codified law. The notification cannot take precedence over the codified law and in case of any conflict between an administrative notification and a law, latter will prevail.

Conclusion: The Gas Utility Court, Lahore has the territorial jurisdiction to entertain and adjudicate upon the suit filed by the Appellant Company.

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8. **Lahore High Court**
LPG Association of Pakistan v. Federation of Pakistan etc.
WP No.9518/2009
https://sys.lhc.gov.pk/appjudgments/2020LHC2274.pdf

Facts: A number of petitioners from different commercial/industrial/business sectors challenged show cause notices issued to them by the Competition Commission of Pakistan **(CCP)** alleging the abuse of dominant position, cartelization, bid rigging, collusive bidding, price manipulation, deceptive marketing practices etc. and resultant proceedings thereafter. Further, they also challenged the constitutionality of the former Competition Ordinances as well as the Competition Act, 2010 **(the Act)** on the grounds of legislative incompetence of Parliament to legislate upon the subject of competition, creation of parallel judicial system in violation of Article 175 and 203 of the Constitution and providing the remedy of direct appeal before the august Supreme Court of Pakistan in violation of Article 185 of the Constitution. They also threw challenge on section 62 of the Competition Act, 2010 providing no saving, reviving or continuance clause.

Issue: **1)** Whether Parliament has legislative competence to enact the Act and the earlier Ordinances?
2) Whether the Act and the Ordinances create a parallel judicial system in violation of Articles 175 and 203 of the Constitution such that the **(CCP)** and Competition Appellate Tribunal **(CAT)** exercise judicial power which is in violation of the Mehram Ali and others v. Federation of Pakistan and others (PLD1998 SC 1445)?

3) Whether Section 43 and 44 of the Act are unconstitutional as they provide for an appeal before the august Supreme Court of Pakistan which is in contravention to Article 185 of the Constitution?

4) Whether the proceedings and orders etc. under the Ordinance have been saved revived or continued pursuant to Section 62 of the Act; and whether Section 62 of the Act is unconstitutional?

Analysis: **1)** The Court answered this question by looking into the historical context of the legislative power of Parliament to make law on free trade and competition and after examining the provisions of Article 151 of the Constitution, 1973 with their corresponding provisions in former Constitutions held that even in the historical context, having a free market and regulating monopolistic behaviour was a federal subject as it was in the national interest of the country. Having examined the scheme of the Constitution, 1973 on Federal-Provincial relationship as set out in Articles 141 to 159 it was observed that the answer to the question was in the Constitution itself, which mandated legislative competence through specific provisions. It was noted that legislative competence for Parliament came from several sources i.e the FLL of the Constitution, express provisions of the Constitution and on subjects which related to the Federation. Legislative competence could not be restricted to just the entries in the FLL, because the entries in the FLL were not sources of power, rather a list of subject matters on which Parliament could legislate.

The Court with reference to Article 18 reiterated that the Federation was not absolved of its duty to enforce fundamental rights notwithstanding the 18th Amendment or the fact that the subject was not listed in the FLL, as enforcement of fundamental rights was the duty of the State, which included the Federal Government; hence regulating competition becomes a matter related to the Federation which falls under Entry 58 of the FLL. The Court while dilating upon the phraseology of Article 151 held that, the subject matter of trade, commerce and intercourse throughout Pakistan was directly related to the Federation (Entry 58) and the Parliament could legislate on the subject of trade, commerce, industry and intercourse so as to keep it 'free' throughout the country and in the interest of free competition. In view of above, the Court **(Minority)** held that Article 151(1) of the Constitution however applied throughout the country and was not limited to inter-provincial trade and commerce…..Hence the Act could not be restricted in its application to inter-provincial issues as the Act applied to the whole of Pakistan. However, the **Majority**, **to the extent that only Parliament can legislate upon the subject matter**, disagreed. It was held by that Parliament though had power to legislate for ensuring "Free Competition" through Act but only to the extent of 'Inter Provincial Trade and Commerce'… The Provinces had legislative power to ensure Free Competition within the territorial limits of the Province, either through provisions in existing general laws or through a special legislation. If such law is enacted or exists, the Executive Authority shall not be exercised by a Province on a matter, cognizance of which is taken by the Competition Commission under the Act and if cognizance is taken

by both, Provincial and Federal Authorities, the proceedings initiated by Federal Authorities shall prevail, unless it is established that the anticompetitive behaviour does not have the spillover effect.

To the extent of question whether the subject of competition falls within Parliament's competence, the Court held that its structures and behaviour sought to be regulated had its nexus with trade, commerce, industry and intercourse throughout Pakistan. Therefore, the Act by its very nature was federal in character because it was not confined to any territorial limits since it regulated the market, which could be geographic or based on the product. The Court concluded that the Federal legislature was competent to enact law on the subject of competition under the Constitution.

2) To answer this question, the Court as a prelude to discussion, referred to principles as enunciated in Mahram Ali and Sharaf Faridi cases on the point of independence of judiciary from the executive due to reliance of the petitioners on former case. The Court discussed what constitutes "judicial powers" and also referred to the "purpose test" to determine whether a forum exercising judicial power is court in constitutional context of the word or regulatory or administrative authorities. In order to understand the objective and nature of the functions of the CCP, the Court discussed various provisions of the Act, and concluded that the CCP was a regulatory authority, with a regulatory objective and its purpose was not to exercise judicial power but its scope was limited to being preventive and restorative. The Court found that by its very nature the CCP did not perform judicial functions akin to a 'court'.

The Court noted that though all three functions of the state required to 'hear and decide' issues based on facts but the question was that whether the function to 'hear and decide' controversies was merely incidental to the regulatory objective hence administrative in nature or could all instances of 'hear and decide' be termed as judicial function. To answer this question, the Court referred to the characteristics of judicial action enumerated in case reported as (PLD 1958 SC (Pak.) 437) decided by august Supreme Court and concluded that in order to understand judicial power, the purpose for which the forum was established, the process and procedures the forum follows, the finality given to its decision, the rights and liabilities decided upon and the manner in which a dispute was brought to the forum was relevant. The Court ultimately found that the CCP was not established as part of the judicial hierarchy of courts nor are its function to exercise judicial power. It was established to carry out the administrative function of the executive to ensure economic efficiency and promote consumer welfare and in doing so it discharged quasi-judicial functions with the sole objective to regulate anticompetitive behaviour. Although the process followed by the CCP while hearing cases must follow due process, they were not bound by the formal laws of evidence and procedure… Hence while exercising its functions under the Act the CCP was not a 'court' under Article 175 of the Constitution.

As regards CAT, it was observed by **Minority** that as the nature of the orders passed by the CCP are preventive and corrective, aimed at restoring

competition, the nature of the order remained the same in the appellate process……CAT was not a ‘court’ established under the law as contemplated under Article 175 of the Constitution. The Act did not establish a court rather it established an Authority and an Appellate Tribunal….CAT was not an Administrative Tribunal as contemplated under Article 212 of the Constitution as it did not decide upon any of the stated matters in the said Article. Hence it did not fall under the mandate of Article 212 of the Constitution. The Act established an Appellate Tribunal which had to adjudicate upon matters arising out of and pursuant to the matters set out in the Act, hence it was not working as a ‘court’ as contemplated in Article 175 or a tribunal under Article 212 of the Constitution.

To the extent of CAT, however, **Majority** did not agree with the conclusion that it was an Administrative Tribunal. It, after discussing principles of administrative law, nature of judicial function and relevant case law held that CAT’s jurisdiction was to determine disputes relating to rights and liabilities, recognized by the Constitution and law, by discovering the relevant facts in light of the evidence produced by the parties in their presence. Hence it was a judicial tribunal, therefore, its separation and independence from executive was mandatory under constitutional command.

3) The Court observed that there were two parts to Entry 55; the second part dealt with the enlargement of the jurisdiction of the Supreme Court of Pakistan and the conferring of supplemental powers thereon. This had been made subject to that which was authorized by or under the Constitution, meaning that where the Constitution conferred authority on Parliament, it could enlarge the jurisdiction and power of the Supreme Court of Pakistan and conferred supplemental powers as well..…. Article 175(2) of the Constitution gave Parliament competence to confer jurisdiction on the courts by or under a law. …. When Article 175(2) is read with Entry 55 of the First Part of the FLL and Article 142 of the Constitution, Parliament was competent to make law enlarging the jurisdiction of the Supreme Court of Pakistan and conferring supplemental powers, where it was provided by or under the Constitution meaning that the constitutional jurisdiction of the Supreme Court of Pakistan could not be taken away but where the Constitution authorized Parliament on jurisdiction it could be enlarged. While referring to some other laws providing direct appeal to Supreme Court, the Court concluded that where the Constitution declared Parliament competent to make law which regulated jurisdiction, Parliament could confer jurisdiction on the Supreme Court of Pakistan through a law as per Entry 55 of the FLL.

4) The Court while relying on The Nawaz Khokhar Case (PLD 2000 SC 26) held that the circumstances of this case were similar with the instant cases with the repeated promulgation of the Ordinances and eventually the Act. Section 62 of the Act gives the clear intent of Parliament to give continuity and permanence to the actions, proceedings and orders, amongst others of the CCP under the Ordinances which suggests that the intent was there to give continuity to the exercise of power by the CCP. Section 62 supports the intent of Parliament by deeming

everything to be validly done as of 02.10.2007 and by declaring that the Act shall have, and shall be deemed always to have had effect accordingly. So the legislature by way of a deeming provision has declared that actions, proceedings orders etc. which were not saved due to the defect caused by the gaps and lack of a saving clause, will deem to exist by way of legal fiction. The Court while discussing deeming clause further found that the only intent that had come forward with reference to Section 62 of the Act was that continuity be given to all proceedings, decisions and actions taken by the Monopolies Control Board and the CCP from the promulgation of 2007 Ordinance. Hence the intent of Parliament was clear, which was to give legal cover to proceedings, decisions, actions and orders, amongst others, of the CCP. The effect of this declaration was simply to give continuity to the exercise of authority by the CCP with reference to the show cause notices, orders and proceedings challenged before the Court.

Conclusion: **1)** The Ordinances and the Act are not ultra vires of Constitution. The Federal legislature is competent to enact law on the subject of competition under the Constitution but only to the extent of ‘Inter Provincial Trade and Commerce’. The Provinces have also legislative power to ensure Free Competition within the territorial limits of the Province.

2) Competition Commission is performing administrative functions, therefore, its functions and appellate authority under its control are not covered under Article 175(3) of the Constitution, but **CAT** is a Judicial Tribunal, hence is to be separated from executive influence for being mandatory under constitutional command. Provisions of Section 43 of the Act of 2010, to the extent of appointment of Chairperson, Members and financial control by the Executive, are declared ultra vires.

3) Section 43 and 44 of the Act providing for an appeal before the august Supreme Court of Pakistan are not unconstitutional.

4) The proceedings and orders etc. under the Ordinance have been saved revived and continued pursuant to Section 62 of the Act; and Section 62 of the Act is not unconstitutional.

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9. **Peshawar High Court**
CM No. 974-A of 2020 in Cr.M(B.A) No. 884-A of 2020
Mst Safeena Shah Vs The State
https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Cr.M-974-A-2020.pdf

Facts: The petitioner, who was granted post-arrest bail by the High Court in a case registered under section 302/109 PPC subject to furnishing bail bonds in the sum of Rs. 200,000/- with two sureties each in the like amount, sought permission to deposit the surety amount in cash as she is not local resident to find local sureties.

Issue: Whether Court can grant permission to deposit surety amount in cash instead of furnishing bail bonds along with local sureties?

Analysis: The words “permit him to deposit” used in Section 513 Cr.P.C, are not at all without significance and suggest of a situation where something is permitted upon the request of accused but never ordered by the Court, of its own. The object of this section is to enable an accused to deposit cash security in case he is unable to find out sureties.

Conclusion: Petition accepted and petitioner was permitted to deposit the surety amount in cash in the form of bank guarantee alongwith personal bond to the satisfaction of area magistrate.

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10. **Sindh High Court**
Dr. Mashhood-Uz-Zafar Farooq v. Province of Sindh
Constitutional Petition No. D –6499 of 2018
2020 SHC 944
https://eastlaw.pk/cases/Dr.-Mashhood-uz-ZafarVSProvince-of-Sindh.Mzk2NTEx

Facts: Petitioner has impugned the office order issued by respondent, whereby he was relieved to report his parent department. Petitioner extended satisfaction qua the impugned order to the extent of issuance of his retirement notification; however, he disagreed with the decision of the Syndicate to the extent of the decision in respect of the intervening period from 13.10.2017 to 26.10.2019 which has been treated as leave without pay. He has prayed for direction to the respondent to pay the service benefits for the intervening period.

Issue: Whether the decision of respondent to treat the intervening period as leave without pay, during which the petitioner remained absent from service, as "non-duty", is legally sustainable or not?

Analysis: According to the fundamental Rule 54, petitioner would not only be entitled to all his salaries from the date of impugned action till the date of his superannuation on the premise that the competent authority allowed the petitioner to join his duty with just after one day from his repatriation order, but he is also entitled to the increments and other benefits which were granted to other similarly placed colleagues from time to time including annual grade increments. Petitioner’s absence from duty, which in any event was forced, could neither be converted into extraordinary leave without pay nor could he be denied annual grade increments for the year during which he was not in service. Denial by respondent-university to allow back benefits to the petitioner is patently violative of the ‘right to equality’ enshrined in Article 25 of the Constitution of Pakistan, 1973.

Conclusion: Petition in hand was accepted.

11. **Islamabad High Court**
W.P.No. 3383/2020
Islamabad Marquees, Catering and Banquet Hall Associations v. Federation of Pakistan
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-3383-2020%20|%20Citation%20Awaited&cseTle=IMCBA-%20VS%20-FOP%20&%20others&jgs=The%20Honorable%20Chief%20Justice&jgmnt=/attachments/judgements/WP-3383-2020_________________________637413775854845074.pdf

Fact: The petitioner seeks to declare the Notification dated 06-11-2020, issued by the National Command and Operation Centre (NCOC), to the extent of "Ban on Indoor Marriages"

Issue. Whether ban on indoor marriages is violative of Articles 4, 18 and 25 of the Constitution?

