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FORTNIGHTLY CASE LAW BULLETIN

(16-06-2023 to 30-06-2023)

A Summary of Latest Judgments Delivered by the Supreme Court of Pakistan & Lahore High Court, Legislation/Amendment in Legislation and important Articles

Prepared & Published by the Research Centre Lahore High Court

JUDGMENTS OF INTEREST

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1. **Supreme Court of Pakistan**
Dr. Mohammad Aslam Khaki. v. Khawaja Khalid Farooq Khan and others.
Civil Petition No. 3203 of 2017
Mr. Justice Qazi Faez Isa, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._3203_2017.pdf

Facts: The petitioner had filed Writ Petition in the High Court under Article 199 of the Constitution, which was dismissed. In his petition, the petitioner alleged that the Foundation had illegally allotted another plot to its Managing Director, who already had been allotted a plot. The petitioner also alleged that the second plot allotted to Managing Director was designated as a park/green area in the layout plan of the Foundation approved by the Development Authority.

Issues: i) Whether designated park/green area can be converted for exclusive private use and/or private profit?
ii) Whether an appeal under Article 185 of the Constitution of the Islamic Republic of Pakistan can be filed directly to the Supreme Court instead of intra court appeal?
iii) In what circumstances a writ under Article 199 of the Islamic Republic of Pakistan can be issued against the Foundation?

Analysis: i) Every designated park/green area must be preserved; these areas may also be for the use and/or benefit of the public. Designated parks and green areas must not be allowed to be converted for exclusive private use and/or private profit.
ii) This Court considered the scope of section 3 of the Law Reforms Ordinance, 1972 holding that since the Ordinance provided for an appeal the appellate forum should not be bypassed unless it attracted one of the stated exceptions. However, there are also decisions of this Court in which the decisions of a Single Judge of the High Court were directly challenged before this Court in an appeal/petition under Article 185 of the Constitution, despite the fact that the stated exceptions mentioned in section 3(2) of the Law Reforms Ordinance, 1972 were not attracted.
ii) When the Federal Government has paid a considerable amount and has established the Foundation which is a charitable endowment with stated objectives to be adhered to. The Committee of Administration of the Foundation comprises of serving government officers. The Foundation's property can only be used as stipulated in its Scheme of Administration. In presence of such facts to contend that the High Court did not have jurisdiction under Article 199 of the Constitution is inexplicable. Article 199(1)(c) of the Constitution also requires the High Court to ensure the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution and empowers the High Court to give such directions to any person or authority to ensure compliance .

Conclusion: i) Designated park/green area cannot be converted for exclusive private use and/or

private profit.

ii) An appeal under Article 185 of the Constitution of the Islamic Republic of Pakistan can be filed directly to the Supreme Court instead of intra court appeal.

iii) When the government has established the Foundation and administration of the Foundation comprises of serving government officers then writ can lie.

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2. **Supreme Court of Pakistan**
Afiya Shehrbano Zia & others v.
The Hon'ble Supreme Judicial Council & others
Constitutional Petition No.19 of 2020
Mr. Justice Ijaz Ul Ahsan, Mr. Justice Munib Akhtar
https://www.supremecourt.gov.pk/downloads_judgements/const.p._19_2020.pdf

Facts: Through this Constitutional petition, the petitioners have raised propositions in relation to Article 209. The "grievance" of the petitioners relates to those Judges against whom a complaint (or perhaps even a reference) has been filed before the Council but who either retire or resign before a report is made by the Council to the President or he makes an order thereon and the complainant is simply informed that the complaint stands closed. It is this with which the petitioners are "aggrieved".

Issues: i) Whether a complaint under Article 209 of Constitution against a judge of Supreme Court or High Court can be taken up, deliberated and decided by the Council on the date of his leaving office?

ii) Whether Article 205 and the Fifth Schedule to the Constitution, which relate to the remuneration and other terms and conditions of service of Judges and in particular their right to pension, ought to be so read as to exclude a person who, though no longer holding office, was found guilty of misconduct by the Council?

Analysis: i) As is clear from clause (6) of Article 209 of Constitution that it is necessary for the Council, if it forms the necessary opinion, to report to the President that the Judge be removed from office and on such report the President may do so. Thus, the only action permissible to the Council, and hence the President, is the removal of the errant Judge from office. If this is not possible, then clause (6) can have no application. Obviously, this outcome is impossible in relation to a Judge who has already retired or resigned. Even otherwise, it is clear that the Constitution draws a distinction between a person who, at the relevant time, holds office as a Judge and one who, having held that office in the past, does not. Article 209 applies only to the former and not the latter. Thus, e.g., clauses (2) and (3) of Article 202 refer, respectively, to a "person who has held office" "as a Judge of the Supreme Court or of a High Court" or "as a permanent Judge". Further, such a complaint could conceivably be filed even years after the retirement or resignation (i.e., the alleged misconduct). Such an outcome is quite obviously beyond the contemplation of the Constitution. This is yet another reason why the proposition postulated cannot be regarded as correct.

ii) The alternative submission of the counsel with respect that Article 205 and the Fifth Schedule to the Constitution, which relate to the remuneration and other terms and conditions of service of Judges and in particular their right to pension, ought to be so read as to exclude a person who, though no longer holding office, was found guilty of misconduct by the Council, runs into the same difficulty as

already noted inasmuch as the Council can only make a finding of misconduct in terms of Article 209, which applies only to a Judge still in office at the relevant time and results in his removal from office. Therefore, it is not possible to accept this alternative formulation of what, in essence, is the same point.

Conclusion: i) A complaint under Article 209 of Constitution against a judge of Supreme Court or High Court cannot be taken up, deliberated and decided by the Council who has already retired or resigned.
ii) Article 205 and the Fifth Schedule to the Constitution, which relate to the remuneration and other terms and conditions of service of Judges and in particular their right to pension, cannot be so read as to exclude a person who, though no longer holding office, was found guilty of misconduct by the Council

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3. **Supreme Court of Pakistan**
Rehmat Wali Khan and another v. Ghulam Muhammad and others
Civil Appeal NO. 226-P of 2018
Mr. Justice Munib Akhtar, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/c.a._226_p_2018.pdf

Facts: Through this appeal under Article 185(2) (d) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment passed by the learned Single Judge of the Peshawar High Court, Circuit Bench Chitral whereby the Civil Revision filed by the respondents was allowed, the judgment and decree of the learned Appellate Court was set aside and the judgment and decree of the learned Trial Court was restored.

Issues: i) Whether the unregistered sale deed can be given preference over the registered sale deed?
ii) Whether the right of party in possession for considerable long period pursuant to unregistered sale deed can be taken away by statute of limitation?

Analysis: i) In the case of Sardar Arshad Hussain Vs. Mst. Zenat-un-Nisa (2017 SCMR 608) the question whether the un-registered sale deed can be given preference over the registered one when on the basis of un-registered sale deed possession of the property has also been given, came up for consideration before this Court and this Court while relying on earlier judgments of this Court on the subject candidly held as follows:-
"A registered deed reflecting transfer of certain rights qua a property though will have sanctity attached to it regarding its genuineness, and a stronger evidence would be required to cast aspersions on its correctness but cannot be given preference over an un-registered deed vide which physical possession of the property has also been given. Subsection (1) of section 50 of the Registration Act, 1908 also provides that a registered document regarding transfer of certain rights in an immovable property will have effect against every un-registered document relating to the same property and conferring the same rights in the property as shown in the registered document but the law has also provided certain exceptions

to the above said provisions of law. If a person being in possession of an un-registered deed qua transfer of certain rights in property along with possession of the same he can legally protect his rights in the property and even a registered deed subsequent in time will not affect his/her rights. The first proviso to section 50 of the Registration Act, 1908 provides so that such rights in the property can be protected under section 53-A of the Transfer of Property Act, 1882. Reliance in this regard can well be placed on the cases of Fazla v. Mehr Dina and 2 others (1999 SCMR 837) and Mushtaq Ahmad and others v. Muhammad Saeed and others (2004 SCMR 530)."

ii) When pursuant to the un-registered sale deed, the respondents were put in possession of the suit land in the year 1971, a vested right had been created in their favour, which cannot be taken away merely on the basis of technicalities. In the case of Syed Hakeem Shah Vs. Muhammad Idrees (2017 SCMR 316) the sale consideration was totally paid and possession was also delivered to the vendee/transferee but the registered document could not be executed. This Court held that "Section 53-A of Transfer of Property Act, 1882, in itself creates a right in favour of transferee to retain possession. Such right comes into existence when transferor put the transferee in possession in part performance of the contract/sale deed. Right created by Section 53-A in favour of the transferee in possession can be termed as an equitable title which he held in the property. Where the transferee continued to enjoy a right then the statute of limitation cannot take away such right as the law of limitation is not meant to take away an existing right. Right created under Section 53-A of the Transfer of Property Act, 1882 is an existing right and is not extinguished by any length of time. Law of limitation does not come in the way of a transferee in possession when he as a plaintiff, filed his own suit to preserve his right to retain possession that was granted to him under Section 53-A of the Transfer of Property Act, 1882."

Conclusion: i) If a person being in possession of an un-registered deed qua transfer of certain rights in property along with possession of the same he can legally protect his rights in the property and even a registered deed subsequent in time will not affect his/her rights.

ii) When pursuant to the un-registered sale deed, a party is put in possession of the land long time ago, a vested right had been created in his/her favour, which cannot be taken away merely on the basis of technicalities. Law of limitation does not come in the way of a transferee in possession when he as a plaintiff, filed his own suit to preserve his right to retain possession that was granted to him under Section 53-A of the Transfer of Property Act, 1882.

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4. **Supreme Court of Pakistan**
Gufran Ali v. Haseeb Khan and another
Criminal Petition No. 1617 of 2022
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1617_2022.pdf

Facts: The respondent No. 1 was proceeded against in terms of the case FIR under Section 302 PPC. Pursuant to an application submitted by the respondent No. 1, the learned Trial Court declared the respondent No. 1 juvenile at the time of commission of the offence. Being aggrieved, the petitioner/complainant filed criminal revision before the Islamabad High Court but it also met the same fate. Hence, this petition has been filed.

Issues: i) How age of a person can be determined when his age is disputed and varies on different documents?
ii) What is an ossification test and whether it varies in different conditions?
iii) When two views are possible from the evidence adduced then which view is to be adopted?
iv) Whether report of the experts in various fields of science can be produced in evidence without calling them?

Analysis: i) Ordinarily, the date of birth of a person is determined on the basis of documentary proof i.e. birth certificate, educational documents and National Identity Card etc but when the date of birth is disputed and varies on all such documents then the ossification test is the best way to determine a person's age.
ii) The ossification test is a test that determines age based on the "degree of fusion of bone" by taking the x-ray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between birth and the age of twenty five years in an individual. Bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The ossification test varies slightly based on individual characteristics such as climatic conditions where the person born and raised, dietic values, hereditary differences etc.
iii) It is settled principle of law that if two views are possible from the evidence adduced in the case then the view favourable to the accused is to be adopted.
iv) As per Section 510 Cr.P.C. the report of the expert in various fields of science can be produced in evidence without calling them and can be used as evidence in any inquiry or trial or other proceedings.

Conclusion: i) Age of a person can be determined through ossification test when his age is disputed and varies on different documents.
ii) The ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between birth and the age of twenty five years in an individual and it varies slightly based on individual characteristics such as climatic conditions where the person born and raised, dietic values, hereditary differences etc.
iii) If two views are possible from the evidence adduced in the case then the view favourable to the accused is to be adopted.
iv) Report of the experts in various fields of science can be produced in evidence without calling them as mentioned under section 510 Cr.P.C.

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5. **Supreme Court of Pakistan**
Nazir Ahmed v. The State
Jail Petition No. 169 of 2021
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar
https://www.supremecourt.gov.pk/downloads_judgements/j.p._169_2021.pdf

Facts: Petitioner was tried by the learned Special Judge, Anti-Terrorism Court pursuant to a case registered under Sections 4/5 of Explosive Substances Act, 1908 read with Section 7 of the Anti-Terrorism Act, 1997 as explosive material along with four detonators and two safety fuses were recovered from his possession. The trial court convicted and sentenced the accused. In appeal the High Court maintained the conviction and sentences recorded by the learned Trial Court.