Analysis The deadly pandemic has become a reality and no one is immune from its devastating harm. In Pakistan a second wave is spreading rapidly, which is reported to be more severe and deadlier than the previous….The measures and decisions taken by the Committee and its implementation are related to the right to life of every citizen and guaranteed under Article 9 of the Constitution. The freedom of an individual and rights are subservient to the interests and rights of the public at large. The Constitution guarantees fundamental rights but simultaneously contemplates corresponding duties. It is the duty of every citizen not to infringe the constitutionally guaranteed rights of others. When a citizen acts in disregard to the interests of the general public, the constitutionally guaranteed rights are breached. Article 5 of the Constitution declares obedience of the Constitution and the law as an inviolable obligation of every citizen…Policy making is within the exclusive domain of the executive and interference in such domain is not the function of this Court.

Conclusion: Ban on indoor marriages is valid. Writ Petition is dismissed.

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12. **Supreme Court of India**
Civil appeal no. 3687 of 2020
UMC Technologies Private Limited v. Food Corporation of India and Anr.
https://main.sci.gov.in/supremecourt/2019/18159/18159_2019_40_1501_24686_Judgement_16-Nov-2020.pdf

Facts: After issuance of a show cause notice, contract of a Government Contractor was cancelled on the allegation of violation of bidding terms and at the same time said Contractor was blacklisted by a Governmental Agency after issuance of a vague and ambiguous show cause notice, in which penalty/consequence of blacklisting was not mentioned.

Issue: Whether a show cause notice is necessary before blacklisting a contractor for future bidding? If yes, what should be the content of such a show cause notice?

Analysis: In the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

Conclusion: Supreme Court upheld that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the notice. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

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13. **Supreme Court of India**
Civil appeal no. 3820 of 2020
Director General of Police, Railway Protection Force and Ors. V. Rajendra Kumar Dubey
https://main.sci.gov.in/supremecourt/2017/32813/32813_2017_33_1501_24824_Judgement_25-Nov-2020.pdf

Facts: On the charges of misconduct, a Railway Police Officer was compulsory retired by departmental authority on the recommendations of enquiry officer and said Police Officer approached the High Court against that order. High Court has set aside the order after discussing in detail, the evidence recorded against a delinquent officer.

Issue: Whether High Court can re-appreciate the evidence in Writ Proceedings under Article 226 of the Indian Constitution?

Analysis: The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in

recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

Conclusion: Supreme Court has set aside the findings of High Court and restored the order of departmental authority.

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14. **Supreme Court of India**
Transfer Petition (Criminal) No. 452 OF 2019
Jatinderveer Arora & Ors. V. State of Punjab
https://main.sci.gov.in/supremecourt/2019/27892/27892_2019_36_1501_24821_Judgement_25-Nov-2020.pdf

Facts: Petitioners have approached the Supreme Court seeking transfer of criminal cases to competent Court in Delhi or to any nearby State, out of Punjab as the matters relate to alleged sacrilege of the holy book of Sikhism, deep anguish and bitterness is generated amongst a particular religious group against the Petitioners' sect and they are facing bias and prejudice and are unlikely to get a fair trial in the face of strong presumption of culpability as one of the accused was already murdered inside Jail by other inmates.

Issue: What are the grounds to transfer criminal cases from one court to another?

Analysis: For transfer of trial from one Court to another, the Court must be fully satisfied about existence of such factors which would make it impossible to conduct a fair trial. General allegation of surcharged atmosphere is not however sufficient. The apprehension of not getting a fair and impartial trial cannot be founded on certain grievances or convenience of the accused but the reasons have to be more compelling than that. No universal Rules can however be laid down for deciding transfer petitions and each one has to be decided in the backdrop of that case alone. One must also be mindful of the fact that when trial is shifted out from one State to another, it would tantamount to casting aspersions on the Court, having lawful jurisdiction to try the case. Hence powers under Section 406 CrPC must be exercised sparingly and only in deserving cases when fair and impartial trial uninfluenced by external factors, is not at all possible. If the Courts are able to function uninfluenced by public sentiment, shifting of trial would not be warranted.

Conclusion: Supreme Court has declined to transfer the cases of the Petitioners by holding that the projection of surcharged atmosphere is not borne out by the corresponding reaction of the petitioners, who are out on bail. Being residents of Punjab, they

continue to reside at their usual place and are going about their routine affairs. If their threat perceptions were genuine, they could not have gone about their normal ways. For this reason, the Court is inclined to believe that the atmosphere in the State does not justify shifting of the trial venue to another State.

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15. **The United Kingdom Privy Council**
The Airport Authority v Western Air Ltd
[2020] UKPC 29
https://www.bailii.org/uk/cases/UKPC/2020/29.html

Facts: An aircraft of West Air Ltd (respondent) in Bahamas was stolen in the year 2007. The company claimed the damages against the Airport Authority of Bahamas (appellant) as having been solely responsible for the security of the airport. Both the courts below decided in favour of respondent. This appeal was filed to overturn the decisions of courts below.

Issue: Whether the appellant was liable for a criminal act committed on its premises by an act of an independent third party where that act resulted in damage or loss to the respondent?

Analysis: The Court applied the doctrine of *RES IPSA LOQUITUR* to determine the negligence on the part of the appellant which is a rule of evidence whereby the court may draw an inference of fault where "the nature of the accident" suggests both negligence and the defendant's responsibility. The doctrine would apply when (1) the occurrence is such that it would not have happened without negligence and (2) the thing that inflicted the damage was under the sole management and control of the defendant, or someone for whom he is responsible or whom he has a right to control. Provided those two conditions are satisfied, then, on a balance of probability, the defendant must have been negligent.

Conclusion: The appellant was held negligent and consequently responsible for the loss of the respondent. Appeal dismissed.

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16. **European Court Of Human Rights**
Case of Süleyman v. Turkey (Application no. 59453/10)
[2020 ECHR 811]
https://www.bailii.org/eu/cases/ECHR/2020/811.html

Facts: The testimony of sole eye witness X of a murder was recorded through commission as per direction of the domestic court whereupon the applicant was convicted for life imprisonment. The applicant challenged the conviction in the European Court of Human Rights claiming the violation of right to fair trial.

Issue: Whether inability to examine an anonymous witness as required by Article 6 § 3 (d) of the Convention was decisive for conviction?

Analysis: The European Court of Human Rights addressed the Government's submissions which were as follows:

(i) the applicant had failed to show why examining witness X had been important to him;

(ii) the applicant had failed to use his statutory right to put written questions to witness X after the trial court had read out the record of his statements at the trial; and

(iii) the applicant had failed to avail himself of the videotaped statement of witness X which had moreover made it possible for the trial court to form its own impression of his credibility.

The Court pointed out that it is not its task to assess in hindsight whether the overall fairness of the proceedings was guaranteed merely by statutory provisions providing for certain procedural safeguards. On the contrary, the Court must examine whether those procedural safeguards were applied and remedied the difficulties the defence had to encounter as a result of not being able to directly question or cross-examine witness X, whose statements were relied on by the trial court to a decisive extent to convict the applicant.

Having regard to the applicant's and his lawyer's submissions made before the trial court, the Court finds that the applicant was able to demonstrate why it was important for them to examine witness X in person.

The Court stressed that the underlying principle of Article 6 § 3 (d) of the Convention is that before an accused can be convicted, all evidence against her or him normally has to be produced in his presence at a public hearing with a view to adversarial. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him or her, whether during the investigation or at the trial.

The Court further noted that the possibility to put written questions to an absent witness should not be regarded as an answer remedying the absence of an important witness from the trial and the resulting prejudice the trial court's use of his or her evidence entailed to the rights of the defence irrespective of the individual circumstances of a given case. Neither should the right to put written questions to an absent witness be seen as a substitute in the abstract for the fundamental right to examine or have the absent witness examined in person in such a case.

Therefore, caution must be exercised before concluding that the possibility to put written questions to an absent witness is capable of compensating for the

difficulties arising from his or her unjustified absence, that is to say when there was no good reason for his or her non-attendance. Otherwise, the balance between the rights of the defence, the interest of the public and the victims in seeing crime properly prosecuted and, where necessary, the rights of witnesses risk being undermined in the absence of a good reason to depart from the underlying principle under Article 6 § 3 (d) of the Convention.

The court observed that the Government failed to explain on what legal basis the applicant requested for the video recording of the testimony of the witness X as the trial court had opted to protect him by withholding his true identity throughout the proceedings in accordance with Article 58 § 2 and 3 of the Code of Criminal Procedure. Indeed, had the applicant been allowed to obtain a copy of the videotaped statement, it would have effectively rendered that protection measure futile.

Conclusion: The Court is unable to conclude that the trial court administered the necessary safeguards in respect of the evidence given by witness X, a situation falling short of the requirements of a fair trial under Article 6 of the Convention.

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17. **Supreme Court of the United States**
Department of Homeland Security v. Regents of the University of California, 591 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf

Facts: This case is known as the "Dreamers Case". The US Department of Homeland Security (DHS) adopted a program in the year 2012 which was known as the Deferred Action for Childhood Arrivals (DACA) in order to postpone the deportation of undocumented immigrants who had been brought to the United States as children and to assign them work permits to integrate them in society of United States. Numerous lawsuits were filed including one by the University of California system. It was alleged by the University that the decision to rescind DACA violated the Administrative Procedure Act (APA) and denied the right to equal protection and due process. The district court issued a preliminary injunction barring the government from rescinding DACA. In appeal, the government defended its decision to end DACA as a lawful wind-down of a discretionary policy based on the dubious legal status of the program.

Issue: Whether DHS's decision to rescind DACA policy was judicially reviewable and concomitantly whether DHS's decision to strike down the DACA policy was lawful?

Analysis: It was opined inter alia that DHS's decision to rescind the DACA program was arbitrary and capricious under the APA. The U.S. Supreme Court vacated in part and reversed in part the decision of the 9th Circuit. It held that DHS's decision was judicially reviewable as it did not properly follow APA rulemaking

procedures. The court remanded the issue back to DHS. Chief Justice John Roberts observed that "*we do not decide whether DACA or its rescission are sound policies. The wisdom' of those decisions is none of our concern. We address only whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action. Here the agency failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients. That dual failure raises doubts about whether the agency appreciated the scope of its discretion or exercised that discretion in a reasonable manner*"

Conclusion: The US Supreme Court vacated in part, reversed in part the decision of the 9th Circuit and remanded the case.

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   More than Just a Different Face? Judicial Diversity and Decision-making by Rosemary Hunter

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FORTNIGHTLY CASE LAW BULLETIN

(01-12-2020 to 15-12-2020)

A Summary of Latest Decisions by the superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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1. Supreme Court of Pakistan
Civil Petition No.2129 of 2020
Khawaja Anwer Majid v. National Accountability Bureau
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2129_2020.pdf

Facts: Direct appointees (respondents) were appointed vide order dated 03.12.2003. The appellants were recommended for promotion by the Departmental Promotion Committee (DPC) on 24.11.2003, however, their notifications for promotion were issued successively as follows: the promotion notification of one appellant was issued on 2.12.2003, while that of the two, who were recommended for promotion in the same DPC but subject to the completion of their ACRs for the year 2001-2002 were notified for promotion on 10.4.2004 and 24.11.2004, respectively. Appellant no.3, however, was initially deferred in the DPC held on 24.11.2003 and was later on considered in the DPC held on 12.10.2007 and notified for promotion on 26.4.2008. The seniority list prepared by the department placed the appellants over the respondents, who were appointed through direct recruitment. However, the Punjab Service Tribunal declared the respondents senior to appellants.

Issue: Whether the respondents shall rank senior to appellants? And how the seniority shall be fixed in the facts and circumstances of this case?

Analysis: If civil servants are selected for promotion in a “batch” or as a “group of persons” then the date of promotion of all the persons in the batch or the group shall be the date when anyone of them was first promoted to the post and they shall retain their inter se seniority. Therefore, appellants, in the same grade, when considered and recommended for promotion for the next grade in the same Departmental Promotion Committee (DPC) pass for a “batch” or “group of persons” and therefore as per the above provisions will be considered to have been promoted from the date when the first amongst the batch was promoted and will also retain their inter se seniority of the lower post. In this legal background, the three appellants were recommended for promotion on 24.11.2003. One of them N was promoted on 2.12.2003, thus the entire batch of appellants/ promotees who were recommended for promotion in the same DPC shall be considered to have been appointed w.e.f 2.12.2003, the date of promotion of N, one of the promotees, from the same batch or group of persons. However, appellant no. 3 who was deferred in the DPC held on 24.11.2003 on the ground that she was on a long leave and was subsequently recommended in the DPC held on 12.10.2007 (after almost four years) and promoted on 26.4.2008 cannot be considered to be from the same batch as that of the other appellants selected in the year 2003 and therefore the above provisions do not come to her rescue. Her seniority will be fixed according to the date of her promotion. The respondents were appointed through initial

appointment on 03.12.2003, a day after the promotion of the first promottee out of the batch of promotes, hence the respondents will fall under the appellants.

Conclusion: If the promotees from same group considered in one DPC were recommended for promotion but appointed on different dates, then all the promotees shall be deemed to have been appointed on the date when any one of them was first appointed on promotion. However, if anyone was deferred and recommended for promotion at a subsequent date (say after few years), he cannot be considered as promoted on a date when the last group was promoted and appointed. Similarly, if the promotees were recommended for promotion and one of them was appointed on promotion on a date while remaining were appointed on a subsequent date after the intervening appointment of direct appointees, then latter mentioned promotees shall be deemed to be appointed prior to the direct appointees on a date when former mentioned promotee was appointed.

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2. **Supreme Court of Pakistan**
Criminal Petition No.540 of 2020
Muhammad Ejaz v. The State
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._540_2020.pdf

Facts: Injured was examined and the medical officer noted injuries on his person and categorically ruled out possibility of their fabrication; he referred the examinee for radiographic examination wherefrom he was further referred for CT scan which confirmed fracture of nasal bone. The accused, however, moved learned Area Magistrate for re-examination of the injured on the grounds that medical report is totally false and fake. The learned Magistrate without taking the injured on board or recording argument of ADPP, marked present during the proceedings, directed medical examination by the Standing Medical Board.

Issue: **1.** What procedure should the Magistrate adopt while dealing with an application for constitution of Medical Board?
2. What is the value of observation of Medical Board regarding possibility of injury being result of fabrication/fall?

Analysis: 1. There was no occasion for the learned Magistrate to hurriedly exercise ex-parte jurisdiction to the detriment of prosecution/injured in the face of allegations vague and non-specific. The first medical examination was protected by statutory presumption of being genuine under Article 129(e) of the Qanun-e-Shahdat Order, 1984 as well as under Article 150 of the Constitution of the Islamic Republic of Pakistan, 1973. Such formidable statutory protections cannot be summarily dismantled on the whims of an accused struggling to ward off consequences of criminal prosecution, therefore, a Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already

wronged to the inconvenience and embarrassment of a re-examination, a consideration conspicuously missing in the present case.
2. Observation of Medical Board that possibility of fabrication/fall cannot be ruled out is a judgment resting upon the brink of hypothetical possibility that by itself cannot override positive findings earlier unanimously recorded by the medical officers who attended the injured; possibilities are infinite and cannot dislodge proof.

Conclusion: **1.** A Magistrate must insist for tangible and sufficient grounds to plausibly justify exposure of a person already wronged to the inconvenience and embarrassment of a re-examination. He should hear the other party and prosecutor while dealing with such a case.
2. Judgment of possibility of fabrication/fall resting upon the brink of hypothetical possibility that by itself cannot override positive findings earlier unanimously recorded by the medical officers who attended the injured.

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3. **Supreme Court of Pakistan**
Civil appeals No.433 to 438 & 596 of 2020
Government of Baluchistan etc v. Abdul Rauf etc
https://www.supremecourt.gov.pk/downloads_judgements/c.a._433_2020.pdf

Facts: Caretaker Government conducted the recruitment process and made recommendations for appointment of respondents. The incoming Government scrapped the entire process and re-advertised the posts.

Issue: **1.** Whether a caretaker government may conduct recruitment process?
2. When a vested right for appointment accrues?
3. Whether the Government can always stop or abandon the process of recruitment and initiate a fresh one

Analysis: A caretaker government is empowered only to carry out day to day affairs of the state with the help of available machinery/resources/manpower. It cannot take policy decisions and permanent measures including recruitments, making appointments and transfer and postings of Government servants.
No vested right to appointment accrues unless the merit list is displayed and appointment letters are issued.
The Government can always stop or abandon the process of recruitment and initiate a fresh one if there are valid reasons or justification to support such action.

Conclusion: **1.** A caretaker Government cannot conduct recruitment process and make appointments.
2. Vested right to appointment accrues when the merit list is displayed and appointment letters are issued.

3. Government can always stop or abandon the process of recruitment and initiate a fresh one provided such action is supported by valid reasons or justifications.

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4. **Lahore High Court**
Mst. Nargis Yasmeen v. Mst. Ismat Khatoon
Civil Revision No.44031/2017
https://sys.lhc.gov.pk/appjudgments/2020LHC2944.pdf

Facts: A Headmaster while serving in BPS-17 passed away. A dispute amongst the legal heirs of deceased aroused about the entitlement qua Gratuity, General Provident Fund, Benevolent Fund, per month Salary for four months, Group Insurance, Leave Encashment and Financial Aid/Assistance.

Issue: Whether above referred assets would fall in the category of Tarka?

Analysis: The Hon'ble Court held that the fact remains that Rules 4.7 & 4.10 of West Pakistan Civil Servants Pension Rules, 1963, permit only wife and children of deceased civil servant to receive pension and gratuity as such…..The benefits accrued on end of service or after death of a person, as in the present case, Gratuity, Group Insurance, Benevolent Fund and General Provident Fund, being a grant/concession/compensation, cannot be regarded as hereditary in nature nor can be interpreted to mean Tarka.

Conclusion: Gratuity, Group Insurance, Benevolent Fund and General Provident Fund, being a grant/concession/compensation, cannot be regarded as hereditary in nature nor can be interpreted to mean Tarka

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5. **Lahore High Court**
Writ Petition No.17081-Q of 2019
Shaukat Ali Vs. The State etc.
https://sys.lhc.gov.pk/appjudgments/2019LHC4613.pdf

Facts: In a partnership deed the parties agreed that after deduction of expenses, profit shall be distributed equally between them. However, the petitioner did not pay any amount of profit to the complainant; so the FIR under section 406 PPC was lodged by the complainant against him. The petitioner seeks quashment of the FIR through this writ petition.

Issue: Whether the FIR regarding of money or rendition of accounts registered against the petitioner is liable to be quashed?

Analysis: From the given facts, it was a case of civil nature regarding recovery of money or rendition of accounts but the complainant has lodged the impugned FIR by merely mentioning a single sentence therein that the petitioner promised with the complainant that he will keep the remaining amount of the complainant as a **'trust'** with him and the same shall be returned to the complainant as and when

desired by him…There is nowhere mentioned in the partnership deed that the amount invested by the complainant shall remain as a 'trust' with the petitioner rather perusal of the contents of the said partnership deed reveals that the abovementioned amount was invested by the complainant in a joint business of hotel with the petitioner… It is by now well settled that there is a difference between the **'investment' and 'entrustment'** as envisaged under section 405 PPC punishable under section 406 PPC. Reliance placed on (2000 SCMR 122), (2006 PCr.L.J 1900)

Conclusion: It appears that by lodging the impugned FIR, the complainant has tried to convert the civil/business dispute into criminal case in order to blackmail and pressurize the petitioner and his co-accused and to get concession(s) in the civil litigation. I am, therefore, of the view that the impugned FIR is liable to be quashed.

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6. **Lahore High Court**
W.P.No. 667/2020
The State. Versus. Sardar Muhammad alias Sardara Gujjar, etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC3071.pdf

Fact: Accused of a case under Articles 3 & 4 of Prohibition (Enforcement of Hadd) Order, 1979 read with Sections 9/14/15 of the Control of Narcotic Substances Act, 1997 and Sections 324/332 & 353 of PPC was acquitted after trial of case. After acquittal, he filed an application for release of his freezed property which was accepted by trial Court. Hence, the instant appeal before this Court is against the order of release of freezed property.

Issue. Whether property of acquitted accused can be freezed under sections 19 & 37 of the Control of Narcotic Substances Act, 1997 if his relatives (father and brother) are convicted in same case?

Analysis Although under Section 37 of the Act, a Court can pass an order for freezing of the assets of an accused, his relatives and associates. However, in this case accused was tried for charges and acquitted by the learned trial Court from all charges therefore, provisions of Section 37 of the Act supra are not attracted in this case.

Conclusion. The freezed property of acquitted accused is rightly released by learned Special Court. Appeal dismissed.

7. **Lahore High Court**
Ghulam Mustafa v. Judge Family Court & another
2020 LHC 2842
W.P. No.18768 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC2842.pdf

Facts: Wife filed suit against the husband for maintenance, dower and return of dowry articles. The husband admitted his Nikah but claimed that the wife was devoid of feminine characteristics. Husband moved an application to the trial court for medical examination of the wife which was dismissed. Husband challenged the order in High Court through constitutional petition.

Issue: **I)** Whether the wife has a fundamental right to privacy under the Constitution of Islamic Republic of Pakistan, 1973?
II) Whether the Family Court is competent to direct a party to undergo medical examination?
III) Whether the Family Court has rightly declined the husband's request for medical examination of wife?

Analysis: **I)** The Court observed that Pakistan has ratified/signed a number of international covenants/declarations like the Universal Declaration of Human Rights, the International Covenant on Political Rights, the Convention on the Rights of Child and the Cairo Declaration on Human Rights in Islam, which recognize the right of privacy as a basic human right. The Court also noted a number of verses from the Holy Quran and narrations of the Holy Prophet where importance of right of privacy is emphasized. Discussing the articles 9 and 14 of the Constitution and the case law developed, the Court held that the right to privacy is twined with the right to life, liberty and human dignity and thus the respondent has a fundamental right to privacy under the Constitution.

II) The Court thoroughly broached the law and decisions of various jurisdictions on the subject and concluded that the Family Court is competent to direct a party to undergo medical examination but observed that such order should only be made in exceptional circumstances, when there is sufficient material to justify the order. The court added that though no court can compel a person for medical examination if he/she does not consent for medical examination but the court would draw such inference as may be appropriate on the facts and the circumstances of the case. However, for that the court should specifically put the non-cooperating party on notice about the consequences of its refusal and warn it what adverse inference may be drawn against it.

III) The court observed that the contract of marriage entails various rights and obligations, which in Islam involve dower, maintenance and sexual relationship. But these obligations can only be enforced if the marriage is valid……………..In the instant case, if the medical examination of the respondent reveals that she lacks

feminineness, it would have bearing on the marriage between the parties and impact their rights and obligations arising therefrom, including the claim of the respondent for recovery of dower and alimony. The Petitioner lived with the respondent for quite some time and he has not divorced her to-date. This gives rise to a presumption, though rebuttable by evidence, that the marriage between the parties was valid………Since the Petitioner had specifically questioned the gender of the respondent, an allegation denied by the latter, and the matter goes to the root of the case, it was incumbent on the Family Court to frame an issue in that respect and require the husband to produce evidence to prove his assertion. The husband could move an application for medical examination of the wife only after getting his evidence recorded and bringing material which could persuade the Court that an order therefor was absolutely necessary.

Conclusion: (I) Right of Privacy is a fundamental right protected under the constitution but this right is not absolute.

(II) & (III) By holding that the Family court was competent to direct medical examination of the respondent, the Court set aside its order and made the following directions:

- Application for medical examination shall be kept pending for the time being;
- Family court shall frame the issue as to *whether the marriage between the parties is void because the plaintiff lacks feminine characteristics?* OPD;
- The family court shall consider the application after the evidence of the parties have been recorded and pass a fresh order thereon but order for medical examination of the Respondent shall only be passed if it is unavoidable and absolutely necessary;
- The wife shall not be forced for medical examination; if she refuses, the Family Court shall draw such inference as may be just and proper.

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8. **Lahore High Court**
Civil Aviation Authority v. Government of Punjab
2020 LHC 2938
Case No. W. P. No. 247 of 2011
https://sys.lhc.gov.pk/appjudgments/2020LHC2938.pdf

Facts: Due to construction of a public road, the old airport was split in two portions and on the edge of one portion the land owned by Civil Aviation Authority (CAA) was leased out for CNG Station. In 2004 an application for commercialization was moved by lessee of the petitioner, whereupon commercialization fee was fixed and charged from the lessee. In 2010, CAA moved an application for waiving of and refund of the commercialization fee on the ground that the land owned by CAA is a federal subject, therefore, not amenable to the powers and jurisdiction of Tehsil Municipal Administration (TMA, as it was then). However,

through the impugned order the Secretary, LG&CD Department dismissed the application. Said order was challenged in the constitutional jurisdiction of High Court.

Issue: Whether land owned by CAA, being a federal subject, is not amenable to the powers and jurisdiction of Tehsil Municipal Administration and therefore no commercialization fee could be charged on it by TMA?

Analysis: The definition of Aerodrome and Airport as defined in Section 2(i) & (ii) of the Pakistan Civil Aviation Authority Ordinance, 1982 (Ordinance of 1982) alongwith Entry 22 of the Constitution conspicuously depict that these are meant for the purpose of Civil Aviation which has been explained in preamble of the Ordinance of 1982. None of these provisions suggest that any property owned by CAA situated within the territorial limits of a local or provincial government and in particular when being not used for any of the purposes under the Ordinance of 1982, shall be outside the jurisdiction of Provincial or Local Authority….Any land within the premises of an Airport, used for commercial purpose, may not require commercialization by Provincial or Local laws, because such commercial activity shall be primary for the passengers and other persons related thereto. However, a land outside the Airport premises, within territorial limits of Provincial or Local authority used for commercial activities for general public, would not fall under the Ordinance of 1982 or rules thereunder…….any land owned by an authority like Civil Aviation if not used for the purposes as defined under Ordinance of 1982 shall be subject to the Provincial and Local Government's administrative and executive authority and laws relating thereto shall be applicable unless any different intention appears in the Constitution or is exempted by the relevant Provincial or Local Government laws.

Conclusion: Commercialization fee will be payable on the land owned by CAA if used for purposes other than those defined in Ordinance of 1982. In this situation, it would be subject to the Provincial and Local Government's administrative and executive authority; and laws relating thereto shall be applicable to it.

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9. **Lahore High Court, Lahore**
Criminal Appeal No.11595 of 2019
Riaz Ahmad Vs. The State & another
https://sys.lhc.gov.pk/appjudgments/2020LHC3049.pdf

Facts: Accused was tried under section 9(c) of the Control of Narcotic Substances Act, 1997, and convicted.

Issue: Whether accused person can be acquitted on the sole ground that full protocols have not been mentioned by the office of Punjab Forensic Science Agency while preparing the report (Ex.PD)?

Analysis: The august Supreme Court of Pakistan in the case of ***"Khair-ul-Bashar"***acquitted the accused of the said case on the abovementioned sole ground of non-mentioning of protocols/full details of the tests applied in the report of the Punjab Forensic Science Agency, Lahore. Even otherwise, it is by now well settled that a single circumstance creating reasonable doubt would be sufficient to cast doubt about the veracity of prosecution case and the benefit of said doubt has to be extended in favour of the accused not as a matter of grace or concession but as a matter of right.