Issues: i) Whether the testimony of an official witness is as good as any other private witness?
ii) As long as the material aspects of the evidence have a ring of truth, whether courts should ignore minor discrepancies in the evidence?
iii) When a person takes a specific plea and he is a best witness for the same then his non-appearance is to be taken as withholding of the best evidence?
iv) Once the prosecution becomes successful in discharging of proving the case beyond reasonable doubt, whether it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty?

Analysis: i) Testimony of official witnesses is as good as any other private witness unless it is proved that they have animus against the accused. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statements of official witnesses, as no legal bar or restriction has been imposed in this regard. Police/official witnesses are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination.
ii) It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored.
iii) When the person who is himself seized with first hand information does not appear on oath and only produces witnesses, this move lowers the sanctity of defence version simply for the reason that the accused was a best witness to depose entire detail as to when and who abducted him, what was the reason

behind this, where he was kept, who brought him to the place of occurrence, why he was falsely involved in the case etc. When the petitioner took a specific plea and he was a best witness for the same then his non-appearance is to be taken as withholding of the best evidence.
iv) According to Article 119 of the Qanun-e-Shahadat Order, 1984, the burden to prove any particular fact lies on the person who wishes the court to believe its existence. There is no denial to this fact that the prosecution has to discharge the burden of proving the case beyond reasonable doubt. However, once the prosecution becomes successful in discharging the said burden, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty but we are of the view that the petitioner has failed to prove the same.

Conclusion: i) The testimony of an official witness is as good as any other private witness unless it is proved that he has animus against the accused.
ii) As long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence.
iii) When a person takes a specific plea and he is a best witness for the same then his non-appearance is to be taken as withholding of the best evidence.
iv) Once the prosecution becomes successful in discharging of proving the case beyond reasonable doubt, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty.

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6. **Supreme Court of Pakistan,**
Abdul Wahid v. The State,
Criminal Appeal No. 446 of 2020,
Mr. Justice Yahya Afridi, Mr. Justice Sayyed Mazahar Ali Akbar Naqvi, Mr. Justice Muhammad Ali Mazhar.
https://www.supremecourt.gov.pk/downloads_judgements/crl.a._446_2020.pdf

Facts: The learned Trial Court convicted the appellant under Section 302(b) PPC and sentenced him to death with direction to pay compensation to the legal heirs of the deceased. In appeal, the learned High Court while maintaining the conviction of the appellant altered the sentence of death into imprisonment for life.

Issues: i) Can the presence of the related witnesses at the time of occurrence be safely relied upon to sustain conviction of an accused?
ii) When the ocular account is considered sufficient to establish guilt of the accused?
iii) What is the value and status of medical evidence and recovery to sustain conviction?
iv) How non-appearance of the accused in witness box is to be taken, especially when he took a specific plea of which he was the best witness?
v) Where the occurrence allegedly took place at the spur of the moment without any premeditation on the part of the accused who is a security guard, then whether the said aspect may be considered as a mitigating circumstance to reduce his sentence?

Analysis: i) The presence of the related witnesses at the time of occurrence should be natural and their evidence should be straightforward & confidence inspiring for being-safely relied upon to sustain conviction of an accused.
ii) Where ocular evidence is found trustworthy and confidence inspiring, it is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused.
iii) The value and status of medical evidence and recovery is always corroborative in its nature.
iv)When the accused took a specific plea and he was the best witness of the same, then his non-appearance in witness box is to be taken as withholding of the best evidence.
v)According to section 8(11) of the Punjab Private Security Companies (Regulation and Control) Rules, 2003, no guard shall be allowed to carry the weapon licensed in company's name and same shall have to be handed over back as soon as he finishes his duty.

Conclusion: i) The presence of the related witnesses at the time of occurrence can be safely relied upon to sustain conviction of an accused, if their presence at the time of occurrence is natural and their evidence is straightforward & confidence inspiring.
ii) The unimpeachable ocular account may be sufficient to establish guilt of the accused.
iii) The medical evidence and recovery alone are not sufficient to sustain conviction.
iv) When the accused took a specific plea and he was a best witness of the same, then his non-appearance in witness box would give rise to negative inference against him.
v) If the accused being a security guard is permitted by concerned security agency to carry entrusted weapon only during duty hours, then the occurrence, which happened after duty hours, cannot be considered to have had taken place at the spur of the moment without any premeditation on the part of the accused resulting as mitigating circumstance to reduce his sentence

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7. **Supreme Court of Pakistan**
Syed Amir Raza v. Mst. Rohi Mumtaz and others
Civil Petition No.2865 of 2022
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2865_2022.pdf

Facts: Through this petition for leave to appeal filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the order passed by the High Court whereby writ petition being devoid of merit was dismissed.

Issue: Whether the wife is bound to surrender fifty percent (50%) of her share in deferred dower in case of dissolution of marriage on the basis of khula?

Analysis: Per Section 10(5) of the West Pakistan Family Courts Act, 1964, in a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and in case of dissolution of marriage

through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband. So, while obtaining dissolution on the sole basis of khula, the wife is bound to surrender fifty percent (50%) percent of her share in deferred dower. In the judgment of this Court in the case of Muhammad Arif v. Saima Noreen (2015 SCMR 804) it is held that the wife, in case of khula, has to forego the dower amount as per Section 10 of the ibid Act.

Conclusion: The wife is bound to surrender fifty percent (50%) of her share in deferred dower in case of dissolution of marriage on the basis of khula.

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8. **Supreme Court of Pakistan**
Allied Bank Limited v. Habib-ur-Rehman and others
Civil Petition No.2537 of 2020
Mr. Justice Amin-ud-Din Khan, Mr. Justice Syed Hasan Azhar Rizvi
https://www.supremecourt.gov.pk/downloads_judgements/c.p._2537_2020.pdf

Facts: Allied Bank Limited through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has impugned the legality of the order of the Peshawar High Court, Peshawar whereby the Civil Revision filed by the present petitioner against the order of learned first Appellate Court was dismissed. By its judgment, the first appellate court had reversed the judgment/decree of the trial court and had decreed the suit of the respondent No.1 for declaration, permanent injunction, and recovery of benevolent funds, etc.

Issues: i) Whether a Bench of co-equal strength can deviate from the view held by an earlier Bench?
ii) What is the doctrine of binding precedent?
iii) Whether every statement or observation in a judgment creates a precedent to become binding on courts?
iv) What is the concept of memorandum of association and articles of association with regard to the business of company?

Analysis: i) A Bench of co-equal strength cannot deviate from the view held by an earlier Bench, and if a contrary view has to be taken, then the proper course is to request the Hon'ble Chief Justice for constitution of a larger Bench to reconsider the earlier view. At the same time, the law declared by this Court should be clear, certain, and consistent, as it is binding on all other courts of the country, under Article 189 of the Constitution of Pakistan, 1973.
ii) The doctrine of binding precedent promotes certainty and consistency in judicial decisions, and ensures an organic and systematic development of the law.
iii) It would not be out of place to observe here that not every statement or observation in a judgment of this Court creates a precedent to become binding on courts. In this regard reference may be made to Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), reproduced hereunder:

Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan. Moreover, where this Court deliberately and with the intention of settling the law, pronounces upon a question, the such pronouncement is the law declared by the Supreme Court within the meaning of Art.189 of the Constitution and is binding on all Courts in Pakistan. (…) A decision not expressed, not accompanied by reasons, and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 189 of the Constitution.

iv) It would not be out of context to state that the memorandum of association is the document that sets up the company and the articles of association set out how the company is run, governed, and owned. The articles include the responsibilities and powers of the directors and the means by which the members exert control over the board of directors.

Conclusion: i) The Bench of co-equal strength cannot deviate from the view held by an earlier Bench, and if a contrary view has to be taken, then the proper course is to request the Hon'ble Chief Justice for constitution of a larger Bench to reconsider the earlier view.

ii) The main purpose of the doctrine of binding precedent is to promote certainty and consistency in judicial decisions.

iii) Every statement or observation in a judgment does not create a precedent to become binding on courts. Moreover, where this Court deliberately and with the intention of settling the law, pronounces upon a question, the such pronouncement is the law declared by the Supreme Court within the meaning of Art.189 of the Constitution and is binding on all Courts in Pakistan.

iv) The memorandum of association is the document that sets up the company and the articles of association set out how the company is run, governed, and owned.

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9. **Supreme Court of Pakistan**
Muhammad Aslam, etc v. Muhammad Anwar.
C.A.No.781 of 2017
Mr. Justice Amin-Ud-Din Khan, **Mr. Justice Syed Hasan Azhar Rizvi**
https://www.supremecourt.gov.pk/downloads_judgements/c.a._781_2017.pdf

Facts: Through the instant appeal with leave of the court the appellants have assailed the judgments of lower forums in which the suit for specific performance of agreement to sell filed by the respondent was decreed by the trial court and the same was upheld by the appellate courts while dismissing the appeals of appellants.

Issues: i) Whether plaintiff can lead evidence beyond pleadings?

ii) When a date was stipulated in the agreement for performance of the act then whether in consequence of its failure time for all legal and practical purpose will be essence of the contract?

Analysis: i) The plaintiff cannot lead evidence beyond the pleadings and further the evidence led even negates the version of the plaintiff through the plaint...
ii) The terms of the agreement show that time was essence of the contract when it was specifically mentioned the date for performance and its consequences for non-performance by the plaintiff-vendee and it will be cancelled and earnest money will be confiscated.

Conclusion: i) Plaintiff cannot lead evidence beyond pleadings.
ii) Yes, when a date was stipulated in the agreement for performance of the act, then in consequence of its failure time for all legal and practical purpose will be essence of the contract.

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10. **Supreme Court of Pakistan,**
Akhtar Kamran since deceased through legal heirs v.
Pervaiz Ahmed and others,
Civil Petition. No. 492-K of 2023,
Mr. Justice Muhammad Ali Mazhar, Mr. Justice Syed Hasan Azhar Rizvi.
https://www.supremecourt.gov.pk/downloads_judgements/c.p._492_k_2023.pdf

Facts: Respondent being owner of rented shop initiated proceedings before Rent Controller under Section 8 of the Sindh Rented Premises Ordinance, 1979, wherein fair rent of the rented shop was fixed and first regular appeal preferred by petitioner against said order as well as his ultimate Constitutional Petition were dismissed respectively, which judgment dismissing said Constitutional Petition is assailed by petitioner through this petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

Issues: i) What factors Rent Controller should consider whilst fixing fair rent of a rented premises?
ii) Whether rents of other shops, situated outside building where subject rented shop is located, may be considered whilst fixing fair rent of subject rented shop?
iii) When concurrent findings of fora below may be interfered with?

Analysis: i) Where the relationship of the parties being landlord and tenant is not denied, then the Rent Controller, while determining the fair rent, is required to take into consideration all factors involved in reducing the value of money with each passing month. Moreover, the rise in cost of construction, repair charges, taxes and labour charges etc., cannot be ignored as well while determining the fair rent.
ii) When the other shops referred with regard to prevalent rents are not situated in the same building where subject rented shop is located, then those cannot be considered whilst determining fair rent of subject rented shop.

iii) Rational, reasonable and circumspect Concurrent findings, well supported by evidence, of all the fora below i.e. Rent Controller, appellate court and the High Court, do not give way for interference.

Conclusion: i) Section 8 of the Sindh Rented Premises Ordinance, 1979, requires the Rent Controller to consider all the ingredients mentioned therein as it provides complete mechanism and procedure for determining a fair rent.
ii) Rents of the other shops situated outside building, where subject rented shop is located, cannot be taken into consideration while determining the fair rent of subject rented shop.
iii) Concurrent findings of all the fora below cannot be interfered with unless those are perverse, arbitrary, capricious or fanciful.

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11. **Lahore High Court**
Ghulam Hassan and others v. Ijaz Naseer and others
R.F.A No.67289 of 2019
Mr. Justice Shahid Bilal Hassan, Mr. Justice Rasaal Hasan Syed
https://sys.lhc.gov.pk/appjudgments/2023LHC3741.pdf

Facts: The appellants filed RFA arising from the judgment and decree passed by a Civil Judge, whereby suit for specific performance filed by Respondent No.1 was partly decreed while the Respondent No.1 also preferred RFA to the extent of adverse findings as recorded and relief declined.

Issues: (i) Whether an agreement to sell in respect of a land lacking the necessary particulars to identify the land can be enforced?
(ii) Whether a mother can alienate the property of a minor without permission of the Guardian Judge?
(iii) How the execution of a document by an illiterate and ignorant pardanasheen lady is required to be proved by a beneficiary?
(iv) Where the terms of a transaction are in writing whether any oral evidence which is attempted to be used for adding subtracting, contradicting varying or amending the terms of the contract is admissible?
(v) What are the obligations of an intending buyer to succeed in a suit for specific performance?

Analysis: (i) Section 21(c) of Specific Relief Act, 1877 provides that specific performance of an agreement could not be allowed where the terms of the contract cannot be found with reasonable certainty…the agreement to sell in respect of the land shall give the necessary particulars to identify the land by reference to khewat number, khatauni number, khasra number and that where the document lacked certainty it will not be enforceable. The approved principle is that description shall be such as to enable the court to determine with certainty and that in the absence of particulars of killa number of other definable particulars it will not be possible for the court to determine which part of land out of total area is subject-matter of the

agreement to sell.
(ii) It is a settled rule that the mother could not alienate the property of the minor without permission of the Guardian Judge…the mother being a de facto guardian could not make any binding transaction in respect of the share of the minors nor could she enter into a family arrangement on their behalf.
(iii) It is settled rule that where the execution of document is claimed from an illiterate and ignorant pardanasheen lady the beneficiary has to prove the same by producing credible evidence as to the execution of document by the lady and also the further fact that such transaction was explained to the executant who had also had independent advice at the relevant time. It is a rule that even a semi-literate parda observing lady is entitled to the protection of law governing such lady and that where at the time of execution she had no independent advice of her close relative and that the contents of the document were never read over to her nor she was explained about the transaction, the beneficiary will have failed to discharge the onus and document cannot be used detrimental to the interest of alleged transferee.
(iv) As per Article 102 of Qanun-e-Shahadat Order, 1984 where the terms of a contract or of a grant or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract and that the document itself for secondary evidence of its contents will be used for proving the transaction. Similarly, Article 103 of Qanun-e-Shahadat Order, 1984 excludes the admissibility of oral evidence where the terms of transaction are in writing and any such oral evidence which is attempted to be used for adding subtracting, contradicting varying or amending the terms of the contract is deemed to be inadmissible.
(v) Under Section 22 of the Specific Relief Act, 1877, the jurisdiction to grant decree for specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so but the discretion of the court, which is to be exercised fairly, based on sound and reasonable judicial principles. For succeeding in a suit for specific performance, the intending buyer has to claim and prove that he was ready and willing to perform his part of reciprocal obligation as to the payment of balance consideration…It is also a rule that from the date of agreement till the filing of suit and thereafter the buyer shall prove his readiness and willingness to perform the agreement…It is a rule that in cases where the plaintiff's intentions are visible, and he has not proved his readiness and willingness to perform the contract by paying the balance consideration, relief of specific performance cannot be granted.

Conclusion: (i) An agreement to sell in respect of a land lacking the necessary particulars to identify the land cannot be enforced.
(ii) A mother cannot alienate the property of a minor without permission of the Guardian Judge.
(iii) Where the execution of document is claimed from an illiterate and ignorant

pardanasheen lady the beneficiary has to prove the same by producing credible evidence as to the execution of document by the lady and also the further fact that such transaction was explained to the executant who had also had independent advice at the relevant time.
(iv) Where the terms of a transaction are in writing, any oral evidence which is attempted to be used for adding subtracting, contradicting varying or amending the terms of the contract is inadmissible.
(v) For succeeding in a suit for specific performance, the intending buyer has to claim and prove that he was ready and willing to perform his part of reciprocal obligation as to the payment of balance consideration.

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12. **Lahore High Court**
Adeel Manzar and others v. Mst. Naeem Akhtar and others.
Writ Petition No.56215 of 2019
Mr. Justice Shahid Bilal Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3656.pdf

Facts: Through the instant writ petition the petitioners have challenged the vires of the impugned judgment and decree passed by the lower courts in which suit for recovery of dower amount filed by the respondent no.1 has been decreed by the trial court against them and subsequently their appeal was dismissed by the appellate court.

Issues: i) Whether it is bounden duty of the court to see maintainability of suit upon presentation of the plaint?
ii) What is the limitation for recovery of Dower?
iii) Whether court can dilate merits of the case when the same is barred by limitation?

Analysis: i) On presentation of a plaint before a Court, it is first and foremost as well as bounden duty of such Court to see whether the suit is maintainable, not barred under any law and whether the Court has jurisdiction to adjudicate upon the matter or lis before it.
ii) Articles 103 & 104 of the Limitation Act, 1908 relate to the limitation provided under law for filing suit for recovery of Dower of either kind i.e three years of each one...
iii) It is a settled principle of law that when a Court reaches to the conclusion that the suit is barred by limitation, there is no need to dilate upon further on merits of the case; however, keeping in view the sensitivity of the matter in hand it seems appropriate that merits of the case be also dilated upon.

Conclusion: i) Yes, it is bounden duty of the court to see maintainability of suit upon presentation of the plaint.
ii) Limitation period for recovery of Dower is three years.

iii) Court can dilate merits of the case when the same is barred by limitation subject to sensitivity of the matter.

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13. **Lahore High Court**
The State v. Taha Azaam Ullah
Murder Reference No.241 of 2019
Taha Azaam Ullah v. The State, etc.
Crl. Appeal No.27767 of 2019
Adnan Abdullah Khan v. Junaid Ahmad Khan, etc.
P.S.L.A No.41181 of 2019
Ms. Justice Aalia Neelum, Mr. Justice Asjad Javaid Ghural
https://sys.lhc.gov.pk/appjudgments/2023LHC3712.pdf

Facts: The appellant has assailed his conviction by filing the instant appeal. The learned trial court also referred murder reference for confirmation of the death sentence awarded to the appellant. Whereas, the complainant has assailed the acquittal of respondents No.1 to 3. All the matters arising from the same judgment of the learned trial court are being disposed of through a single judgment.

Issues: i) Whether the evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when the same was not entered in the printed Form 24.5 (1) of Police Rules 1934?
ii) Whether the unexplained delay in conducting postmortem is generally suggestive of a real possibility that time has been consumed in cooking up a story for the prosecution before preparing police papers necessary for getting a postmortem examination of the dead body conducted?
iii) Whether the evidence of a witness who is interested and inimical towards the accused can be relied upon?
iv) Whether the case property must be kept in safe custody from the date of seizure till its production in the court?
v) Whether it would be safe to rely upon the positive report of the forensic science laboratory where the case property produced in the court cannot be related to case property seized from the place of occurrence?
vi) Whether an adverse inference can be drawn where prosecution has failed to produce material witness in the witness box?

Analysis: i) According to Rule 24.5 of Police Rules 1934, the F.I.R. shall be filled in the printed Form in Form 24.5(1) with pages serially numbered with three carbon copies (each of the four pages of the register bearing the same serial number). Whenever information regarding cognizable offence is lodged with the police officer, he is obliged to take the same down in writing if it is made orally or receive the complaint in writing and straightaway proceed to enter the substance of it in the book/register kept for that purpose in terms of Section 154 of the Criminal Procedure Code. Chapter XIV CRPC deals with giving/reporting information to police in cognizable cases and its power of investigation. Section 154 of CrPC deals with the registration of FIR by the officer in charge of a police

station based on the information about a cognizable offence. It casts a statutory duty on him to enter the substance of such information in the prescribed register/form, which is commonly called FIR, and the act of entering it is called registration of a crime or case. The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when the same was not entered in the printed Form 24.5 (1) of Police Rules 1934.

ii) The postmortem was conducted with a delay of about 10 hours and 45 minutes from the time of registration of FIR. The fact, however, remains that the post-mortem examination was delayed for ten hours and forty-five minutes. The prosecution did not explain the delay in conducting the postmortem examination. The absence of signatures of doctor on the complaint and F.I.R led to the conclusion that the FIR was recorded with the delay, and the FIR has not been registered at the time at which it is claimed to have been recorded. It also gets support from the inquest report, wherein the reference to the documents is not given in the brief history. The court observed that even though the inquest report prepared under Section 174 of Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of the statement recorded during inquest proceedings get reflected in the report. The deposition of doctor reveals that the documents were received at 05:30 a.m., and till that time, the complaint and F.I.R. were not existing. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the first information report came to be recorded later on after due deliberation and consultation and was then ante timed to provide it with the color of the promptly lodged first information report.

iii) It is admitted that the prosecution witnesses are interested and inimical towards the accused. So, all these facts suggest that both the prosecution witnesses failed to establish their presence at the place of occurrence. The prosecution witnesses were not only inimical towards the accused persons but were also closely related to the deceased, and they had reasons to implicate the accused persons falsely.

iv) It is necessary that as and when the case property is taken out from Malkhana, necessary entry is required to be made in the Malkhana Register and also at the time when the case property is re-deposited in Malkhana. Case property in murder cases must be kept in safe custody from the date of seizure till its production in the Court.

v) The case property produced in the court, could not be related to the case property seized from the place of occurrence. Therefore the case property might have been tampered with while in the custody of the police cannot be ruled out. Thus, there is no evidence to connect the Firearms & Toolmarks Examination Report with the crime empties, seized from the place of occurrence and pistol secured from the possession of the accused. That being the position, it would not be safe to rely upon the positive report of the forensic science laboratory.

vi) The complainant deposed during cross examination admitted that the motive witnesses were not produced in the witness box as PWs and before the police.

Therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had motive witnesses appeared in the witness box would have been unfavorable to the prosecution.

Conclusion: i) The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when the same was not entered in the printed Form 24.5 (1) of Police Rules 1934.
ii) The unexplained delay in conducting postmortem is generally suggestive of a real possibility that time has been consumed in cooking up a story for the prosecution before preparing police papers necessary for getting a postmortem examination of the dead body conducted.
iii) The evidence of a witness who is interested and inimical towards the accused cannot be relied upon.
iv) The case property must be kept in safe custody from the date of seizure till its production in the court.
v) It would not be safe to rely upon the positive report of the forensic science laboratory where the case property produced in the court cannot be related to case property seized from the place of occurrence.
vi) An adverse inference can be drawn where prosecution has failed to produce material witness in the witness box.

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14. **Lahore High Court**
Kamila Aamir and another v. Additional District & Session Judge and others
W.P. No.27395 of 2021
Mr. Justice Shams Mehmood Mirza
https://sys.lhc.gov.pk/appjudgments/2023LHC3572.pdf

Facts: The orders passed by the courts below are at variance on an application under Order VII Rule 11 of the Code of Civil Procedure 1908. The trial court dismissed the application whereas the additional district judge while accepting the revision allowed the application and rejected the plaint of the suit in terms of Order II Rule 2 of the Code.

Issues: i) What is the meaning of the term cause of action?
ii) When a cause of action arises?
iii) What is the difference between claim and relief?
iv) Whether Order II Rule 2 CPC prevents the plaintiff from splitting the claims and reliefs which are based on the same cause of action?
v) What is the purpose of joinder of parties and causes of action?
vi) Whether the rule of splitting of claims is essentially akin to or can be treated as a variation of the principle of constructive res judicata?
vii) Whether plaint can be rejected without recording evidence of the parties?
viii) Whether for rejecting the plaint under Order VII Rule 11 CPC only the contents of the plaint can be looked at?