Conclusion: By following ***"Khair-ul-Bashar"*** case accused can be acquitted on this ground alone.

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10. **Lahore High Court**
Civil Original No. 229608 of 2018
Nadeem Kiani v M/s American Lycetuff (Pvt) Limited and others
https://sys.lhc.gov.pk/appjudgments/2020LHC2918.pdf

Facts: The petitioner, who was holding 50 percent shares in the company, equal to the 50 percent remaining shares owned by the respondent no. 2, his former wife, filed this petition with grievance that several issues including of trade mark is pending in different forums between the parties and Copyright Registrar has decided the issue of copyright/trade mark in favor of respondent No.2, against which he filed an appeal before the Copyright Board, but due to non-functionality of the Board, his grievance could not be redressed. So it was prayed that the High Court pass the orders under section 286 of the Companies Act, 2017 for regulating the future affairs of the company.

Issue: What are the requirements provided under section 286 of the Companies Act, 2017 to seek the intervention of the High Court? Whether the petitioner had fulfilled the said requirements?

Analysis: The basic requirement for seeking intervention of this Court by a member or creditor of a company under Section 286 of the Act is to be a member having not less than ten percent (10%) of issued share capital of a company or be a creditor having not less than ten percent (10%) of the paid-up capital of a company. Moreover, the next requirement is that such a member or creditor makes an application and satisfies this Court that the affairs of the company are being conducted, or are likely to be conducted, in (a) an unlawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest.

Section 286 of the Act, it is an alternative to the winding up of a company and has been incorporated in the law to safeguard the minority shareholders from

oppression and mismanagement of majority shareholders and to ensure that the affairs of the Company must be conducted in a lawful manner and strictly in accordance with the Memorandum and the Articles.

While dealing with an application under this Section, the Court cannot look into dispute inter se the parties and this Section cannot be invoked for settlement of disputes in respect of intellectual property rights between the parties in which other forums are available under the relevant laws.

Conclusion: Section 286 of the Act did not provide any statutory right to any Director, Board of Directors, Chief Executive Officer or any person in management responsible for running affairs of the company, to file an application in the High Court. Since the petitioner was himself responsible for the management and administrative affairs of such Company and does not meet the strict requirement of the said Section. Therefore, he being the Chief Executive of the Company having 50% shareholding and a dispute with the Respondent No.2, is not entitled to relief under Section 286 of the Act especially when the allegations raised are not supported by any material on record.

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11. **Lahore High Court**
Writ Petition No.38872 of 2020
Iram Shahzadi v Government of Punjab etc.
https://sys.lhc.gov.pk/appjudgments/2020LHC2900.pdf

Facts: The petitioner, an Assistant Director of respondent PLRA, with grievance that she faced harassment at workplace sought intervention of Provincial Ombudsperson against another respondent/officer of PLRA, however, the respondent department in retaliation not only suspended her thrice but transferred her to far places. Ultimately Provincial Ombudsperson, upon her petition, directed the respondent to withdraw her suspension and also do not take any other action against her until her complaint is pending before the Ombudsperson, however, the same was not complied with. Through instant Writ petition, the petitioner sought execution of the direction issued by Ombudsperson as well as challenged legality of her suspension order and further registration of case for harassment at workplace against respondents/officers of PLRA.

Issue: Whether High Court can execute an order/direction of Provincial Ombudsperson under Harassment of Women at the Workplace Act, 2010?

Analysis: The answer to this question is that such powers have been given to Ombudsperson under Section 10(vi) of the Act which specifically provides procedure to punish any person who commits contempt of the orders passed by the Ombudsperson.

The only issue is the implementation of the order of Respondent No.8 which the Respondents are not adhering to is the order dated 25.08.2020. In that order the Ombudsperson requires the Respondent No.2 to withdraw the suspension order

which is not under the jurisdiction of Ombudsperson because order passed under the PEEDA Act has its own mechanism and procedure provided under the Act ibid.

Article 199 of the Constitution is very clear for seeking writ of mandamus to direct the Respondents to implement the order of the Respondent No.8 which is without any lawful authority because the Respondent No.2 cannot implement the order of the Respondent No.8 from the direction of this Court due to the powers provided under Section 10(vi) of the Act and the writ of mandamus is only maintainable if the Petitioner satisfies that there is no other alternate remedy is provided under the law.

Conclusion: This Court cannot exercise powers given to Ombudsperson under Section 10(vi) of the Act as the Court is bound to exercise its extra ordinary Constitutional jurisdiction where no other adequate remedy is provided by law but in the present case alternate remedy is available to the Petitioner before the Ombudsperson, therefore, this petition is not maintainable, hence ***dismissed***.

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12. **Lahore High Court**
Mst. Nasim Begum, etc. vs. Muhammad Nawaz,etc.
Civil Revision No.13 of 2004
https://sys.lhc.gov.pk/appjudgments/2020LHC2981.pdf

Facts: In a civil suit involving various factual issues, an intrinsic question regarding the true identity of sect/faith of a party to suit emerged which was decided by the courts below in favour of the respondent.

Issue: What are the parameters to ascertain the true identity of one's sect?

Analysis: It is open and shut that there is not any hard and fast rule/principle of universal application to test the faith of any person to determine this intricated issue, the Court has to probe the surrounding circumstances, the life style of the departed soul, the faith of his/her nearer. The opinion of the contestants, who are in fight to get the legacy of the deceased in one way or the other, definitely is not enough to conclusively determine the sect of a person, which, of course, was his personal belief. In such circumstances, it is always difficult to determine either one was Shia or Sunni. There is no cavil that as per section 28 of Mulla's Muhammadan Law, in this part of the world, majority of the Muslims is Sunni by sect, therefore, primary presumption qua a person tilts that he is follower of Sunni faith, but it definitely is rebuttable presumption.

Conclusion: The Court has to probe the surrounding circumstances, the life style of the departed soul, and the faith of his/her nearer. The opinion of the contestants, who are in fight to get the legacy of the deceased in one way or the other…In this part of the world, majority of the Muslims is Sunni by sect, therefore, primary

presumption qua a person tilts that he was follower of Sunni faith, but it definitely is rebuttable presumption.

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13. **Lahore High Court**
Inam Elahi etc. Vs. Mst. Saeeda Begum (deceased) through LRs etc
C.R.No.2931 of 2000
https://sys.lhc.gov.pk/appjudgments/2020LHC2973.pdf

Facts: The brother challenged the decisions of courts below favouring her two sisters (respondents) who had filed suit to nullify the sale & exchange deeds depriving them from their inheritance. The limitation was the major objection against the decisions of the subordinate courts.

Issue: What is the impact of limitation to claim the right of inheritance?

Analysis: There is no cavil that sanction of inheritance mutation is not essential to determine the right of succession, rather under the law of Shariah, on death of a Muslim, his estate automatically devolves among his heirs as per their shari shares. The law of Shariah being supreme, indeed, is not subordinate to any other law, policy, rules as well as judgment pronounced by Court of law… It is well established by now that right of inheritance cannot be defeated by law of limitation. In alike proposition where brothers deprived sisters of their due shares, the apex Court decreed latter's suits while ignoring law of limitation. See Khair Din vs. Mst. Salaman and others (PLD 2002 SC 677) and Mst. Gohar Khanum and others Vs. Mst. Jamila Jan and others (2014 SCMR 801)

Conclusion: It is settled law that the limitation does not run against the claiming of the right of inheritance. No doubt, that subsequent sale deed and exchange deed being registered one attained some presumption of correctness, but having been found superstructure of a fraudulent mutation, whereby the legal heirs were deprived of their shari shares, cannot be maintained and lost its efficacy when its foundation slipped away. Petition dismissed.

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14. **Lahore High Court**
Mst. Nabila Taj,etc. vs. Murad,etc
Civil Revision No. 2628/2009
https://sys.lhc.gov.pk/appjudgments/2020LHC2959.pdf

Facts: This civil revision is meant to challenge the decisions of the courts below wherein the application of revisionist filed under O. IX R. 13 was dismissed.

Issue: Whether upon transfer of a case on administrative side u/s.24-A of CPC, the parties were required to be informed through some notices, despite when the defendant had already been proceeded ex-parte by the previous court?

Analysis: As per para.6, Chapter XIII, Volume I, High Court Rules & Orders, it was not only usual, but mandatory to issue notice to the parties to impart them information that the case had been transferred from one Court to another and in absence of such notice, the defaulting party could well plead lack of knowledge that in which Court he had to appear… even an order of ex-parte did not deprive him to receive notice on transfer of suit on administrative side. Reliance placed on the judgment cited as *(1995 MLD 484)*

Conclusion: When ex parte case is transferred administratively to some other court, the issuance of notice by transferee court to the parties informing them of further proceedings by it is necessary.

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15. **Sindh High Court**
Asghar Ali, since deceased through legal heirs. and others vs. Mst. Batul Bai, since deceased through legal heirs, and others
Revision Application No.20/2017 (2) Second Appeal No.29/2017
[2020 SHC 1160]
https://eastlaw.pk/cases/Asghar-Ali-VSMst.-Batul.Mzk2ODAx

Facts: After about 25 years from the death of their predecessor the plaintiffs called upon all the defendants to disclose the assets and particulars of the properties of the family but they avoided to do so. Finally the main defendant agreed to sell the entire assets of the family together with all subsequently acquired properties and business at an agreed price but in spite of subsequent legal notices he did not fulfill the commitment and claimed an alleged agreement dated 12.10.1961 under which it was asserted that plaintiffs (including various ladies) had agreed to forego the accounts, partition and share in the family properties. Suit for declaration, mandatory injunction, accounts and partition was decreed in this regard by the learned trial Court and appeal was also decided in favour of the plaintiffs to the suit; hence the matter came to the High Court in appeal.

Issues: (i) Whether claim of a lady to get respective share upon ancestral properties, stands frustrated after lapse of several decades?

(ii) Whether successors are entitled to claim inheritance, if their predecessor died without claiming?

(iii) What is the effect of relinquishment deed qua inheritance rights?

Analysis: Regarding the hereditary disputes upon the properties, foremost effort of a Court of first instance should be (after examination of pleadings of respective parties) to separate disputed properties from undisputed one because the 'adjudication must only be for disputes only' and undisputed things should be allowed to take their course even if the same are from one and same tree. Limitation does not run in matter of inheritance. In such kind of cases one's being out of possession also carries no weight. If one's predecessor died without claiming / receiving his

share; even then his successors are entitled to claim inheritance. A right in inheritance can't be denied on any count including that of estoppels. The relinquishment deed by a woman, even if proved, would not be of any weight to deprive her of divine right in inheritance. No relinquishment can be said as voluntary and legal unless the person, executing such deed knows of her right and claim.

Conclusion: Claim of a lady to get respective share upon ancestral properties does not stand frustrated after lapse of several decades.

Successors are entitled to claim inheritance, if their predecessor died without claiming.

No relinquishment can be said as voluntary and legal unless the person, executing such deed knows of her right and claim.

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16. **Islamabad High Court**
W.P.No. 01/2020
Farrukh Nawaz Bhatti Versus Prime Minister of Pakistan, Prime Minister's Office, Islamabad and others
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-1-2020%20|%20Citation%20Awaited&cseTle=Farrukh%20Nawaz%20Bhatti-%20VS%20-Prime%20Minister%20of%20Pakistan&jgs=Mr.%20Justice%20Aamer%20Farooq%20&%20Mr.%20Justice%20Ghulam%20Azam%20Qambrani&jgmnt=/attachments/judgements/111896/1/Writ-Petition-01-2020_____________________________637430267374299255.pdf

Fact: Rule 4(6) of Rules of Business, 1973 deals with appointment of "Special Assistants to the Prime Minister with such status and functions as may be determined by the Prime Minister". Under this rule, respondent's no. 3 to 18 were appointed as Special Assistants to the Prime Minister and they were given the status of the Ministers of State or the Federal Ministers. In addition to it, respondent no. 3 is appointed as chairman of cabinet committee while respondent no. 4 to 6 are appointed as members of cabinet committee. The petitioner has challenged the Rule 4(6) being ultra vires to the Constitution of Islamic Republic of Pakistan, 1973. In addition to it, he challenged the appointment of respondent no. 3 to 18 as Special Assistants to the Prime Minister and appointment of respondent no. 3 to 6 as cabinet chairman and members.

Issue. **1.** Whether Rule 4(6) of Rules of Business, 1973 is ultra vires to the Constitution of Islamic Republic of Pakistan, 1973
2. Whether appointments of respondent no. 3 to 18 as Special Assistants to the Prime Minister are illegal and unlawful?

3. Whether respondent no. 3 can be legally appointed as chairman of cabinet committee and respondent no. 4 to 6 can be legally appointed as members of cabinet members?

Analysis The Rule 4(6) of the Rules of Business, 1973 came under challenge before this Court in case titled "Malik Munsif Awan Advocate Vs. Federation of Pakistan, etc." **(Writ Petition No.2058 of 2020)**, the Hon'ble Chief Justice of this Court, vide order dated 30.07.2020 dismissed the petition. Also it is not in violation of parameters for challenging the vires of statutes or delegated legislation settled in case reported as "Lahore Development Authority through D.G. and others Vs. Ms. Imrana Tiwana and others" **(2015 SCMR 1739).** The impugned Rule is also within framework of Constitution,

As far as issue regarding appointments of respondent no. 3 to 18 as Special Assistants to the Prime Minister is concerned, since no criteria is provided in any law for the credentials or the qualifications of Special Assistant to the Prime Minister, hence the Federal Government should look into the matter.

As far as issue regarding appointment of respondent no. 3 as chairman and respondents no. 4 to 6 as members of cabinet committee is concerned, a non-elected person cannot be a Member of the Cabinet so he cannot be a Member of the Committee of the Cabinet and even can chair the same. It would be in negation of the Constitution of Islamic Republic of Pakistan, 1973. Undoubtedly, on special requests, persons can be called in by the Committee but no person can be the Chairman or a Member of the Committee of the Cabinet, who is not a Member of the Cabinet. The conferment of status of Federal Minister to an Advisor is again only for the purpose of perks and privileges and the conferment does not make a person/advisor as a Federal Minister. He cannot address the parliament nor has any executive authority vested in him. He also is not a Member of the Cabinet and cannot take part in the proceedings of the same.