Analysis: i) A cause of action is simply the technical, legal name representing the facts which give rise to a claim enforceable in court. The cause of action signifies and provides the pivotal ingredients for establishing the basis for legal claim and is also relevant for other purposes such as computation of limitation period, determination of the proper forum for filing of claim (jurisdiction) and locus standi etc. A cause of action broadly speaking is the factual matrix forming basis of the claim and it also identifies the legal nature of those claims, which is the technical meaning of a cause of action.

ii) Provisions of Orders I & II of the Code would make it evident that when the right recognized by law is violated constituting a legal wrong, a cause of action can be said to have arisen. A fortiori, it is the legally recognized wrong that creates the right to sue. It is axiomatic that facts which do not represent the existence of right in the plaintiff with a corresponding duty in defendant to observe that right and an infringement of that right or duty is no cause of action.

iii) The claim must, however, be distinguished from relief which relates to the form of remedy a person seeks from the court. Relief or remedy is the means through which the cause of action is effectuated and the wrong is redressed.

iv) The rule prevents the plaintiff from splitting the claims and the reliefs which are based on the same cause of action with the aim that a single cause should not be segregated among several suits. The objective appears to safeguard against the defendant being vexed twice in respect of the same cause of action underpinning the claim. In case of omission to sue or intentional relinquishment of a claim, the rule places a bar on bringing a subsequent action in regard thereto. Similarly, the rule compels a plaintiff to sue for all reliefs arising from the same cause of action and in case of his omission to do so he shall be barred from that relief in a subsequent suit except where he took the leave from the court. The principle embodied in Order II Rule 2 directs that the plaintiff has no right to maintain two separate actions involving the same subject matter in the same court and against the same defendant. It puts a bar on a party from bringing claims arising from the same set of facts in successive suits. In other words, a party cannot split up the claim and bring only a portion thereof before the court on which relief is sought and leave the rest to be prosecuted in a subsequent suit.

v) The Code provides a fairly liberal regime for joinder of parties and causes of action. The Code made these provisions not on account of any problem relating to pleading rather what was aimed at was that all the matters at issue between the parties or set of parties should be settled as shortly and speedily as possible through one action.

vi) Section 11 embodies the principle of res judicata which provision assumes decision on merits in the former suit as per its explanation I. The text of Order II Rule 2, however, does not command the decision in the first suit. The rule against claim splitting is not synonymous with the doctrine of res judicata although the two rules serve some of the same policies. In simple terms the principle of res judicata states that where there is a judgment *inter partes* a fresh suit on the same subject matter shall be barred. The principle contained in Order II Rule 2 by

contrast simply bars the second suit in case the plaintiff omitted or relinquished the claim/relief that he could seek in the first suit.

vii) The petitioners also contended that the plaint could not be rejected under Order VII Rule 11 CPC without recording evidence of the parties. Respondent No.2 in the present case pleaded to claim/relief splitting rule by filing an application in which necessary facts were stated and the copy of the plaint of the first suit was appended. The petitioners in reply to that application admitted all the facts stated therein. In the circumstances, there was no need to go through the process of submission of documentary evidence after framing of an issue as all the facts pleaded in the application were accepted by the petitioners.

viii) The short answer to the submission that only the contents of the plaint can be looked at for rejecting the plaint is that it depends on the nature of the plea raised by the defendant for invoking the said provision. If the facts presented by the defendant are incontrovertible or admitted and clearly demonstrate that the suit is barred under some law or that the plaint does not disclose the cause of action the courts will not permit the suit to proceed to the stage of evidence thereby prolonging the agony of the parties and shall reject the plaint.

Conclusion: i) A cause of action is simply the technical, legal name representing the facts which give rise to a claim enforceable in court.

ii) A cause of action arises when the right recognized by law is violated constituting a legal wrong.

iii) The claim relates to the form of remedy a person seeks from the court. Relief or remedy is the means through which the cause of action is effectuated and the wrong is redressed.

iv) Order II Rule 2 CPC prevents the plaintiff from splitting the claims and reliefs which are based on the same cause of action.

v) The purpose of joinder of parties and causes of action is that all the matters at issue between the parties or set of parties should be settled as shortly and speedily as possible through one action.

vi) The rule of splitting of claims is not akin to or cannot be treated as a variation of the principle of constructive res judicata.

vii) Plaint can be rejected without recording evidence of the parties where the facts pleaded in the application for rejection of plaint are admitted.

viii) For rejecting the plaint under Order VII Rule 11 CPC not only the contents of the plaint but the material before the court apart from plaint admitted by the plaintiff can also be looked at.

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15. **Lahore High Court,**
The State v. Muhammad Qasim,
Murder Reference No. 172 of 2021,
Muhammad Qasim v. The State,
Crl. Appeal No.75010-J of 2021,
Muhammad Hashim v. The State,
Crl. Appeal No.75588-J of 2021,
Liaqat Ali v. The State etc.,
Crl. Rev. No. 69106 of 2021,
Liaqat Ali v. The State etc.,
Crl. A. No. 79499 of 2021,
Miss Justice Aalia Neelum, Mr. Justice Muhammad Amjad Rafiq.
https://sys.lhc.gov.pk/appjudgments/2023LHC3546.pdf

Facts: Conviction awarded to the appellants by learned Trial Court in case F.I.R. registered under Sections 302/337-L (ii)/34 P.P.C. is assailed by them by filing the jail appeals. The learned Trial Court also filed reference to confirm the death sentence awarded to one of the appellants. Whereas the complainant also filed Criminal Revision qua sentence enhancement awarded to another appellant and a Criminal Appeal against the acquittal of co-accused. All said matters arose from the same judgment; therefore, these are being disposed of through instant consolidated judgment.

Issues: i) When does the FIR lose its value and authenticity?
ii) How an omission to explain the injuries received by accused in same occurrence will affect prosecution case?
iii) When the accused would be entitled for benefit of doubt?

Analysis: i) To determine whether the FIR was lodged when it is alleged to have been recorded, the Courts generally look for certain external checks. It has to be noticed that in the inquest report, the names of the complainant and witnesses should be mentioned as well as that these witnesses should sign it. The absence of those details indicates that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed. Delay in lodging the FIR often results in embellishment, a creature of an afterthought.
ii) The injuries of grave nature received by the accused during the same occurrence would indicate a fight between both parties. In such a situation, the question of the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack, assumes great importance in reaching the ultimate decision. It is here that need to explain the injuries of serious nature received by the accused in the course of the same occurrence arises. When the explanation is given, the correctness of the reason is liable to be tested. Ultimately, the factum of non-explanation of injuries must be kept in view while appreciating the evidence of prosecution witnesses.
iii) As per dictates of the law, the benefit of every doubt is to be extended in favor of the accused. For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.The doubt of course must be reasonable and not imaginary or artificial. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one

innocent person be convicted". In simple words it means that utmost care should be taken by the Court in convicting an accused.

Conclusion: i) On account of the infirmities like delay in reporting the incident leads to the conclusion that the F.I.R. had not been recorded at the time as it is claimed to have been recorded, which is sufficient to cast doubt about its authenticity.
ii) If there is an omission to explain the injuries received in same occurrence by accused, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident.
iii) If there is an element of doubt as to the guilt of the accused, the benefit thereof must be extended to him.

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16. **Lahore High Court**
Ikhlaq Haider Chattha. v Caretaker Chief Minister Punjab & others
Writ Petition No. 10992 of 2023.
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC3356.pdf

Facts: Through this constitutional petition filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner has challenged the vires of order issued by the order of the Governor of Punjab pursuant to the decision of the Provincial Caretaker Cabinet in its meeting which suspends and puts on hold the earlier notification sought to create a new district which was divided into Tehsils/ Sub Divisions and revenue estates.

Issues: i) What are the domain and functions of caretaker government under section 230 of the Elections Act, 2017?
ii) Whether the Caretaker Government has been restrained from taking any major policy decision?

Analysis: i) As the statutory wording makes clear a Caretaker Government shall perform its functions to attend to day to day matters which are necessary to run the affairs the Government and shall assist the Commission to hold elections in accordance with law. Further the Caretaker Government shall restrict itself to activities that are of routine, non-controversial, urgent and in the public interest. Finally the Caretaker Government is obliged to be impartial to every person and political party.
ii) Under Sub-section (2) of Section 230 of the Elections Act, 2017, the Caretaker Government has been restrained from taking any major policy decisions except on urgent matters or to attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.

Conclusion: i) A Caretaker Government shall perform its functions to attend to day to day matters which are necessary to run the affairs the Government.
ii) The Caretaker Government has been restrained from taking any major policy decisions.

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17. **Lahore High Court**
M/s Nishat Hotels & Properties Ltd. & another v. Province of Punjab & others
W.P No.16217 of 2020
Mr. Justice Shahid Karim
https://sys.lhc.gov.pk/appjudgments/2023LHC3770.pdf

Facts: Through instant petition and connected petitions same question of law has been raised. Primarily, the challenge is to the constitution of the Authority under the Punjab Revenue Authority Act, 2012 ("the Authority"). Further challenges have been laid to the issuance of show cause notices by the officers of the Authority under Section 52 of the Punjab Sales Tax on Services Act, 2012 ("Act, 2012")

Issues: i) What is meant by "prescribed" under section 2(31) of the Punjab Sales Tax on Services Act, 2012?
ii) Whether the officers, for whose appointment rules for specific purpose have not been enacted, can assume jurisdiction under section 52 of the Act, 2012 and issue show cause notice?

Analysis: i) The term 'prescribed" means prescribed by the rules. The power to make rules has been conferred by section 76 of the Act, 2012 and the power vests in the Authority which may enact rules with the approval of the government and by notification in the official gazette. Sub-section (2) of section 76 further provides that all rules made under Sub-section (1) during a financial year shall be laid in Provincial Assembly of the Punjab at the time of presentation of the Annual Budget for the next financial year.
ii) The appointment of the officers and authorities for the purposes of the Act, 2012 has to be done by the Authority by firstly enacting rules as this is the only prescribed manner in which the appointment can be made. The power vesting in the Authority under Section 39 relates to appointment of officers in relation to any area or cases specified in the notification. It indubitably follows that unless there are rules which have been enacted for the specific purpose of appointment of officers mentioned in section 39 to exercise jurisdiction in relation to certain areas or cases, those officers cannot assume the jurisdiction to exercise powers in terms of section 52 of the Act, 2012and to issue show cause notice.

Conclusion: i) As above under analysis no. 1.
ii) Unless there are rules which have been enacted for the specific purpose of appointment of officers mentioned in section 39 to exercise jurisdiction in relation to certain areas or cases, those officers cannot assume the jurisdiction to exercise powers in terms of section 52 of the Act, 2012 and to issue show cause notice.

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18. **Lahore High Court**
Federation of Pakistan through Military Estates Officer, Multan Circle Multan & another v. Sahibzada Dawod Khan Abbasi & others
RFA No.47 of 2017/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi, Mr. Justice Asim Hafeez
https://sys.lhc.gov.pk/appjudgments/2023LHC3596.pdf

Facts: This judgement has decided the appeals filed by the appellants challenging the consolidated judgment and decree passed by learned Senior Civil Judge, whereby

reference applications filed under Section 18 of the Land Acquisition Act, 1894 by respondents, were partly accepted and the cross appeals filed by the respondents seeking enhancement in the quantum of price and value of the property acquired.

Issue: What the term ‘potential value’ means and how it is determined for evaluating the compensation amount u/s 23(1) of the Land Acquisition Act 1894 of the acquired property?

Analysis: Potential value means the value of the land based on the probability that if developed, considering its location and proximity to residential, commercial, or industrial areas with amenities such as roads, water, gas, electricity, communication network and suitability, it has the potential to be developed, which will increase its value. The value of land must include the potentiality of the land because this is the value, which the landowners would benefit from if they were able to maintain their ownership over the land. So far as the determination of potential value is concerned, there is no mathematical formula, which is applied uniformly in every case. Each case needs to consider in the context of proximate facts, but potential value must be factored along the market value. The objective is to ensure that the landowner not only gets the actual value of the land at the time of its acquisition but certainly benefit assessed on future prospects of the land. Consequently, factors such as entries in the revenue record and land classification(s) simplicitor cannot form the basis of determination of compensation but prospective value thereof. Although, the Land Revenue Collector is required to classify the land being acquired with its location, under Rule 10 of the Rules, it is not the sole basis for calculating the estimated price of the land under acquisition. It is held by Hon’ble Apex Court in the case of Land Acquisition Collector and others v. Mst. Iqbal Begum and others (PLD 2010 SC 719) that if a landowner is deprived of his property, he must be adequately compensated; give gold for gold and not copper for the gold. This is the essence of significance of potential value. The Hon’ble Apex Court has also held that compensation cannot be based on past sales of similar land in the same vicinity because potentiality cannot be determined without examining future prospects. Hence, compensation is about the value of the land, being its market value plus its potential value, ensuring that landowner is duly compensated.