Conclusion. Rule 4(6) of Rules of Business, 1973 is not ultra vires to the Article 99 of the Constitution. The Federal Government should look into the matter regarding criteria and qualification of Special Assistants to the Prime Minister. Notification dated 25.04.2019 appointing respondent No.3 as Chairman and respondent number 4 to 6 as Members of the Committee of Cabinet on privatization is set-aside.

17. **Supreme Court of India**
Criminal Appeal No.826 Of 2020
Jayant Etc v. The State of Madhya Pradesh.
https://main.sci.gov.in/supremecourt/2020/12111/12111_2020_34_1502_24918_Judgement_03-Dec-2020.pdf

Facts: Appellants were caught while committing the offence under Mines & Minerals (Development & Regulation) Act, 1957 ("Mines and Minerals Act" hereafter). Mining officer filed case against them. Appellants/accused entered into plea bargain and deposited fine. Later on, upon news reports, concerned area magistrate suo moto directed the police to investigate the matter and to register an FIR against the appellants. Resultantly the case was registered against the Appellants for offences under section 4/21 of the Mines and Minerals Act and for offences under section 379 and 414 of Indian Penal Code.

The version of the appellants was that FIR cannot be registered for an offence under Mines & Minerals (Development & Regulation) Act, 1957, India as on a plain reading of Section 22, cognizance of the offence can be taken by the Magistrate only if there is a written complaint in that regard by the Mining Officer/authorizes officer.

Issue: Whether an FIR can be registered for offences under Mines and Minerals Act along with other offences, when cognizance of the offence under Mines and Minerals Act can only be taken by the Magistrate when there is a written complaint in that regard by the Mining Officer/authorizes officer?

Whether the provisions contained in Section 21,22 and other Sections of the Mines and Minerals Act operate as bar against prosecution of a person who has been charged with allegation which constitute offences under section 379/414 and other provisions of the Penal Code?

Whether the provisions of the Mines and Minerals Act explicitly and impliedly exclude the provisions of the Penal code when the act of an accused is an offence both under Penal Code and under the provisions of the Mines and Minerals Act?

Analysis: Reading of Section 22 would establish that cognizance of an offence punishable under the Mines and Minerals Act or the Rules made there under shall be taken only upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government but the learned Magistrate has not taken the cognizance rather in exercise of the suo moto powers conferred under section 156(3) of Cr.P.C has directed the concerned In-charge/SHO of the police station to lodge/register the crime case/FIR and directed initiation of investigation and directed the concerned In-charge/SHO of the police station to submit a report after due investigation.

Further, the prohibition contained in section 22 would be attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Mines and

Minerals Act and not for any act or omission which constitutes an offence under the Penal Code.

Sub-section 2 of section 23-A provides that where an offence is compounded, no proceeding or further proceeding, as the case may be, shall be taken against the offender thus, the bar under sub-section 2 of Section 23-A shall be applicable with respect to offences under the Mines and Minerals Act or any rule made thereunder. However, the bar contained in Sub-section 2 of Section 23-A shall not be applicable for the offences under the IPC, such as, section 379 and 414 IPC and at the same time, the criminal complaint/proceedings for the offences under the IPC which are held to be distinct and different can be proceeded further.

Conclusion: It cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under section 173, Cr.P.C. The bar contained in Sub-section 2 of Section 23-A shall not be applicable for the offences under the IPC, such as, section 379 and 414 IPC and at the same time, the criminal complaint/proceedings for the offences under the IPC which are held to be distinct and different can be proceeded further.

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18. **Supreme Court of India**
Criminal Appeal No. 38 of 2011
Rohtas & Anr. V. State of Haryanay
https://main.sci.gov.in/supremecourt/2010/10789/10789_2010_32_1501_25004_Judgement_10-Dec-2020.pdf

Facts: Three out of seven accused were acquitted by the High Court while conviction to the extent of remaining accused was maintained. Appellants/accused have preferred appeal against that order.

Issue: When three out of the seven accused have been acquitted by the High Court, whether the conviction for attempt to murder as part of an unlawful assembly could survive?

Whether case should not be converted to one under section 307 IPC simplicitor at an advanced stage and likewise?

Whether a charge framed with the assistance of Section 149 IPC can later be converted to one read with Section 34 IPC or even a simplicitor individual crime?

Analysis: Before the members of an 'unlawful assembly' can be vicariously held guilty of an offence committed in furtherance of common object, it is necessary to establish that not less than five persons, as mandatory prescribed under section 141 read with Section 149 of the IPC had actually participated in the occurrence. It is not uncommon when although the number of accused is more than five at the time of charge-sheeting, but owing to acquittals of some of them over the course of trial,

the remaining number of accused falls below five. It may be true that in such cases the charge under section 148 and 149 IPC would not survive.

This does not, however, imply that Courts can not alter the charge and seek the aid of Section 34 IPC (if there is common intention), that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. Section 221 to 224 of Cr.P.C which deal with the framing of charges in criminal trials, give significant flexibility to Courts to alter and rectify the charges. The only controlling objective while deciding an alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy.

In the present case both the common object and the common intention are traced back to the same evidence as each of them had individually attacked the complainant with a deadly object in furtherance of common intention of killing him. That apart, even the requirements of Section 34 IPC are well established at the attack was apparently premeditated. The incident was not in a spur of the movement. The appellants have previously threatened the complainant with the physical harm if he were to attempt to irrigate his fields. Their attack was thus preplanned and calculated. There is nothing on the record to suggest that the complainant caused any provocation. Specific roles have been attributed to each of the appellants by the injured and solitary eyewitness, establishing their individual active participation in the crime.

Conclusion: Appellant did not suffer any adverse effect when the High Court held three of them individually guilty for the offence of attempted murder, without the aid of section 149 IPC.

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19. **Supreme Court of the United States**
Espinoza v. Montana Department of Revenue, 591 U.S. ___ (2020)
https://www.supremecourt.gov/opinions/19pdf/18-1195_g314.pdf

Facts: The state of Montana passed a special income tax credit program in 2015 to help fund non-profit scholarship organizations to help low-income families pay for private schools. For tax payers, they were able to pay up to US$150 into the program and receive a dollar-for-dollar state tax credit to support it. Montana's constitution bars the uses of "any direct or indirect appropriations or payment" to any religious organizations or schools affiliated with religious organizations, also known as the "no-aid" provision, prohibiting public support for religious or sectarian institutions. To reconcile this provision with the scholarship program, the Montana Department of Revenue promulgated a rule prohibiting families from using the scholarships to send their children to religious schools. In 2018 the Montana Supreme Court ruled that under the no-aid provision, the state could not operate its scholarship tax credit program, as some recipients would use the scholarships funded by public tax credits to attend religious schools. Montana

parents sued, arguing that the scholarship program discriminated against them based on their religion by prohibiting them from using the scholarships to send their children to schools aligned with their religious values.

Issue: Whether the exclusion of religious institutions from student aid programs violates the religion clauses or the equal protection clause of the United States Constitution?

Analysis: In a 5-4 decision, the application of the no-aid provision discriminated against religious schools. From the opinion by Chief Justice Roberts (joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh), it was observed "we do not see how the no-aid provision promotes religious freedom. As noted, this Court has repeatedly upheld government programs that spend taxpayer funds on equal aid to religious observers and organizations, particularly when the link between government and religion is attenuated by private choices. A school, concerned about government involvement with its religious activities, might reasonably decide for itself not to participate in a government program. But we doubt that the school's liberty is enhanced by eliminating any option to participate in the first place."

Conclusion: The U.S. Supreme Court reversed and remanded the Montana Supreme Court's ruling holding that the application of Article X, Section 6 of the Montana Constitution violated the free exercise clause of the U.S. Constitution by barring from receiving public benefits on account of sending their children to religious schools/ institutions.

LIST OF ARTICLES: -

1. **JOURNAL OF CYBER SECURITY**
   https://doi.org/10.1093/cybsec/tyaa006
   Privacy threats in intimate relationships by Karen Levy and Bruce Schneier

2. **JOURNAL OF HUMAN RIGHTS PRACTICE**
   https://doi.org/10.1093/jhuman/huaa037
   Forum: Human Rights Practice in the Age of Pandemic by Richard Carver

3. **JOURNAL OF LEGAL ANALYSIS**
   https://doi.org/10.1093/jla/laaa003
   The Economics of Leasing by Thomas W Merrill

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FORTNIGHTLY CASE LAW BULLETIN

(15-12-2020 to 31-12-2020)

A Summary of Latest Decisions by the superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

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Corrigendum
In the Lahore High Court Fortnightly Bulletin, Volume I, Issue V, the title of the judgment of Hon'ble Supreme Court of Pakistan at Sr. No. 1 be read as following title along with link.

Supreme Court of Pakistan
Dr. Zohara Jabeen v. Muhammad Aslam Pervaiz etc.
C.A.762-L to 766-L of 2012
https://www.supremecourt.gov.pk/downloads_judgements/c.a._762_1_2012.pdf

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1. Supreme Court of Pakistan
Muhammad Hayat Wakeel etc. v.The State
Criminal Shariat Appeal No.12 of 2017
https://www.supremecourt.gov.pk/downloads_judgements/crl.sh.a._12_2017.pdf

Facts: Appellants' were convicted and sentenced by the learned trial Court for committing Qatl-i-Amd of three persons during a robbery at night which judgment was upheld by Federal Shariat Court.

Issue: The Identification Parade was conducted at Police Station and assailants' features were also not mentioned in the crime report. Whether such an ID Parade is legally valid?

Analysis: Argument that police station was not an appropriate place for the holding test identification parade is entirely beside the mark inasmuch as the law does not designate any specific place to undertake the exercise…. A combined reading of rule 26.32 of Police Rues with Article 22 of the Qanun-e-Shahdat Order, 1984, does not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts.
Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is equally inconsequential; Part C of the Lahore High Court Rules and Orders Volume-III (adopted by the High Court of Baluchistan) does not stipulate any such condition. In the natural course of events, in an extreme crisis situation, encountered all of a sudden, even by a prudent onlooker with average nerves, it would be rather unrealistic to expect meticulously comprehensive recollection of minute details of the episode or photographic description of awe inspiring events or the assailants. The pleaded requirement is callously artificial and, thus, broad identification of the assailants, in the absence of any apparent malice or motive to substitute them with the actual offenders, is sufficient to qualify the requirement of Article 22 of the Order ibid.

Conclusion: Law does not designate any specific place to undertake the exercise of identification parade. Reference to omission of assailants' features in the crime report as a ground to discard the test identification parade is inconsequential since Part C of the Lahore High Court Rules and Orders Volume-III does not stipulate any such condition. Hence the ID Parade is valid.

2. **Supreme Court of Pakistan**
Province of Punjab v. Javed Iqbal
C.P.1554-L to 1573-L of 2020
https://www.supremecourt.gov.pk/downloads_judgements/c.p._1554_l_2020.pdf

Facts: Respondent while working as Forest Guard was departmentally proceeded against under the Act by way of show cause notice dated 19.12.2009 and was awarded major penalty vide order dated 23.10.2012. During the course of the said inquiry the petitioner retired from service on 15.04.2010. The departmental proceedings initiated against the petitioner on 19.12.2009 continued and were finalized on 23.10.2012, more than two years after his retirement.

Issue: Under the proviso to section 21 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 departmental proceedings initiated against a retired employee shall be finalized not later than two years of his retirement.Whether the proviso is directory or mandatory?

Analysis: In order to determine whether a provision is directory or mandatory, the duty of the court is to try to unravel the real intention of the legislature. The ultimate test is the intent of the legislature and not the language in which the intent is clothed. The object and purpose of enacting the provision provide a strong and clear indicator for ascertaining such intent of the legislature. Intention of the legislature is to be ascertained not only from the phraseology of the provision but also by considering its nature, its object, and the consequences which would follow from construing it one way or the other...… A provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding. One of the important test that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, the court would say that that provision must be complied with and that it is obligatory in its character. There are three fundamental tests, which are often applied with remarkable success in the determination of this question. They are based on considerations of the scope and object, sometimes called the scheme and purpose, of the enactment in question, on considerations of justice and balance of convenience and on a consideration of the nature of the particular provision, namely, whether it affects the performance of a public duty or relates to a right, privilege or power – in the former case the enactment is generally directory, in the latter mandatory…….a statute which regulates the manner in which public officials exercise the power vested in them is construed to be directory rather than mandatory, especially when neither private or public rights are injured or impaired thereby. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive and directory in form, is in fact peremptory or mandatory as a general rule…..where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such

a duty within the specified timeframe is mandatory….Where a public official can impose liability on a retired employee if the power is exercised within a certain statutory timeframe and there is a delay in the exercise of such power on the part of a public official, no such liability can be imposed after the lapse of the statutory period…..The word shall, used in the proviso, is commonly construed as mandatory. The phrase not later than two years in the proviso passes for a negative phrase and gives an imperative effect. Such negative phrases or words are prohibitive in essence, and are ordinarily used as a legislative device to make a provision in a statute mandatory. Therefore, negative words used in a provision that prescribes some statutory requirement makes, as a general rule, that requirement mandatory even if no penalty is prescribed for non-compliance of that requirement.

Conclusion: On the above considerations, the court concluded the proviso as mandatory.

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3. **Lahore High Court**
Mrs. Azra Riaz v. Addl. District Judge & others
Writ Petition No. 32552/2015
https://sys.lhc.gov.pk/appjudgments/2020LHC3278.pdf

Facts: The petitioner/owner of premises rented it out through oral tenancy. The said tenant stopped the payment of agreed rent and without permission of the petitioner, sublet the rented premises to another person/respondent. The petitioner filed ejectment petition before Rent Controller, which was accepted. The order was assailed by the respondent with the plea that petitioner is not owner of the premises and the appellate court accepted the appeal and remanded the matter to Rent Tribunal for framing additional issue about relationship of tenancy between the petitioner and respondent.

Issue: Whether a tenant, who does not claim himself to be an owner of the rented premises, can deny the title of landlord and refuse to pay rent?

Analysis: It is a settled principle of law that once a tenant is always a tenant. During the subsistence of tenancy, tenant has no right to challenge the title of landlord. It is a settled proposition of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law.

Conclusion: A tenant cannot deny the title of the landlord and cannot challenge the same, unless he is a rival claimant himself, and in such case he must seek a declaration of the competent court to that effect.

4. **Lahore High Court**
Muhammad Khalid Javed and others v. Lahore Development Authority and others
Writ Petition No.48219 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3294.pdf

Facts: The petitioners were joint owners of land measuring 27 kanals. In 1985 at the time of launching Johar Town Housing Scheme by respondents, an agreement was executed between petitioners and respondents wherein the petitioners were allowed division of the property inter se, as per their own settlement, to raise construction thereon and also to erect a boundary wall across the area. However, on the pretext of constructing road for the public, the respondents demolished that boundary wall without issuing any show cause notice and affording opportunity of hearing to the petitioners, despite of the fact that a civil suit was already pending regarding the intended action of respondents LDA.

Issues: **i.** Whether writ is maintainable regarding a lis which is already subject matter of a civil suit?

ii. Whether LDA can demolish a boundary wall erected upon privately owned land in consonance with agreement executed between them, for the purpose of construction of a road without giving notice and affording opportunity of hearing to the affectees?

Analysis: The *lis* before civil court is regarding title, declaration and mandatory injunction whereas this constitutional petition has been filed against "the illegal action" of the respondents, which not only violates petitioners' fundamental right to privacy of home guaranteed under Article 14 of the Constitution but at the same time infringed their fundamental right of holding property as provided under Article 23 of the Constitution as well as undermined protection of their property rights as guaranteed by Article 24 of the Constitution. More so, the actions of the respondents have seriously jeopardized the constitutional protection of due process of law provided under Article 10-A of the Constitution, therefore, actions of the respondents which clearly breached the fundamental rights of the petitioners provided and protected under the Constitution, was amenable before the High Court within the meaning of Article 199 of the Constitution, which mandates that High Court on the application of any aggrieved person can make an order or give such directions for the enforcement of any of the fundamental rights.

In this case, the property is owned by the petitioners therefore, they cannot be termed as unauthorized occupants of the property as provided under Section 39 of the LDA Act and thus the provision to eject them under Section 39 is not applicable, hence action taken by the respondents is unwarranted and uncalled for. On the other hand, perusal of section 40 of the Act reveals that it deals with the removal of buildings but this is also subject to providing opportunity of hearing as per Section 40(2) of the Act. The respondents-LDA under this section can only

take an action of removal of building, structure, work or land if it is erected, constructed or used in contravention of the provisions of the Act or of any rule, regulation or order made thereunder. The Act does not provide or give mandate to LDA for taking law in their own hands and demolish the property or land without hearing out the parties and fulfilling the mandatory requirements of the Act.

Conclusion: **i.** Where civil suit does not provide an alternative effective remedy then pendency of civil suit does not bar exercise of writ jurisdiction by the High Court.

ii. The respondents bypassed the requirements of law and did not give any notice to the petitioners and without providing them an opportunity of hearing arbitrarily took recourse to drastic measures, which is though provided in law but not intended to be adopted in such a manner which negates not only the mandatory requirements provided under the Act but also hampers the petitioners' fundamental right of due process of law.

Petition is allowed and respondents' actions are declared contrary to law.

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5. **Lahore High Court**
Abdul Qadir v. The State
2020 LHC 3120
I.C.A. No.38 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3120.pdf

Fact: Appellant lodged FIR under Sections 395, 365, 170, 171 PPC with the allegation that the respondent along with his co-accused hijacked the Oil Tanker driven by him&abducted its crew. The respondent challenged his arrest in writ jurisdiction of High Court, which was accepted and the respondent was ordered to be released and all the proceedings taken by police during his physical remand were quashed. Appellant challenged that order through the Intra Court Appeal.

Issue: Whether Intra Court Appeal is competent against an order passed in writ jurisdiction of the High Court whereby a person was ordered to be released from custody and proceeding taken by the police during his physical remand were quashed?

Analysis: The Court observed that under Section 3 (1) of the Law Reforms Ordinance, 1972 Intra court appeal is competent when a decree or final order is passed by a Single Judge in the exercise of his original civil jurisdiction and under section 3 (2) of the Ordinance when order is passed under article 199 of the constitution except an order under sub-paragraph (b)(i) of that Article (relating to habeas corpus). The Court with the help of a number of judgments including AIR 1923 PC 148, PLD 1968 SC 171, PLD 1993 SC 109, PLD 1996 SC 543, [1921] 2 AC 570, [(1943) AC 147], PLD 1996 SC 543, elaborated the term 'original civil jurisdiction' and deduced that the proceedings in which the impugned order was passed was

criminal in nature, therefore Intra-Court appeal under sub-section (1) of Section 3 of the ordinance was not competent.

The Court rejected the argument that the second part of the impugned order regarding quashment of proceedings fell in the domain of article 199(a) (ii); so intra court appeal was maintainable against it**.** The Court relying upon the decision of Lahore High Court reported as PLD 1975 Lah. 1372 held that Writ Petition, where impugned order was passed, was filed under Article 199(1) (b) (i) and not under Article 199(1)(a) of the Constitution and the learned Single Judge had also passed the impugned order under the former; therefore appeal was barred even under Section 3(2) of the LRO.

Conclusion: Intra Court Appeal against the decision of single judge passed in writ jurisdiction whereby a person was ordered to be released from custody and proceeding taken by the police during his physical remand were quashed, was not competent.

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6. **Lahore High Court**
Dr. Jamshed Dilawar etc. v. Government of the Punjab through Chief Secretary etc.
ICA No. 15249/2020
2020LHC 3130
https://sys.lhc.gov.pk/appjudgments/2020LHC3130.pdf

Facts: During their ad-hoc appointment as medical Officers, the appellants appeared before the Punjab Public Service Commission against the regular posts but remained lower in merit, hence they were not appointed. They submitted before the Hon'ble Court that a direction may be passed to the respondents to send a requisition for their regularization as they have been working with the respondents for a considerable period of time and have already undergone the process of recruitment before the PPSC and qualified the same.

Issues: Whether the appellants can seek regularization on the basis of their earlier attempt and without fresh recourse to the PPSC?

Analysis: Appellants' contention that they are not required to go before the PPSC is misguided because although they earlier participated in the recruitment process, but did not come on merit. Ad-hoc appointees cannot seek regularization as of right rather they are dependent on following the process undertaken by the appointing authority. Subsequent appearance of the appellants before the PPSC in the year 2019 does not liberate them from the requirement of undergoing the process for selection by the PPSC. Even if the department goes to consider them for regularization, they have to be selected by the PPSC for appointment on merit.

Conclusion: The Hon'ble Court held that for regularization the appellants have to undergo thefresh process for selection by the PPSC on merit.

7. **Lahore High Court, Lahore**
Ghulam Rasool v. M/s Jam Brothers & Company etc
Intra Court Appeal No.198 of 2019
https://sys.lhc.gov.pk/appjudgments/2020LHC3153.pdf

Facts: Investigation was conducted and cancellation was recommended before the Anti-Corruption Court which disagreed with the direction of reinvestigation u/s 5(6) of Pakistan Criminal Law Amendment Act 1958. The said order was challenged and the petition was set aside to the extent of issuance of direction for reinvestigation of the case.

Issue: Whether the Anti-Corruption Court was competent to pass the direction for the reinvestigation of the case?

Analysis: Under sub section 6, of section 5 of the Act, the Anti-Corruption Court is competent to direct for investigation. It also, cannot be restrained from asking to recollect further or more evidence.

Conclusion: Anti-Corruption Court was competent to pass the direction for the reinvestigation of the case.

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8. **Lahore High Court Lahore**
Muhammad Ashfaq @ Nanna v. Additional Sessions Judge etc.
Writ Petition No: 1903-Q of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3159.pdf

Facts: Accused persons/respondentswere convicted and sentenced. The respondents had preferred appeal against the said judgment. During pendency of the appeal, the respondents had moved an application for recording of additional evidence. The learned appellate court, through the order in question dated 10.02.2020, had accepted the said application and while setting aside the above said judgment of the learned trial court, had remanded the case, with a direction to record the additional evidence and decide it afresh. The said order was challenged by the present petitioners.

Issue: Whether the learned appellate court has rightly accepted the application for production of additional evidence while setting the judgment of conviction?

Analysis: The findings of the learned appellate court, regarding setting aside of conviction of the respondents, being totally unjustified and against the procedure laid down u/s 428 of Cr.P.C, are turned down. However, as the document intended to be brought on the record, is public record, surely beneficial to reach at the just conclusion, therefore, the above said application has rightly been allowed.

Conclusion: The appeal was partly accepted to the extent of production of additional evidence; however, it was dismissed to the extent of setting aside conviction.The learned trial courts was directed to record additional evidence and transmit the same to the

learned appellate court, which on the basis of whole of the record, shall decide the appeal, in accordance with law, which shall be deemed to be pending there.

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9. **Lahore High Court, Lahore**
The State v. Qari Ahmed Khan etc.
Capital Sentence Reference No.4-RWP of 2009
Criminal Appeal No.250-Tof2006
https://sys.lhc.gov.pk/appjudgments/2020LHC3162.pdf

Facts: On 30.07.2004 the then finance Minister Mr. Shaukat Aziz had addressed a jalsa at Jafer in connection with by-election in NA59Attock City in which he was a candidate. The car of the Minister travelled about ten yards distance when a young man suddenly dashed himself with the leftdoor of the car. It was driving seat of the car. There was a loudexplosion. The said person had explosive on his body. The driverof the car namely Abdul Rehman was seriously injured in theexplosion. He expired at the spot. The suicide attacker was also killed. Some others were seriously injured and from them the four succumbed to the injuries.

Issue: i. Whether the evidence which has been disbelieved qua the acquitted co-accused of the appellants, can be believed against the appellants.
ii. Whether the fact of abscondence of an accused can be used as a corroborative piece of evidence.

Analysis: (I) If a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in unofalsus in omnibus. The august Supreme Court of Pakistan in Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013 reported as PLD 2019 Supreme Court 527 has also affirmed the above view. Therefore, the prosecution witnesses who were disbelieved with regard to their assertion that Qari Muhammad Suleman son of Muhammad Azam (since acquitted) was also a part of the criminal conspiracy, cannot be believed in this respect with regard to the appellants.

(II) In the cases of Muhammad Arshad v. Qasim Ali (1992 SCMR 814), Pir Badshah v. State (1985 SCMR 2070) and Amir Gul v. State (1981 SCMR 182) it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive pieces of evidence in the shape of ocular account and the alleged confessions, judicial and extrajudicial, have been disbelieved, therefore, no conviction can be based on abscondence alone. Reliance is also placed on the cases of “Muhammad Farooq and another Vs. The State” (2006 SCMR 1707) and “Nizam Khan and 2 others Vs. the State” (1984 SCMR 1092) and Rohtas Khan vs. The State (2010 SCMR 566).

Conclusion: **i.** No.If a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole against all accused persons facing trial in the same case.

ii. Yes. The abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence.

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10. **Lahore High Court, Lahore**
Muhammad Saleem v.The State etc.
Crl. Appeal No. 36 of 2015
Crl. Misc. No. 3260 of 2020 21.10.2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3268.pdf

Facts: A direction has been sought for fixation of the titled criminal appeal, before a learned Single Bench. It is contended that the appeal relates to the judgment dated 28.01.2015, of the learned Additional Sessions Judge, Bahawalpur, towards imprisonment for life, to the petitioner, hence it is proceed able before a learned Single Bench. Therefore, its fixation before the Division Bench is totally unjustified.

Issue: Whether all the matters, arising out of the same judgment, should be fixed before and decided by one forum or otherwise.

Analysis: In the situation in hand, the principle that one forum should adjudge a judgment of a subordinate court and challenged through different modes, would only be applicable, if an appeal against acquittal, filed under Section 417 of Code of Criminal Procedure, 1898 is admitted for regular hearing and notice(s) to acquitted accused is/are, issued. Prior to that, the respective matters shall proceed in respective forums.

Conclusion: It was held that, till happening of the above mentioned occasion i.e. admission of the above mentioned appeal, Crl. Misc. No. 3260 of 2020 in Crl. Appeal No. 36 of 2015 4 against acquittal and issuance of notice to acquitted accused, the titled appeal is proceed able before a learned Single Bench. Resultantly, the application in hand is allowed and request made therein for sending the titled appeal to the learned Single Bench is accorded.

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11. **Lahore High Court**
Altamush Saeed v. Govt. of Punjab etc.
2020 LHC 3336
ICA No.55556 of 2020
https://sys.lhc.gov.pk/appjudgments/2020LHC3336.pdf

Facts: Through Public interest petition the petitioners sought strict enforcement of the Punjab Compulsory Teaching of the Holy Quran Act, 2018 (The Act) to enable

the Muslims, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to understand the meaning of life according to the Holy Quran and Sunnah.

Issues: Whether the Holy Quran Act, 2018 is not being implemented in its letter and spirit by the Government?

Analysis: The Secretary School Education Department Government of the Punjab and the Chairman, Punjab Curriculum & Textbook Board got recorded their separate statements pledging that the Act shall be enforced in letter and spirit and implemented in all educational institutions. From the next academic year a notification shall be issued that no private or public school shall prescribe or suggest any kind of book or reading material without getting its approval from the Government or its authorized officer/department/ organization and in case of its violation all kind of legal actions shall be taken. All steps shall be taken to ensure that every book that is to be taught in any school does not contain any offensive material about the teaching of Holy Quran & Sunna, Islamic Ideology and pious personalities of Islam.