Conclusion: Potential value means the value of the land based on the probability that if developed, considering its location and proximity to residential, commercial, or industrial areas with amenities such as roads, water, gas, electricity, communication network and suitability, it has the potential to be developed, which will increase its value. It is determined on the basis of proximate facts of each case, but it must be factored along the market value.

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19. **Lahore High Court**
Muhammad Bilal & another v. Muhammad Ayub
C.R. No.388 of 2018/BWP
Mr. Justice Muhammad Sajid Mehmood Sethi
https://sys.lhc.gov.pk/appjudgments/2023LHC3301.pdf

Facts: Petitioners challenged a judgment passed by an Additional District Judge, whereby appeal filed by respondent against Trial Court's order dismissing his application for extension of time period to deposit the remaining sale consideration, was allowed.

Issue: Where a suit for specific performance of a contract was conditionally decreed by trial court with penal consequences of not depositing the remaining sale consideration within stipulated time, then whether trial court becomes *functus officio* after expiry of the said time, hence debarred from extending the said time?

Analysis: Section 148 of the Civil Procedure Code gives the Court power to extend time previously fixed or granted by it for the doing of any act prescribed or allowed by the Code of Civil Procedure and it can do so even after the period originally fixed or granted has expired. But this section, it is now well settled, does not apply where the period is fixed by a decree in a suit unless the decree is in the nature of a preliminary decree…The real test, is whether the decree has been made in such terms as to indicate that the Court has finally disposed of all matters so that it is to operate automatically or whether the Court has still retained some control over the litigation. An examination, therefore, has to be made of the precise terms used in the decree. [where] the decree of the Trial Court used the words that in the event of default, "plaintiff will deemed to be non-suited", [such use of words] are words of finality and are to take effect automatically, Section 148 CPC can have no manner of application and the time cannot be enlarged… on account of the penal clause contained in Trial Court's decree, upon respondent's failure to deposit the remaining sale consideration within time fixed therein, respondent stands non-suited and consequently, the subject matter agreement to sell automatically stood rescinded in terms of section 35(c) of the Specific Relief Act, 1877. The jurisdiction with the learned Trial Court was only available within the stipulated period in the subject matter decree and the moment this stipulated period expired, it ceased to have jurisdiction and had become *functus officio*, in view of the expression of adjudication through a condition contained in the decree.

Conclusion: Where a suit for specific performance of a contract was conditionally decreed by trial court with penal consequences of not depositing the remaining sale consideration within stipulated time, then the trial court becomes *functus officio* after expiry of the said time, hence debarred from extending the said time.

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20. **Lahore High Court**
Atta Muhammad v. Zarai Taraqiati Bank Ltd.
EFA No.15 of 2022
Mr. Justice Tariq Saleem Sheikh, Mr. Justice Muzamil Akhtar Shabir
https://sys.lhc.gov.pk/appjudgments/2023LHC3392.pdf

Facts: Through this Execution First Appeal filed under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (FIO), the appellant has called in question order passed by Judge Banking Court whereby non-bailable warrants of arrest have been issued against the appellant.

Issues: i) Whether without satisfaction of the pre-conditions mentioned in Section 51 of the Code of Civil Procedure, 1908 mechanical order for detention of judgment debtor can be passed?
ii) Whether without adequate efforts to satisfy the decree by adopting the other modes provided in law, request for issuance of warrants of arrest of judgment debtor is justified?
iii) Whether the decisions of the High Court to the extent that it decides a question of law are binding on all the Courts subordinate to High Court?

Analysis: i) The perusal of Section 51 of the Code of Civil Procedure, 1908 and principles laid down in the afore-referred judgments make it clear that warrants of arrest of judgment debtor can only be issued in cases where the Court was satisfied that in order to obstruct or delay the execution of decree, the judgment-debtor is likely to abscond or leave the limits of Court or has after the institution of the suit in which decree was passed, dishonestly transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation to his property, or the judgment-debtor has, or has had since the date of decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account for, and without satisfaction of these pre-conditions no mechanical order for detention in prison can be passed.
ii) Request for issuance of warrants of arrest to arrest and detain the judgment-debtor on the basis of bald allegations without reference to any material evidence or fact merely to procure a coercive order, without adequate efforts to satisfy the decree by adopting the other modes provided in law, is highly unjustified.
iii) The decisions of the High Court to the extent that it decides a question of law or is based upon or enunciates a principle of law, are binding on all the Courts subordinate to this Court, per force of Article 201 of the Constitution of the Islamic Republic of Pakistan, 1973.

Conclusion: i) Without satisfaction of the pre-conditions mentioned in Section 51 of the Code of Civil Procedure, 1908 no mechanical order for detention of judgment debtor can be passed.

ii) Without adequate efforts to satisfy the decree by adopting the other modes provided in law, request for issuance of warrants of arrest of judgment debtor is highly unjustified.
iii) The decisions of the High Court to the extent that it decides a question of law are binding on all the Courts subordinate to High Court.

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21. **Lahore High Court**
Muhammad Tariq & 6 others v. The State & another
Criminal Revision No. 292 of 2019
Mr. Justice Tariq Saleem Sheikh
https://sys.lhc.gov.pk/appjudgments/2019LHC5106.pdf

Facts: Through this revision petition, the Petitioners have assailed the vires of order passed by the learned Additional Sessions Judge, whereby, he closed their right to cross-examine respondent No.2 and other witnesses.

Issues: i) Whether cross-examination by an accused himself on a prosecution witness can either be equated or substituted with the cross-examination by a counsel?
ii) When the accused deliberately avoids to produce his lawyer, whether the court may appoint a defence counsel at state expense and proceed with the trial?

Analysis: i) In Pakistan also the courts recognize that the right of accused to cross-examine the witnesses is the most valuable right. The courts have thus consistently held that cross-examination by an accused himself on a prosecution witness can neither be equated nor substituted with the cross examination by a counsel.
ii) Admittedly, there is no provision in the Criminal Procedure Code, 1898, which specifically empowers the trial court to guillotine the accused's right of cross-examination. However, this does not mean that he can abuse the process of law with impunity and take the court hostage. Hence, when he deliberately avoids to produce his lawyer, the court may appoint a defence counsel at state expense and proceed with the trial.

Conclusion: i) Cross-examination by an accused himself on a prosecution witness can neither be equated nor substituted with the cross-examination by a counsel.
ii) When the accused deliberately avoids to produce his lawyer, the court may appoint a defence counsel at state expense and proceed with the trial.

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22. **Lahore High Court**
M/s Mandviwalla Builders & Developers and Mangla View Resort (Pvt.) Limited v. M. Awais Sheikh CEO Mangla View Resort and Mangla Garrison Housing (Pvt.) Limited and others
Civil Original No.11 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3368.pdf

Facts: The Applicants/ Respondents filed an application in a Civil Original petition raising objection qua the maintainability of the main petition on the ground of

lack of territorial jurisdiction of High Court under the Companies Act, 2017.

Issue: Whether a Civil Original Petition against a company can be filed/ entertained at any place other than the place at which the registered office of the company is located/ situated?

Analysis: It is by now a settled law that if a mandatory condition for the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled, then the entire following proceedings become illegal and suffer from want of jurisdiction. Part II of the Companies Act, 2017 deals with jurisdiction of the Court and Section 5 of the "*Act*", starts with the Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situated… Under Section5 (4) of the *"Act"*, the Chief Justice of the High Court has been given explicit powers to constitute Company Benches to exercise jurisdiction vested in the High Court under the *"Act"*. Since the Chief Justices of the respective High Courts have the exclusive powers to create more than one Company Benches, it is imperative to determine the jurisdiction as to which Company Bench will exercise powers in a particular case. Section 5(1) of the *"Act"* unequivocally provides that the jurisdiction shall be determined on the basis of place of the "*registered office*" of the company situated in the territorial jurisdiction of the respective High Court.

Conclusion: A Civil Original Petition against a company cannot be filed/ entertained at any place other than the place at which the registered office of the company is located/ situated.

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23. **Lahore High Court**
Samra Gul v. Chairperson TEVTA etc.
Writ Petition No. 1407 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3641.pdf

Facts: The Petitioner sought setting aside of the order of her dismissal from service passed by the respondent Authority claiming that the impugned orders were passed in violation of the Punjab Employees Efficiency, Discipline and Accountability Act 2006.

Issue: Whether holding of regular inquiry of a government employee is necessary for his/her termination from service on ground of misconduct?

Analysis: No regular inquiry was conducted for bringing on record relevant reliable evidence for fixing up extent of liability of culprit officials in subject issue as well as for onward determination of quantum of penalties…Record reveals that Inquiry Committee had recommended petitioner's removal from service, whereas Competent Authority substituted said penalty with petitioner's dismissal from service, that too, without assigning justifiable reasons and a speaking order…It

is also worth mentioning that it is inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Hence, it is the duty and obligation of every public functionary to act within the four corners of the mandate of the Constitution and the Punjab Employees Efficiency, Discipline and Accountability Act 2006, and pass a speaking order.

Conclusion: Holding of regular inquiry of a government employee is necessary for his/her termination from service on ground of misconduct.

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24. **Lahore High Court**
Service Global Footwear Limited and another v.
Federation of Pakistan and others
Writ Petition No. 58683 of 2022
Mr. Justice Jawad Hassan
https://sys.lhc.gov.pk/appjudgments/2023LHC3797.pdf

Facts: The Petitioners assailed the retrospective application of Section 4C of the Income Tax Ordinance, 2001 and the vires of the First Proviso to Division IIB of Part I of the First Schedule of the said Ordinance, introduced through the Finance Act, 2022.

Issues: (i) Whether the effective date of Section 4C of the Income Tax Ordinance, 2001i.e. 01.07.2022 includes the tax period 01.07.2021 to 30.06.2022?
(ii) What is the Doctrine of Textualism?
(iii) Whether the First Proviso to Division IIB of Part I of the First Schedule of the Income Tax Ordinance, 2001 is discriminatory, hence, ultra vires to the Constitution of Pakistan, 1973?

Analysis: (i) Notably, Section 4C Division IIB was inserted in the *"Ordinance"* through the Finance Act 2022 passed on 30.06.2022 effective from 01.07.2022. The sole ground as agitated by the Petitioners is that this amendment does not apply retrospectively as their tax year 2022 ended on 30.06.2022 and 31.12.2022 thus becomes absolute and past and closed transaction. It is observed that computation of any taxable income as self-assessed and declared by a taxpayer, is subject to scrutiny and assessment in terms of Section 111 and 122 of the *"Ordinance"* and may further be reassessed and amended for a period of five consecutive tax periods/years. In this regard, section 122(2) of the *"Ordinance"* empowered the Respondents to amend taxpayers' assessment upto five successive years and mere reflecting the internal accounting income that is worked out as per International Accounting Standards and is reported in annual accounts is different from computation of taxable income. Therefore, the return of income can only be considered a past and closed transaction after the lapse of statutory five years limitation period. So, the conclusion can easily be drawn that the effective date of Section 4C of the *"Ordinance"* i.e. 01.07.2022 includes the tax period 01.07.2021 to 30.06.2022 during which the tax liability accrued and same was to be paid till

thirtieth day of September as per normal tax year and that of 31st December if availed as concession with regard to special tax year.
(ii) Doctrine of Textualism envisages a method of statutory interpretation that asserts a statute should be interpreted according to its plain meaning and not according to the intent of the legislature, the statutory purpose, or the legislative history.
(iii) It is noted that while imposing super tax under Section 4B of the "Ordinance", it appears that uniform rate of super tax upon the same class of person i.e. (i) Banking Companies @ 4% and (ii) Person, other than a banking Company having income equal to or exceeding to Rs.500 Million (Rupees Five Hundred Million) @ 3% has been imposed without any discrimination within the same class. But from perusal of Division IIB, Column 5, reveals that maximum rate of super was fixed at 4% where the income exceedRs.300 million while in 1st Proviso, added to Division IIB of Part I of the First Schedule of the "Ordinance", which create a further sub-classification, the persons engaged, wholly/partly, in the businesses of airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles, were held liable to pay super tax at the rate of 10% where the income exceeds Rs. 300 million which, of course, is more than the double rate as compared to column No.5 of Division IIB of Part I of the First Schedule. Therefore, the said proviso is found to be prima facie discriminatory and the learned counsel for the Respondents remained unable to demonstrate any intelligible differentia therein, having rational nexus with the object of classification…It is by now well settled law that although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification but it is also equally settled that in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought tobe achieved. This means that any distinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied…Moreover, the creation of said separate category/sub-classification of persons under the 1st proviso to Division IIB of Part I of the First Schedule of the *"Ordinance"* tantamount to creation of artificial grouping leading to arbitrariness.

Conclusion: (i) The effective date of Section 4C of the Income Tax Ordinance, 2001 i.e. 01.07.2022 includes the tax period 01.07.2021 to 30.06.2022.
(ii) Doctrine of Textualism envisages a method of statutory interpretation that asserts a statute should be interpreted according to its plain meaning and not according to the intent of the legislature, the statutory purpose, or the legislative history.
(iii) The First Proviso to Division IIB of Part I of the First Schedule of the Income Tax Ordinance, 2001 is discriminatory, hence, ultra vires to the Constitution of

Pakistan, 1973.

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25. **Lahore High Court**
Sajjad Ali v. ASJ, Mandi Bah-ud-din and 12 others
Criminal Revision No. 56556 of 2020
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2022LHC9616.pdf

Facts: The petitioner being an accused of case FIR registered under sections 302, 324, 148, 149, 109, PPC also got recorded his cross-version by filing an application under section 22-A(6), Cr.P.C. before learned Ex-Officio Justice of Peace but the same was cancelled by the police and the petitioner then filed private complaint but the learned Additional Sessions Judge after recording cursory statements of CWs dismissed the same. The petitioner through this criminal revision has challenged the dismissal of his private complaint.

Issues: i) What are the requisite conditions of section 204, Cr.P.C. for the issuance of process against the accused to appear in the Court?
ii) What procedure is to be adopted by the Court when a private complaint is filed?
iii) Whether court can examine the material in depth while deciding the point of issuance of process in a private complaint?

Analysis: i) It is settled proposition of law that requisite conditions mentioned in section 204, Cr.P.C. are the availability of sufficient grounds which can satisfy the Court for issuance of process against the accused to appear in the Court. Availability of some evidence on record is sufficient for the summoning of an accused. Section 204, Cr.P.C. provided formation of 'opinion' by taking cognizance of an offence and availability of 'sufficient grounds for proceeding. For recording conviction, there must be evidence in support thereof but no such evidence is required for issuance of process and summoning of accused persons. Expression 'sufficient grounds' used in section 204, Cr.P.C. means the presence of facts and evidence prima facie constituting an offence to enable the court to issue process.
ii) It is settled proposition of law that after filing a complaint the court should examine the complainant on oath and evidence produced by the complainant party should be brought on record which shall be duly signed by the complainant and Area Magistrate and if the complaint is made in writing the court may examine the case on oath. However, the Court if not certain about the truthfulness or otherwise of the complaint, then on postponement of the issuance of process, for which reasons will have to be recorded, it may direct investigation/inquiry to be conducted in order to ascertain the truth or falsehood of the complaint and after arriving at a conclusion in either way, the court then, may proceed either under section 204, Cr.P.C. for the issuance of process or under section 203, Cr.P.C. dismiss the complaint.
iii) While deciding the point of issuance of process, the court should have taken the bird eye view because it is never a full-fledged trial and the court is not

competent to examine the material in depth. The burden of proof in preliminary inquiry of issuance of process is more lessor as compared to burden of proof of prosecution at the time of full-fledged trial because in the trial the prosecution has to prove its case beyond reasonable doubt but at the stage of issuance of process the complainant was not duty bound to discharge his responsibility heavily.

Conclusion: i) The requisite conditions of section 204, Cr.P.C. are the availability of sufficient grounds which can satisfy the Court for the issuance of process against the accused to appear in the Court.

ii) After filing a complaint the court should examine the complainant on oath and evidence produced by the complainant party should be brought on record and the Court if not certain about the truthfulness or otherwise of the complaint, then on postponement of the issuance of process it may direct investigation/inquiry to be conducted in order to ascertain the truth or falsehood of the complaint.

iii) The court cannot examine the material in depth while deciding the point of issuance of process in a private complaint because it is not a full-fledged trial.

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26. **Lahore High Court**
Muhammad Tasleem v. The State, etc.
Criminal Appeal No.544 of 2015
Mr. Justice Muhammad Tariq Nadeem
https://sys.lhc.gov.pk/appjudgments/2023LHC3342.pdf

Facts: Appellant faced trial in case FIR, under sections 409, 420, 468 & 471 PPC read with section 5(2) of Prevention of Corruption Act, 1947, registered at Police Station Anti-Corruption Establishment, and at the conclusion of trial, the trial court convicted and sentenced him.

Issues: i) Whether non cross-examination of prosecution witnesses is sufficient to convict and sentence the accused or conviction should base on totality of impression from circumstances of case?

ii) What is the standard of proof required in criminal case?

Analysis: i) It is true that due to lethargic attitude of the appellant, his right of cross-examination was closed by the trial court, but High Court still has to determine whether or not the evidence of prosecution witnesses, who were not subjected to cross-examination, is sufficient to uphold the appellant's conviction and sentences. No hard and fast rule has been laid down by the Supreme Court of Pakistan in the op.-cit. case-law that if the prosecution witnesses are not cross-examined by the defence, their statements would be blindly relied upon by the courts of law for convicting and sentencing the accused. I am afraid, the above principle highlighted by the prosecution is applicable to the cases on civil side and not to the criminal cases. It has been well-settled by now that the criminal cases should be decided with regard to the totality of impressions drawn and inferred from the circumstances of the case rather than on the restricted basis of a witness's

cross-examination or otherwise on a specific fact disclosed by him.

ii) It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The findings as regard the guilt of accused should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused at the standard of proof required in criminal cases, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused, the benefit of that doubt is to be given to the accused as of right, not as of concession.

Conclusions: i) If the prosecution witnesses are not cross-examined by the defence, their statements would not be blindly relied upon by the courts of law for convicting and sentencing the accused. Criminal cases should be decided with regard to the totality of impressions drawn and inferred from the circumstances of the case.

ii) The finding as regards guilt of accused should rest surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot substitute the proof.

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27. **Lahore High Court**
Public Interest Law Association of Pakistan v.
Federation of Pakistan & 08 others
W.P No.36692/2021
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC3403.pdf

Facts: Four writ petitions have been filed to challenge an arrangement between the Government of the Punjab (the “GOP”) and the Pakistan Army, a branch of the Armed Forces of Pakistan that envisages the transfer of more than one million Acres of State land vested in the Province of the Punjab or its Departments to the Pakistan Army to venture into Corporate Agriculture Farming (the “CAF”) on profit sharing basis. The plan after passing through legal processes during the period of caretaker government was accorded approval by the caretaker Cabinet of the Province of the Punjab and formal notification was issued under Section 10 of the Colonization of Government Lands (Punjab) Act, 1912 (the “Colonization

Act”). Pursuant thereto, a Joint Venture Management Agreement (the “JVA”) was executed between the GOP and the Pakistan Army. The process of bestowing State land by the Caretaker Government to the Pakistan Army for CAF culminating into the Notification, the JVA and subsequent developments were assailed before this Court.

Issues: i) What are caveats which a person has to cross to invoke the jurisdiction of High Court under Article 199(1) (a) & (c) of the Constitution?

ii) How the locus standi to maintain the grievance under Article 199 of Constitution is determined?

iii) When the general and traditional rule to question the locus standi of a person can be relaxed?

iv) Whether any member of general public can invoke the jurisdiction of High Court under Article 199 of Constitution regarding state/public property?

v) Whether policy making of executive is amenable to Judicial Review?

vi) What is concept of ‘caretaker government’?

vii) Whether there are any limitations and restrictions on mandate or scope of care taker government?

viii) Whether care taker government can pick up and proceed further in a policy matter left by previous elected government and bound the future elected government?

ix) Whether approval of new statement of conditions (SOCs) by only one Minister and secretaries of other ministers without approval of their respective ministers and in the absence of minutes of meetings is legal?

x) What is process of grant of land under section 10(1) of the colonization Act?

xi) What is scope of section 10(2) in grant of land?

xii) What is nature of authority of GOP regarding grant of land and issuance of notification?

xiii) What is significance of the written order of allotment by the Collector under Colonization Act?

xiv) What is difference between words ‘person’ and ‘tenant’ used under section 10 of Colonization Act?

xv) Whether joint venture on profit-sharing basis is beyond the scope of Section 10(2) of the Colonization Act?

xvi) Whether issuance of notification for grant of land under the Colonization Act, requires approval of Governor?

xvii) What are duties of Armed forces and who holds command of Armed forces of Pakistan?

xviii) What is scope and mandate of Armed Forces of Pakistan?

xix) Whether Pakistan Armed forces should involve in civil functioning of State and it should be assigned permanent civilian role?

xx) Whether Pakistan Armed forces can involve in commercial activity without approval of Federal Government?

Analysis: i) There is no cavil to the proposition that in order to invoke the jurisdiction of High Court under Article 199(1)(a) and (c) of the Constitution, the Petitioners are required to cross the caveats of ‘aggrieved person’ or ‘locus standi’ and the absence of ‘adequate remedy provided by law’. At the same time, Article 199(2) of the Constitution emphasizing the importance of fundamental rights provides that subject to the Constitution, the right to move a High Court for the enforcement of any of the fundamental rights conferred by Chapter I of Part II shall not be abridged. Determination of the eligibility of a person to invoke jurisdiction of the Court under Article 199 of the Constitution is vested, in the first instance, with the Court itself.

ii) The rule of locus standi has over the time received liberal interpretation and any person or citizen of the State having ‘sufficient interest’ in the larger public interest has always been entertained to maintain his grievance under Article 199 of the Constitution subject to satisfying the other requirements of the said Article. The rule is discretionary and no hard and fast rule can be laid down with respect to determination of locus standi of a person to knock the door of High Court under Article 199 of the Constitution. The discretion is exercised on the basis of sound and established judicial principles depending on the facts and circumstances of each case in the light of nature, substance and gravity of the issues raised vis-à-vis their implications upon the rights and interests of the people.

iii) When the matter brought to this Court relates to breach or enforcement of any of the fundamental rights affecting the citizens of the State as a whole including the person who has come forward to move the Court, the general and traditional rule to question the locus standi of such person is relaxed and dispensed with in favour of an exceptional rule and procedure available in public interest litigation provided it is established that the person approaching the Court is acting with bona fide and in all sincerity to protect the collective rights of the people.

iv) The rights accruing to the citizens of the State may be in the nature of their personal or collective rights. The initiative may, therefore, come from a concerned citizen regarding the enforcement of a collective right of the society, which of course, is also his own personal right being a member and part of the society. Surely, every citizen has ‘sufficient interest’ to protect and preserve property of the State or at least ensure that it is put to use in the best interest of the people. The Atta Ullah Khan Malik case extensively deliberated the scope of public interest litigation with reference to public property. It was held that any citizen or person has ‘sufficient interest’ and is therefore, an ‘aggrieved person’ under Article 199 of the Constitution, if public property is being acquired, held, used or disposed of by public functionaries in violation of the law since public functionaries as trustees of the people cannot have any personal interest in any public property. Therefore, if there is any abuse of trust or violation of law, it confers a right upon any member of the general public as an ‘aggrieved person’ to invoke the constitutional jurisdiction of this Court, subject to fulfilling other requirements under Article 199 of the Constitution.

v) The normal rule is that policy making being an executive function is not amenable to Judicial Review by the Courts unless the policy falls in any of the exceptions to the general rule. The exceptions include if a policy is shown to be in violation of fundamental rights, inconsistent to constitutional and statutory provisions, or demonstrably arbitrary, capricious, mala fide, discriminatory or unreasonable opposed to public policy.

vi) The concept of 'caretaker government' connotes that it is installed for an interim or interregnum period when an elected or legitimate government is not in place to achieve two-fold objectives, that is, to provide continuity to the business of the State and ensure neutrality to all political stakeholders who may contest the elections to form a future government. By its inherent nature, it is temporary in character to be replaced with an elected or legitimate or stable government. Thus, it is generally well established that there are limitations and restrictions with respect to any caretaker government in terms of its powers, functions and duties. Normal rule is that a caretaker government limits itself to routine business of the State and in principle, must refrain from making policy decisions.