Conclusion: Keeping in view the respective statement of both the respondents the Hon'ble Court directed them to submit compliance report before the commencement of next academic year about strict implementation of the Act.

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12. Sindh High Court

Peoples University of Medical & Health Sciences for Women & Othersv. Pakistan & Others
C.P. Nos.D-4953, 5036, 5158, 5237 of 2020
2020 SHC 1312
http://43.245.130.98:8056/caselaw/view-file/MTQ4MTc2Y2Ztcy1kYzgz

Facts: The petitioners brought under question the vires of Section 4 and 18 of the Pakistan Medical Commission Act, 2020 (PMC Act, 2020) and the position of notification issued by the respondents for withholding of the admission process already initiated by the medical colleges under the Pakistan Medical and Dental Council Ordinance 1962. According to them, Medical and dental colleges admissions tests (MDCAT) could not be conducted until the academic board is set-up and a national curriculum is issued under the PMC Act, 2020. They also alleged that the Regulations framed by the erstwhile PMDC and decisions taken by the Ad-hoc Council were saved and cannot be undone by inserting the provisos to Section 50 (2) in PMC Act, 2020.

Issues: i. Whether Sections 4 and 18 of the PMC Act, 2020 are ultra vires the Constitution and have no legal effect?

ii. Whether Section 50 of PMC Act, 2020 actually repealed the Pakistan Medical and Dental Council Ordinance, 1962?

iii. Whether until the setting-up of academic board and a national curriculum, MDCAT may not be conducted under the PMC Act, 2020?

Analysis: Under Section 4 of the PMC, Act, 2020 the Council is to be notified after approval of the Prime Minister. Though the qualification and experience of each member to be appointed is clearly mentioned in this section, but no guiding principle, procedure or modus has been assimilated to structure the discretionary powers or to begin with the recruitment or appointment process of members of the council is provided. However, keeping in view of the Section 15 of the PMC Act 2020 and on the basis of doctrine of reading down of a statute, this very section appears intra vires. The Hon'ble Court directed the Ministry of National Health Sciences, Regulations and Coordination, Government of Pakistan to frame Rules within 90 days for the appointment of members of the Council so that future appointments may be made in accordance with prescribed procedure.

Before the PMC Act, 2020, MDCAT was being taken by "Admitting University" of a Province but in fact the matter was being regulated by PMDC constituted under the Federal piece of legislation and not by any Provincial law. Under Article 142 of the Constitution, Parliament shall have exclusive power to make laws with respect to any matter in the FederalLegislative List. Under the Federal Legislative List, the Parliament is competent to make legislation according to entry No.11 as it pertains to the legal, medical and other professions, whereas Entry No.12 relates to the standards in institutions for higher education and research, scientific and technical institutions. No doubt that qualifying the MDCAT is also a gateway to the higher education i.e. the medical profession. So Section 18 or 4 of the PMC Act 2020 have not been enacted beyond the legislative competence. No fundamental right of any student/candidate is infringed if a centralized or unified MDCAT is conducted under the PMC Act, 2020 nor it is a vested right of any student to claim MDCAT to be continued under the old regulations of PMDC/PMC through Admitting University of Province despite centralized policy.

Section 50 of the PMC Act, 2020 repealed Pakistan Medical and Dental Council Ordinance, 1962. While discussing different principles of interpretation about a 'Proviso' as enunciated through case law, the Hon'ble Court observed that Section 50 is not contrary to established principles of law.

Neither Academic Board was constituted nor the National Medical Authority, but the date of MDCAT was announced in absenteeism of basic components of PMC, Act, 2020. Since the connotation and magnitude of above sections were found quite meaningful with great weightage therefore the Hon'ble Court restrained the Pakistan Medical Commission from holding the MDCAT and directed to first appoint National Medical & Dental Academic Board and the National Medical Authority to review and formulate the examination structure and standards for the MDCAT and announce common syllabus for conducting MDCAT.

Conclusion: While holding that Section 18 is neither discriminatory nor beyond the legislative competence of the Parliament and no illegality or ultra-vires attaches to section 4 and 50 of the PMC, Act, 2020, the Hon'ble Court disposed of the petitions and directed the Pakistan Medical Commission to proceed for mandatory structuring of the National Medical & Dental Academic Board and the National Medical Authority and also to formulate the examination structure and develop common syllabus, before the MDCAT.

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13. **Sindh High Court**
Irshad Ali Shah, Ubaid ullah & Others v. Province of Sindh & Others
C.P.No.S-484 of 2020
2020 SHC 1372
https://eastlaw.pk/cases/Ubaidullah-OthersVSProvince-Of-Sindh.Mzk3MDYx

Facts: The petitioners contended that they are respectable persons but Police is harassing them while involving in false cases, therefore they may be protected from such harassment by ordering the police to get permission from High Court, if they are required to be involved in any criminal case.

Issues: Whether any condition may be attached with the police to seek permission from High Court for registration of FIR against an accused?

Analysis: No condition could be attached with the police to seek permission from High Court for registration of FIR against the accused persons. If such condition is imposed, it would be contrary to law and illegal. The registration of FIR is a legal course, same could hardly be said to be harassment, which could be prevented by this Court in exercise of its constitutional jurisdiction.

Conclusion: No condition could be attached with the police to seek permission from High Court for registration of FIR. The registration of FIR is a legal course, same could hardly be said to be harassment, which could be prevented by this Court in exercise of its constitutional jurisdiction.

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14. **Supreme Court of Azad Jammu And Kashmir**
Azad Govt. & others v. Barrister Adnan Nawaz and others
Civil Review Petition No.22/2020
http://ajksupremecourt.gok.pk/wp-content/uploads/2020/12/Azad-Govt.-others-v.-Barrister-Adnan-Nawaz-and-others.pdf

Facts: Petitioners have sought the review of judgment dated 17.07.20 wherein the appointments of the private petitioners as judges of Azad Jammu and Kashmir High Court have been declared ultra vires the constitution and without lawful authority.

Issue: I Whether the office of President comes within the definition of aggrieved person?

ii Whether the Government can contest the case of private petitioners?
Iii Whether the rule of primacy is attracted in present case?

Analysis: i As no observations relating to the office of President have been made in the judgment under review so he does not come within the definition of an aggrieved person.

ii There was no legal justification for the Government to come forward for contesting the case of the private petitioners. Similarly, the private petitioners cannot be associated with government for filing review petition. They should have filed the independent review petition.

iii The Rule of Primacy has not been applied. As under law in case of difference of opinion between the consultees, the primacy shall be given to the opinion of the Chief Justice of Azad Jammu and Kashmir and it is not the discretion of the Executive to pick the names of the candidates at his own choice. In view of the contents of the summary, it becomes crystal clear that the Rule of Primacy was neither attracted nor applied.

Conclusion: It was held that:

i The office of President does not come within the definition of an aggrievedperson.
ii Government cannot contest the case of Private Petitioners rather they should have had filed independent review petitions.
iii Rule of Primacy does not attract in this case.

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15. **Islamabad High Court**
W. P. No. 3808/2020
Capt. (Rtd) Muhammad Safdar v. Federation of Pakistan through Secretary Interior, Islamabad
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-3808-2020%20|%20Citation%20Awaited&cseTle=Capt%20Ret%20Muhammad%20Safdar%20VS%20FOP%20&%20others&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah&jgmnt=/attachments/judgements/123910/1/WP-3808-2020_637435576386304657.pdf

Fact: Petitioner is seeking a direction to the Ministry of Interior to liaison with the Inspector Generals of Police of the respective provinces to provide him with security.

Issue: Whether High Court has jurisdiction to direct executive to provide security to petitioner?

Analysis: The function to provide security exclusively falls within the executive domain and petitioner has already informed the concerned authorities. It is for the authorities to assess the requirements of providing security and no direction can be given by a High Court while exercising jurisdiction under Article 199 of the Constitution.

Conclusion: The petition is dismissed. Needless to mention that this Court expects that the State will fulfill its constitutional obligation and provide security to every citizen of Pakistan without discrimination.

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16. **Islamabad High Court**
W.P.No. 194/2020
Mrs. Nusrat Rasheed and another Versus Federation of Pakistan through Secretary, M/o Education and others
http://mis.ihc.gov.pk/frmRdJgmnt.aspx?cseNo=Writ%20Petition-194-2020%20|%20Citation%20Awaited&cseTle=Nusrat%20Rasheed%20&%20others-%20VS%20-FOP,%20etc&jgs=Honourable%20Mr.%20Justice%20Miangul%20Hassan%20Aurangzeb&jgmnt=/attachments/judgements/112516/1/W.P-194-2020_________________________637432878816664306.pdf

Fact: The petitioners have been serving as teachers in the Federal Directorate of Education (FDE) on deputation basis for several years. They have assailed notifications issued by the FDE whereby they were repatriated to their respective parent departments. According to them, since their absorption in FDE is under process and theirparent departments had issued NOC for their absorption, so they had acquired a vested right and had a legitimate expectation for their absorption in the FDE.

Issue: i. Whether a process of selection is necessary for appointment on deputation?
ii. Whether a person can be appointed by transfer to any post in the F.D.E. other than the post of elementary school teacher (BPS-14)
iii. Whether appointment by transfer reserved for 10% posts of elementary school teacher (bps-14) in the FDEis to be made only by absorbing the deputationists serving against the said post?
iv. Whether a person can be appointed on deputation to any post in the FDE which the recruitment rules require to be filled by promotion or initial appointment?
v. Whether a deputationist is liable to be repatriated to his/her parent department upon completion of maximum deputation period of five years?
vi. Whether the petitioners' lien with their respective parent departments had terminated upon the issuance of N.O.C for their absorption in the F.D.E.

Analysis: 1.Adeputationist is a government servant, who is appointed or transferred through the process of selection to a post in a department or service altogether different from the one to which he permanently belongs.A person cannot be appointed on deputation unless he or she has been subjected to a process of selection. An

appointment of an officer on deputation basis would be void if such appointment is not preceded by a process of selection of the officer in question.

As far as issue no. 2 is concerned,a post which is required by the rules to be filled by initial recruitment cannot be filled by promotion, transfer, absorption, or by any other method which is not provided by the relevant law and rules.

As far as issue no. 3 is concerned, although the APT Rules do not expressly provide for the absorption of a deputationist to be one of the modes of an appointment by transfer, in the case reported as 2013 SCMR 1752 (In the matter of contempt proceedings against Chief Secretary, Sindh and Others), the Hon'ble Supreme Court, held inter alia that “absorption” itself is an appointment by transfer.

As far as issue no. 4 is concerned, Establishment Division’s O.M. No.1/28/75-D.II/R.3/R.I dated 11.04.2000 makes it clear that “where a post proposed to be filled is reserved under the rules for departmental promotion, appointment on deputation may be made only if the department certifies that no eligible person is available for promotion or the eligible person is found unfit for promotion by the appropriate DPC / Selection Board.” Furthermore, it is provided that “in such cases, deputation may be approved till such time a suitable person becomes available for promotion. “Additionally, Establishment Division’s O.M. No.1/28/75-R.I dated 14.03.1995 (Serial No.29 of the Esta Code) provides inter alia that “no deputation proposals will be entertained which will adversely affect the method of appointment to the post as laid down in the recruitment rules.” The mere fact that the post required by the recruitment rules to be filled by promotion or initial appointment is occupied by a deputationist shall not pose as an obstacle in the initiation of the process for filling up the post in accordance with the method of appointment envisaged by the recruitment rules.

As far as issue no. 5 is concerned, upon completion of the maximum permissible deputation period of five years, it is obligatory upon the borrowing department to repatriate a deputationist to his/her parent department. Failure on the part of the borrowing department to repatriate a deputationist who completes the maximum permissible deputation period of five years would be an actionable wrong. The only exception to the said rule is that where the posting of a deputationist is on the basis of the wedlock policy.In such situation, if the borrowing department does not want to repatriate a deputationist appointed under the wedlock policy or the parent department is inclined to extend the deputation period of such deputationist beyond five years, such deputationist can continue serving for a reasonable period beyond the maximum permissible period of five years by virtue of the proviso to Rule 20A of the A.P.T. Rules. However, neither the parent department nor the borrowing department is under an obligation to keep the exempted categories on deputation for the complete five years or beyond.To hold in favour of such a deputationist would be tantamount to disregarding the innumerable authorities from the Superior Courts that no legal or vested rights were available to a deputationist to serve his entire period of deputation in borrowing department.

As far as issue no. 6 is concerned, Rules provides that on confirmation in a permanent post, a civil servant shall acquire a lien in that post and shall retain it during the period when he holds a temporary post other than the post in the service or cadre against which he was originally appointed.

Conclusion:

A person cannot be appointed on deputation unless he or she has been subjected to a process of selection. Otherwise such appointment would be void.

1. The deputationists appointed to posts in BPS-16 and above in the F.D.E. cannot be considered for appointment by transfer in the F.D.E. since they do not hold an appointment on regular basis under the Federal Government.
2. The APT Rules do not make absorption of deputationists to be the only mode of appointment by transfer. Therefore, the 10% quota reserved for appointment by transfer to the post of EST (BPS-14) under the F.D.E. is not to be filled only by the absorption of deputationists.
3. Appointments on deputation in the F.D.E. without the fulfillment of the conditions laid down in the said O.M. would be unlawful and the incumbents would be liable to immediate repatriation to their respective parent departments so as to pave the way for appointment by promotion or initial appointment, as the case may be, strictly in accordance with the recruitment rules.
4. Deputationist can continue only on the basis of wedlock policy but this exception does not create any legal or vested rights to a deputationist to serve his entire period of deputation in borrowing department. An order for the repatriation of a deputationist would imply that the process initiated for the permanent absorption of the deputationist had been brought to an end.
5. A deputationist retains his/her lien in the parent department until he/she is confirmed in the borrowing department. The lien of a permanent civil servant cannot be terminated even with his consent, and that the same could be terminated only when he was confirmed against some other permanent post.