vii) Section 230 of the Elections Act contains both positive and negative covenants, the conjunctive reading of which conclusively establishes that there are serious limitations and restrictions imposed by the Parliament upon the caretaker government in terms of its powers and functions. The mandate or scope of a caretaker government is limited to perform functions with respect to day-to-day affairs deemed to be necessary to run the government which cannot be postponed to a future date. It is obligated to assist the Election Commission of Pakistan to hold elections in accordance with law. It is equally under a legal duty to consciously restrict itself to routine, non-controversial and urgent matters. Such caveats or principles were introduced to necessarily refrain it from taking any action which is not reversible by the future elected government. The caretaker government is also barred from entering into any major contract or undertaking detrimental to public interest.

viii) The decision of the Caretaker Cabinet to approve the new SOCs definitely had the effect to pre-empt the exercise of authority by the future elected governments. As such, the act of the Caretaker Government to pick the thread from where it had been left by the previous Elected Government and proceed further was beyond its scope and mandate in terms of Section 230 of the Elections Act and was a blatant attempt to encroach upon the domain of the future elected governments.

ix) The Secretary as administrative head of the Department is under the control of his Minister-in-charge and is obliged to work under his direction and supervision keeping him informed of all important matters, particularly proceedings attended by the Secretary in the absence of the Minister. In fact, the Secretary under Rule 10(1)(e) of the Rules, 2011 is mandatorily required to submit, with the approval of Minister, proposals for legislation to the Cabinet. In the instant case, the concerned Secretaries attending the Ministerial Committee's meeting did not take any approval of their respective Ministers. Rather, in the absence of minutes,

there was no question of obtaining any approval. Moreover, the Ministerial Committee consisted of specified persons including Ministers and officers who could not have been substituted by anyone else except without cause which act of absence was subject to mandatory subsequent approval. The Rules, 2011 merely allow representation in case of absence for the smooth conduct of official business. In any event, the Rules, 2011 framed under the Constitution are mandatory procedural stipulations for the conduct of official business and do not pre-empt the specific constitutional and legal duties imposed by the Constitution and law upon the holders of any constitutional and public office. Therefore, the claim of approval of the new SOCs by the Ministerial Committee by substituting or amending the original SOCs in the absence of minutes and without three out of four Ministers in the absence of their subsequent approval exposes the hollowness and callousness of the assertion and illuminates the dangers associated to any caretaker regime. The claim of approval of the new SOCs by such Ministerial Committee is a nullity in the eyes of law.

x) Under Section 10(1) of the Colonization Act, the legislature delegated the power upon the BOR subject to the approval of the GOP to grant land to 'any person' on 'such conditions as it thinks fit'. The BOR in exercise of such power was entitled to present a proposal to the GOP for grant of land in favour of any person. The proposal was subject to the mandatory condition of approval by the GOP which in the light of Mustafa Impex case was required to be extended by the Cabinet. This provision is limited to 'grants' only and it may be invoked to confer land to the Departments or any other person to achieve the public purposes as deemed appropriate by the GOP.

xi) Section 10(2) relates to 'tenants' and it proclaims that land can be granted to tenants only by the GOP itself subject to issuance of a legislative instrument under the doctrine of delegated legislation in the nature of SOCs determining the terms of grant of land in favour of tenants. Therefore, the scope of Section 10(2) is limited to grant of land to 'tenants'. The provision is more stringent than mere grant of land under Section 10(1).

xii) An act of grant, sale, disposition or mortgage of any property in itself is an executive function and is included in the executive authority of a Province. The GOP was directly delegated both executive and legislative authority by the Provincial Assembly while promulgating the Colonization Act. The power conferred upon the GOP under Section 10(2) of the Colonization Act is in the nature of delegated legislation. Any notification to be issued thereunder by the GOP is a legislative instrument. The process of issuance of Notification involves exercise of partly executive and partly legislative authority. The exercise of power of subordinated legislation in terms of issuance of SOCs to grant land to tenants was required to be exercised by the Cabinet in light of Mustafa Impex case.

xiii) Once a valid notification by the GOP is issued, the Collector subject to the control of the BOR may allot land to any person with the caveat that land cannot be allotted in contravention of SOCs in terms of Section 10(3) of the Colonization Act. The Collector may declare in his written order of allotment as to which of the

terms stipulated in SOCs would apply to the allottee. However, the allotment order must be confined to SOCs and anything beyond that would be unlawful. The significance of the written order of allotment by the Collector is spelled out in Section 10(4) of the Colonization Act which unequivocally declares that no person is recognized as a tenant or can claim any right or title in the allotted land in the absence of written order of the Collector and must take possession of allotted land with the permission of the Collector.

xiv) the text of Section 10(1), (3) and (4) of the Colonization Act uses the word 'person', whereas, Sub-section (2) thereof employs the word 'tenants'. Taken as a whole, Section 10(1) & (2) of the Colonization Act are mutually exclusive as the former relates to 'grants only to any person', whereas, the latter pertains to 'grants to tenants only'. Section 10(3) & (4) of the Colonization Act are in furtherance to the controlling Sub-Section (2) of Section 10 of the Colonization Act. The controlling provision limits the power of the GOP to grant land to 'tenants only' and the furthering provisions spell out the methodology of allotment and possession along with attached covenants. The intentional use of the word 'tenant' in Section 10(2) of the Colonization Act is clarified by the legislature by using the term 'no person shall be deemed as a tenant' employed in Section 10(4) of the Colonization Act leaving no doubt that land can only be granted under Section 10(2) of the Colonization Act to 'tenants' only and 'person' in terms of Sub-sections (3) & (4) of Section 10 of the Colonization Act is no one else but a 'tenant'.

xv) A joint venture on profit-sharing basis is beyond the scope of Section 10(2) of the Colonization Act as its mandate was limited to creation of tenancy.

xvi) Article 139 of the Constitution ordains that all executive actions of the Provincial Government shall be expressed in the name of the Governor in accordance with the Rules, 2011. Rule 12(1) of the Rules, 2011 requires that no order shall be issued without the approval of the Governor in cases mentioned in Part-A of Third Schedule thereof. However, no item therein relates to delegated legislative instruments such as the impugned Notification. Rather, the matter squarely falls under Rule 14(1) of the Rules, 2011 read with Item No. 19 of Part-A of Seventh Schedule thereof being a case pertaining to 'policy decision' and 'delegated legislation' requiring approval of the Chief Minister through the Cabinet. The case is required to be submitted to the Governor only for information under Rule 13(4) read with Third Schedule, Part B, item No. 3 of the Rules, 2011 which requires that summaries for the Cabinet, minutes and decisions of its meetings will be placed before the Governor for his information. The administration of the Colonization Act fell within the ambit of the Colonies Department of the BOR in terms of distribution of business under Rule 3(3) read with Second Schedule of the Rules, 2011 and the Notification was required to be issued by the Secretary of the Colonies Department on behalf of the GOP.

xvii) The institution of the Armed Forces of Pakistan was conceived to discharge the pivotal duty of the State in terms of protection of its frontiers and its citizens against external aggression and internal disturbances which may impair the

collective will of the people of Pakistan to live an orderly and disciplined life regulated by law. It is evident from the bare reading of the Articles 243 to 245 of Constitution that the institution of the Armed Forces was created by the Constitution itself under the control and command of the Federal Government. Realizing the importance of the Armed Forces with respect to its foremost duty regarding the protection of citizens against external aggression or internal disturbances, the supreme command was vested in the institution of the President who is the symbol of unity of the State, although the executive authority of the FOP is exercised through the Prime Minister and the Federal Cabinet in terms of Articles 90 and 91 of the Constitution.

xviii) The scope and mandate of the Armed Forces of Pakistan have been exquisitely interpreted in the cases of Sindh High Court Bar Association; Air Marshal (Retd.) Muhammad Asghar Khan; and Prof. Zahid Baig Mirza, it has been rightly concluded therein that any action of the Armed Forces undertaken without the direction or approval by the Federal Government shall always be unlawful, unconstitutional, void ab initio and consequently, of no legal effect. The Directorate or Department dealing with lands has a restricted mandate with respect to land allocated for the use of branches of Armed Forces or the Pakistan Army in order to manage and retain it according to the scheme of governing law. The administration of military lands and cantonments group is also under the administrative control of the Ministry of Defence.

xix) The Armed Forces being a disciplined and armed force in terms of its peculiar duties must be effectively separated from the civilian functioning of the State. Therefore, the members of the Armed Forces as a principle should not be assigned any permanent civilian role which allows their interaction with the civilian population or with the civil administration of the State to avoid disputes and differences which are inherent in any civilian disposition so that each member of the Armed Forces can function beyond political divide and perform his duties in a neutral and non-partisan manner Such is the importance of this rule that Article 245(3) of the Constitution even ousts the jurisdiction of the High Court under Article 199 of the Constitution in relation to any area in which the Armed Forces of Pakistan, for the time being, are acting in aid of civil power in pursuance of Article 245 of the Constitution. Similarly, Article 199 of the Constitution which provides constitutional remedy to the citizens of Pakistan for the enforcement of their fundamental rights also ordains in sub-Article (3) thereof, that the High Court shall not make an order under sub-Article (1) thereof, on application made by or in relation to a person who is a member of Armed Forces of Pakistan or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or a person subject to such law. The above articulation postulates that the institution of Armed Forces of Pakistan as an institution of the State is to be kept in segregation or oblivion to all other civil institutions of the State so that it can focus upon its primary responsibility of

defending Pakistan and protecting its people without being involved in any kind of political, social or economic divide which may erode its professional capability, neutrality, prestige and pride.

xx) The Pakistan Army cannot do anything of its own, it is held that the restricted mandate of the Pakistan Army in terms of Article 245 of the Constitution is comprehensive and extends to every function of the Pakistan Army and includes all commercial activities. The Pakistan Army is funded out of public money through budgetary allocation. The Armed Forces cannot do anything of their own without the approval or direction of the Federal Government.

Conclusion: i) In order to invoke the jurisdiction of High Court under Article 199(1)(a) and (c) of the Constitution, the Petitioners are required to cross the caveats of ‘aggrieved person’ or ‘locus standi’ and the absence of ‘adequate remedy provided by law’.

ii) No hard and fast rule can be laid down with respect to determination of locus standi of a person to knock the door of High Court under Article 199 of the Constitution. The discretion is exercised on the basis of sound and established judicial principles depending on the facts and circumstances of each case in the light of nature, substance and gravity of the issues raised vis-à-vis their implications upon the rights and interests of the people.

iii) When the matter brought to High Court relates to breach or enforcement of any of the fundamental rights affecting the citizens of the State as a whole including the person who has come forward to move the Court, the general and traditional rule to question the locus standi of such person is relaxed.

iv) If there is any abuse of trust or violation of law, it confers a right upon any member of the general public as an ‘aggrieved person’ to invoke the constitutional jurisdiction of High Court regarding state/public property, subject to fulfilling other requirements under Article 199 of the Constitution.

v) If public property is being acquired, held, used or disposed of by public functionaries in violation of the law since public functionaries as trustees of the people cannot have any personal interest in any public property. Therefore, If a policy is shown to be in violation of fundamental rights, inconsistent to constitutional and statutory provisions, or demonstrably arbitrary, capricious, mala fide, discriminatory or unreasonable opposed to public policy, the same is amenable to Judicial Review.

vi) The concept of ‘caretaker government’ connotes that it is installed for an interim or interregnum period when an elected or legitimate government is not in place to achieve two-fold objectives, that is, to provide continuity to the business of the State and ensure neutrality to all political stakeholders who may contest the elections to form a future government. Normal rule is that a caretaker government limits itself to routine business of the State and in principle, must refrain from making policy decisions.

vii) The mandate or scope of a caretaker government is limited to perform functions with respect to day-to-day affairs deemed to be necessary to run the government which cannot be postponed to a future date. It is obligated to assist the Election Commission of Pakistan to hold elections in accordance with law. It

is refrained from taking any action which is not reversible by the future elected government.