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17. **Supreme Court of India**
Civil Appeal No. 3100 of 2020
Samir Agrawal v. Competition Commission of India &Ors.https://main.sci.gov.in/supremecourt/2020/16963/16963_2020_33_1502_25089_Judgement_15-Dec-2020.pdf

Facts: Appellant has filed application with Competition Commission of India against UBER India and OLA rides by alleging that Uber and Ola provide radio taxi services and essentially operate as platforms through mobile

applications ["apps"] which allow riders and drivers, that is, two sides of the platform, to interact. A trip's fare is calculated by an algorithm based on many factors. The apps that are downloaded facilitate payment of the fare by various modes and due to algorithmic pricing, neither are riders able to negotiate fares with individual drivers for rides that are booked through the apps, nor are the drivers able to offer any discounts. Thus, the pricing algorithm takes away the freedom of riders and drivers to choose the best price on the basis of competition, as both have to accept the price set by the pricing algorithm.

Issue:

i. Whether the pricing algorithm used by Ola and Uber artificially manipulates supply and demand, guaranteeing higher fares to drivers who would otherwise compete against one and another?

ii. Whether Ola and Uber apps function akin to a trade association, facilitating the operation of a cartel and since Ola and Uber have greater bargaining power than riders in the determination of price, whether they are able to implement price discrimination?

iii. Whether such pricing appears to be similar to the 'hub and spoke' arrangement as understood in the traditional competition parlance?

Analysis:

Supreme Court approved/upheld the following reasons/analysis of Competition Commission of India:

i. In case of app-based taxi services, algorithm pricing seemingly takes into account personalised information of riders along with other factors e.g. time of the day, traffic situation, special conditions/events, festival, weekday/weekend which all determine the demand-supply situation etc. Resultantly, the algorithmically determined pricing for each rider and each trip tends to be different owing to the interplay of large data sets. The dynamic pricing can and does on many occasions drive the prices to levels much lower than the fares that would have been charged by independent taxi drivers. Thus, there does not seem to be any fixed floor price that is set and maintained by the aggregators for all drivers and the centralized pricing mechanism cannot be viewed as a vertical instrument employed to orchestrate price-fixing cartel amongst the drivers.

ii. Ola and Uber are not an association of drivers, rather they act as separate entities from their respective drivers. In the present situation, a rider books his/her ride at any given time which is accepted by an anonymous driver available in the area, and there is no opportunity for such driver to coordinate its action with other drivers. This cannot be termed as a cartel activity/conduct through Ola/Uber's platform. Further, there is absence of an agreement, understanding or arrangement, demonstrating/indicating meeting of minds, which is a sine qua non for establishing a contravention under Section 3 of the Act

iii. In the present case, the drivers may have acceded to the algorithmically determined prices by the platform (Ola/Uber), this cannot be said to be

amounting to collusion between the drivers. In the case of ride-sourcing and ridesharing services, a hub-and-spoke cartel would require an agreement between all drivers to set prices through the platform, or an agreement for the platform to coordinate prices between them.

Conclusion: Supreme Court after making reference to above discussed reasons given by Competition Commission of India in its decision, has upheld its decision by holding that Ola and Uber do not facilitate cartelization or anti-competitive practices between drivers, who are independent individuals, who act independently of each other, so as to attract the application of section 3 of the Act, as has been held by both the CCI and the NCLAT.

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18. **Supreme Court of India**
Civil appeal no. 611 of 2020
Pradeep Kumar Sonthalia. V. Dhiraj Prasad Sahu @ DhirajSahu&Anr.
https://main.sci.gov.in/supremecourt/2017/32813/32813_2017_33_1501_24824_Judgement_25-Nov-2020.pdf

Facts: On 23.03.2018, the biennial elections for two seats in the Council of States from the State of Jharkhand was held between 9.00 A.M. and 4.00 P.M. at the Vidhan Sabha. A total of 80 members of the Legislative Assembly of the State of Jharkhand cast their votes. One Shri Amit Kumar Mahto who was an elected member of the Assembly belonging to Jharkhand Mukti Morcha Party (JMM) admittedly cast his vote at 9.15 A.M. on 23.03.2018 but he was convicted by the Court of the Additional Judicial Commissioner XVIII, Ranchi, in Sessions Trial No.481 of 2010, for the offences punishable under Sections 147, 323/149, 341/149, 353/149, 427/149 and 506/149 IPC, on the same day, but the conviction and sentence were handed over at 2.30 P.M. An objection was lodged at 11.20 P.M. requesting the Returning Officer to declare the vote cast by ShriAmit Kumar Mahto invalid, on the basis of the conviction and sentence imposed in the afternoon on the same day by the Criminal Court but his objection was dismissed and his election petition and Writ Petition in High Court also failed, so he approached the Supreme Court to get declare the election nullity.

Issue: Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?

Analysis: Section 8(3) of the Representation of the People Act, 1951 is comprehensive in that it indicates both the commencement of the period and its expiry. The date of conviction is prescribed to be the point of commencement of disqualification and the date of completion of a period of six years after

release is prescribed as the point of expiry of the period of disqualification. Once the period of disqualification starts running, the seat hitherto held by the person disqualified becomes vacant by virtue of Article 190(3) of the Constitution. While speaking about the seat of the disqualified person becoming vacant, Article 190(3) uses the expression “thereupon”. We may have to keep this in mind while interpreting the words “the date of such conviction”. An election dispute lies in a special jurisdiction and hence it has to be exercised without importing concepts familiar to common law and equity, unless they are ingrained in the statute itself. It is contended by Appellant that wherever the statute uses the words “on the date”, it should be taken to mean “on the whole of the day” and that law disregards as far as possible, fractions of the day.

- We must point out at this juncture that even in criminal law, there is a vast difference between (i) the interpretation to be given to the expression “date”, while calculating the period of imprisonment suffered by a person and (ii) the interpretation to be given to the very same expression while computing the period limitation for filing an appeal/revision. Say for instance, a person is convicted and sentenced to imprisonment and also taken into custody pursuant thereto, on 23.03.2018, the whole of the day of March 23 will be included in the total period of incarceration. But in contrast, the day of March 23 will be excluded for computing the period of limitation for filing an appeal. Though one contrasts the other, both interpretations are intended to benefit the individual.

- We have no doubt that disqualification is not a penal provision and that the object of disqualification is to arrest criminalisation of politics. But what triggered the disqualification in this case, under Section 8(3) was a conviction by a criminal Court, for various offences under the Penal Code. Therefore, the phrase “the date of conviction” appearing in Section 8(3) should receive an interpretation with respect to the penal provisions under which a person was convicted. The rule that a person is deemed innocent until proved guilty is a long-standing principle of constitutional law and cannot be taken to be displaced by the use of merely general words. In law this is known as the principle of legality and clearly applies to the present case.

- In our view to hold that a Member of the Legislative Assembly stood disqualified even before he was convicted would grossly violate his substantive right to be treated as innocent until proved guilty.

- In the present case, it would be significant to add that it is not necessary to make a declaration incompatible in the use of the word “date” with the general rule of law since the word “date” is quite capable of meaning the point of time when the event took place rather than the whole day.

- The well-known presumption that a man is innocent until he is found guilty, cannot be subverted because the words can accommodate both competing circumstances. While it is known that an acquittal operates on nativity, no case has been cited before us for the proposition that a conviction takes effect even a minute prior to itself. Moreover, the word "date" can be used to denote occasion, time, year etc. It is also used for denoting the time up to the present when it is used in the phrase "the two dates". Significantly, the word "date" can also be used to denote a point of time etc.

- To say that this presumption of innocence would evaporate from 00.01 A.M., though the conviction was handed over at 14.30 P.M. would strike at the very root of the most fundamental principle of Criminal Jurisprudence.

- Inasmuch as a conviction for an offence is under a penal law, it cannot be deemed to have effect from a point of time anterior to the conviction itself. Legal fiction cannot prevail over facts where law does not intend it to so prevail.

- The disqualification arising under Section 8(3) of the Act, is the consequence of the conviction and sentence imposed by the criminal Court. In other words, conviction is the cause and disqualification is the consequence. A consequence can never precede the cause.

- In any case the principle that the acts of the officers de facto performed within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally regarded as valid and binding as if they were the acts of the officers de jure. "Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned." So long as he is clothed with the insignia of the office and exercises its powers and functions, the acts performed by him were held by this Court to be valid.

Conclusion: Supreme Court has held that we hold that the vote cast by Shri Amit Kumar Mahto at 9:15 a.m. on 23.03.2018 was rightly treated as a valid vote. To hold otherwise would result either in an expectation that the Returning Officer should have had foresight at 9:15 a.m. about the outcome of the criminal case in the afternoon or in vesting with the Election Commission, a power to do an act that will create endless confusion and needless chaos.

19. **Supreme Court of Canada**
C.M. Callow Inc. v. Zollinger, 2020 SCC 45
https://www.canlii.org/en/ca/scc/doc/2020/2020scc45/2020scc45.html

Facts: In 2012, a group of condominium corporations ("Bay crest") entered into a two-year winter maintenance contract and into a separate summer maintenance contract with C.M. Callow Inc. ("Callow"). Pursuant to clause 9 of the winter maintenance contract, Bay crest was entitled to terminate that agreement if Callow failed to give satisfactory service in accordance with its terms. Clause 9 also provided that if, for any other reason, Callow's services were no longer required, Bay crest could terminate the contract upon giving 10 days' written notice.

In early 2013, Bay crest decided to terminate the winter maintenance agreement but chose not to inform Callow of its decision at that time. Throughout the spring and summer of 2013, Callow had discussions with Bay crest regarding a renewal of the winter maintenance agreement. Following those discussions, Callow thought that it was likely to get a two-year renewal of the winter maintenance contract and that Bay crest was satisfied with its services. During the summer of 2013, Callow performed work above and beyond the summer maintenance contract at no charge, which it hoped would act as an incentive for Bay crest to renew the winter maintenance agreement.

Issue: Whether exercise of termination clause by Bay crest constituted the breach of duty of honest performance of a contract?

Analysis: The duty of honest performance in contract, formulated in Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494, applies to all contracts and requires that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract. … Even though Bay crest had what was, on its face, an unfettered right to terminate the winter maintenance agreement on 10 days' notice, the right had to be exercised in keeping with the duty to act honestly. Bay crest's deception was directly linked to this contract, because its exercise of the termination clause was dishonest. It may not have had a free-standing obligation to disclose its intention to terminate, but it nonetheless had an obligation to refrain from misleading Callow in the exercise of that clause. Bay crest had to refrain from false representations in anticipation of the notice period. If someone is led to believe that their counterparty is content with their work and their ongoing contract is likely to be renewed, it is reasonable for that person to infer that the ongoing contract is in good standing and will not be terminated early. Having failed to correct Callow's misapprehension that arose due to these false representations, Bay crest breached its duty of good faith in the exercise of its right of termination.

Conclusion: In the instant case, Bay crest knowingly misled Callow in the manner in which it exercised clause 9 of the winter maintenance agreement and this wrongful exercise of the termination clause amounts to a breach of contract.

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20. **Supreme Court of the United States**

New York State Rifle & Pistol Association Inc. v. City of New York, New York, 590 U.S. (2020)

https://www.supremecourt.gov/opinions/19pdf/18-280_ba7d.pdf

Facts: It is a case addressing whether the gun ownership laws of New York City, which restrict the transport of a licensed firearm out of one's home, violated the Constitution's Second Amendment, Commerce Clause, and right to travel. A group of New York City residents challenged the former provisions of the city's premises license, arguing that not being able to travel outside of the city limits with a handgun violated their Second Amendment right, the dormant Commerce Clause, the First Amendment right of expressive association, and the fundamental right to travel.

Issue: Whether the City's ban on transporting a licensed, locked, and unloaded handgun to a home or shooting range outside city limits is consistent with the Second Amendment, the Commerce Clause, and the constitutional right to travel?

Analysis: In a concurring opinion, Justice Brett Kavanaugh agreed that the case was moot, but wrote that he agreed with Justice Samuel Alito's concern that some federal and state courts may not be properly applying the principles mentioned in the cases of *Heller* and *McDonald.* Former case recognized the right of US Citizens to own guns within the privacy of their homes and in the latter affirmed the constitutional right to be incorporated to the states and so prohibited regulations that completely prevented gun ownership. In a lengthy dissent joined by Justice Neil Gorsuch in full and Justice Clarence Thomas in part, Justice Alito wrote that "*This case is not moot. The City violated petitioners' Second Amendment right, and we should so hold.*" He opined that the Court should have evaluated the city's laws in light of the cases of *Heller* and *McDonald* and that by rendering the case moot, they have allowed the docket of the Supreme Court to be "*manipulated*".

Conclusion: The court vacated the 2nd Circuit's decision in a 6-3 *per curiam* ruling, holding the petitioners claim was moot. The case was remanded to lower courts to consider whether petitioners may still add a claim for damages in this lawsuit with respect to New York City's old rule.

LIST OF ARTICLES:-

1. **THE CHINESE JOURNAL OF COMPARATIVE LAW**
   https://doi.org/10.1093/cjcl/cxaa023
   COVID-19 in Civil or Commercial Disputes: First Responses from Chinese Courts
   By: Qiao Liu

2. **JOURNAL OF LAW AND THE BIOSCIENCES**
   https://doi.org/10.1093/jlb/lsaa011
   The United Kingdom's Coronavirus Act, deprivations of liberty, and the right to liberty and security of the person
   By: Jonathan Pugh

3. **The All Pakistan Legal Decisions (PLD)**
   http://www.plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J7
   Video Recording as a Piece of Evidence
   By: Jawad Hussain Aadil,

   http://plsbeta.com/LawOnline/law/contents.asp?CaseId=2020J1
   Honour Killings in Pakistan and Status of Women in Islamic Law
   By: Muhammad Sher Abbas, Senior Research Officer, Lahore High Court, Lahore