viii) Picking up policy matter by care taker government left by previous elected government and proceed further to bound the future elected government is beyond the scope and mandate of care taker government in terms of section 230 of Elections Act.

ix) Approval of the new SOCs by the Ministerial Committee by substituting or amending the original SOCs in the absence of minutes and without three out of four Ministers in the absence of their subsequent approval exposes the hollowness and callousness of the assertion and illuminates the dangers associated to any caretaker regime. The claim of approval of the new SOCs by such Ministerial Committee is a nullity in the eyes of law.

x) As above (under relevant analysis).

xi) The scope of Section 10(2) is limited to grant of land to ‘tenants’.

xii) The GOP was directly delegated both executive and legislative authority by the Provincial Assembly while promulgating the Colonization Act.

xiii) The significance of the written order of allotment by the Collector is spelled out in Section 10(4) of the Colonization Act which unequivocally declares that no person is recognized as a tenant or can claim any right or title in the allotted land in the absence of written order of the Collector and must take possession of allotted land with the permission of the Collector.

xiv) Grant of land under section 10(2) of the Colonization Act to ‘tenants’ only and ‘person’ in terms of Sub-sections (3) & (4) of Section 10 of the Colonization Act is no one else but a ‘tenant’.

xv) A joint venture on profit-sharing basis is beyond the scope of Section 10(2) of the Colonization Act as its mandate was limited to creation of tenancy.

xvi) The matter squarely falls under Rule 14(1) of the Rules, 2011 read with Item No. 19 of Part-A of Seventh Schedule thereof being a case pertaining to ‘policy decision’ and ‘delegated legislation’ requiring approval of the Chief Minister through the Cabinet. The case is required to be submitted to the Governor only for information under Rule 13(4) read with Third Schedule, Part B, item No. 3 of the Rules, 2011 which requires that summaries for the Cabinet, minutes and decisions of its meetings will be placed before the Governor for his information.

xvii) Realizing the importance of the Armed Forces with respect to its foremost duty regarding the protection of citizens against external aggression or internal disturbances, the supreme command was vested in the institution of the President who is the symbol of unity of the State, although the executive authority of the FOP is exercised through the Prime Minister and the Federal Cabinet in terms of Articles 90 and 91 of the Constitution.

xviii) Any action of the Armed Forces undertaken without the direction or approval by the Federal Government shall always be unlawful, unconstitutional, void ab initio and consequently, of no legal effect.

xix) Armed forces should not involve in civil functioning of State and it should not be assigned permanent civilian role.

xx) The Armed Forces cannot do anything of their own without the approval or

direction of the Federal Government.

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28. **Lahore High Court**
Syed Ali Javaid Hamdani v. The Federation of Pakistan through its Cabinet Secretary and 05 others
W. P. No. 12660 / 2023
Mr. Justice Abid Hussain Chattha
https://sys.lhc.gov.pk/appjudgments/2023LHC3681.pdf

Facts: The Petitioner as the CEO of SNGPL has impugned the decisions taken by the Board with respect to seizure of his powers as the CEO by appointing an Acting CEO and initiation of inquiry against him with other consequential measures in the 600th emergent meeting of the Board.

Issues: i) Whether the constitutional petitions filed by the employees of SNGPL are maintainable before the High Court regarding service matters?
ii) Whether the offices of the CEO, Chairman and member of the Board are separate and independent in terms of appointment, removal, role, powers and functions?
iii) Whether the process of appointment and removal of the CEO is regulated by specific mandatory legal provisions?
iv) Whether the power of nomination of the CEO vested with the Federal Government?
v) Whether the CEO has the same powers, functions and responsibilities as any other member of the Board?
vi) Whether the processes of appointment and removal of the CEO are separate and distinct and whether the Government has any role in its removal?
vii) Whether the delegated powers to the CEO can be withdrawn and the CEO can be removed without conducting inquiry?
viii) Whether the appointment of Acting CEO and conferring of powers of the CEO to the Acting CEO in the presence of existing CEO is lawful?

Analysis: i) There is no cavil to the proposition that SNGPL has no statutory rules of service as a public sector listed company and as such, constitutional Petitions with respect to the terms and conditions of service of its employees based on service contracts are not maintainable in terms of jurisdiction vested in this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. But constitutional Petitions with respect to interpretation of statutory provisions regarding the appointment, responsibilities, functions, powers and removal of the CEO vis-à-vis and the responsibilities, functions and powers of the Board in order to determine the scope and mandate of the applicable law germane to a public sector company which is required to be run and operated in accordance with the highest standards of good governance prescribed by law are maintainable.
ii) The offices of the CEO, Chairman and member of the Board are separate and independent in terms of appointment, removal, role, powers and functions which

are regulated by mandatory provisions of law and the same cannot be circumvented or made redundant by exercise of discretionary and general powers vested in any of such offices.

iii) The process of appointment and removal of the CEO is regulated by specific mandatory legal provisions which preempt the general role of oversight, supervision and control of the Board over the CEO.

iv) Notwithstanding the power of nomination of the CEO vested with the Federal Government under Section 187(4) of the Companies Act, the Federal Government did not exercise the power of nomination regarding the incumbent CEO of SNGPL and followed the process of the appointment prescribed under Section 187(1) of the Companies Act read with the Public Sector Companies (Appointment of Chief Executive) Guidelines, 2015 and Public Sector Companies (Corporate Governance) Rules, 2013.

v) The incumbent CEO is also a Director of SNGPL and as a member of the Board has the same powers, functions and responsibilities as any other member of the Board.

vi) The processes of appointment and removal of the CEO are separate and distinct and does not have any co-relation with each other. There is no role of the Federal Government in the removal of the incumbent CEO of SNGPL as the Federal Government does not hold more than 75% shares in SNGPL as ordained by Section 190(2) of the Companies Act. Therefore, the incumbent CEO of SNGPL can only be removed in accordance with the mandatory provisions of Section 190 of the Companies Act requiring three fourth of total membership of the Board being not inconsistent with Section 22 of the State Owned Enterprises (Governance and Operations) Act, 2023.

vii) The Board is obligated to delegate such powers to the CEO as are necessary to enable the CEO to perform the statutory duty of administration and management of the Company. Such powers cannot be withdrawn but the CEO can be removed even without inquiry under Section 190 of the Companies Act. However, if the Board deems appropriate, the Board can initiate an inquiry against the CEO before removing him from office but without seizure of his powers. If immediate measures are required to be taken against the CEO, the only course available is to follow the procedure of removal of the CEO under Section 190 of the Companies Act.

viii) There is no provision in the law for the appointment of Acting CEO in the presence of existing CEO. As such, the acts of the Board of SNGPL of suspending the incumbent CEO and / or withdrawing his powers, appointing the Acting CEO and conferring him the powers of the CEO were unlawful, illegal and void-ab-initio being in violation of Section 190 of the Companies Act.

Conclusion: i) The constitutional petitions by the employees of SNGPL are not maintainable before the High Court regarding terms and conditions of service matters.

ii) The offices of the CEO, Chairman and member of the Board are separate and independent in terms of appointment, removal, role, powers and functions.

iii) The process of appointment and removal of the CEO is regulated by specific mandatory legal provisions.
iv) The power of nomination of the CEO vested with the Federal Government under Section 187(4) of the Companies Act.
v) The CEO has the same powers, functions and responsibilities as any other member of the Board.
vi) The processes of appointment and removal of the CEO are separate and distinct and the Government has the power to remove the CEO where more than 75% of the voting rights are held by the Government.
vii) Such powers cannot be withdrawn but the CEO can be removed even without inquiry under Section 190 of the Companies Act.
viii) The appointment of Acting CEO and conferring of powers of the CEO to the Acting CEO in the presence of existing CEO is unlawful.

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29. **Lahore High Court**
Mian Bilal v. Muhammad Razzaq, etc.
Writ Petition No.22949 of 2016
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3331.pdf

Facts: Briefly stated facts of the case are that the petitioner filed an ejectment petition against respondent, with the assertions that he executed an agreement in favour of the respondent, regarding the sale-cum-tenancy of the rented premises. The pivotal and not-so-traditional clause resulting in the present lis was also agreed inter se the parties that till the performance of reciprocal contractual obligations spelled out above, the respondent was to be treated as tenant. It is the case of the petitioner that the respondent failed to pay the balance amount, within stipulated period of time and instituted a suit for specific performance against the petitioner, which stood dismissed on account of non-affixation of the Court fee. Petitioner, filed ejectment petition. The respondent contested the application by filing the reply and denied the relationship of landlord and tenant and claimed ownership of the rented premises on the strength of the agreement qua the sale-part thereof. The ejectment petition was dismissed, against which an appeal was preferred by the petitioner that also met the same fate, hence, the present constitutional petition.

Issues: i) Whether the rent clause contained in the agreement is an independent and stand-alone contract, severable from the rest of the agreement, and the same could be considered to have survived after failure on part of the respondent to fulfil the condition of payment of balance sale price, before the cut-off date?
ii) Whether the jurisdiction exercised by the learned Courts below, under the West Pakistan Urban Rent Restriction Ordinance, 1959, could have been extended in aid of a person/tenant in occupation of the rented premises by permitting him to establish and prove the payment of outstanding sale price pursuant to the agreement (of sale) even though the suit for specific performance, instituted by such person/tenant, on the basis of the agreement had been dismissed by the

competent Court?

Analysis: i) This Court is of the opinion that the rent clause contained in the agreement is an independent and stand-alone contract severable from the rest of the agreement and the same survived after failure on part of the respondent to fulfil the condition of payment of balance sale price, before the cut-off date i.e., 30.03.1995. The contracts have their own canons and principles for their construction. Principle of severance/severability of a contract is well-entrenched under the law of contract. The doctrine implies that there are contracts within a contract in the form of particular clause, which survive the frustration and/or the determination/rescission of the main contract.

ii) The conclusion is erroneous inasmuch as while exercising jurisdiction under rent law, the learned fora below extended an opportunity to the respondent to establish and prove the outstanding payment of sale consideration pursuant to the agreement that is not covered under the object of the Ordinance, more so when the suit for specific performance on the basis of the agreement had been dismissed by the competent Court. The learned Rent Controller as well as the learned Appellate Court below appear to have been impressed by the endorsements on the reverse/back side of the agreement, which by itself cannot be a circumstance that establishes the receipt of any money, more particularly, when the said endorsements have not been recorded in accordance with the dictates of Qanun-e-Shahadat Order, 1984 („QSO‟). No doubt that the learned Rent Controller was entitled to hold an inquiry into question of title in case of eviction, however, when the matter involved a complexity such as the one in hand, requiring interpretation of the agreement having dual characteristics involving issue related to specific performance thereof, unless the same is proved in accordance with Article 17 read with 79 of the QSO, before the Court of plenary jurisdiction, the respondent could not deny the relationship of landlord and tenant.

Conclusions: i) Rent clause contained in the agreement to sell is an independent and stand-alone contract, severable from the rest of the agreement and the same survived after failure on part of the respondent to fulfil the condition of payment of balance sale price, before the cut-off date.

ii) While exercising jurisdiction under rent law, the Rent Controller could not extend an opportunity to the respondent to establish and prove the outstanding payment of sale consideration pursuant to the agreement that is not covered under the object of the Ordinance, more so when the suit for specific performance on the basis of the agreement had been dismissed by the competent Court.

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30. **Lahore High Court**
Muhammad Rabi Zahid v. Abdul Razzaq Manzoor etc.
W.P No.36692/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3537.pdf

Facts: The petitioner has laid challenge to the orders passed by the Rent Tribunal and the Appellate Court respectively. By virtue of the former order, ejectment of the petitioner from the rented premises fully described in the eviction petition has been ordered; whereas through the latter, the order has been upheld.

Issues: i) Whether Section 7 of the Punjab Rented Premises Act, 2009 contemplates that in case a landlord refuses to receive the rent, it is obligatory on part of the tenant to either tender the same through money order or in the bank account?

ii) Whether conjunctive reading of section 7 with section 15(b) of the Punjab Rented Premises Act, 2009 provides a period of thirty days to tender the rent after the due?

iii) Whether in terms of Section 24 of the Punjab Rented Premises Act, 2009, if eviction petition is filed, it is the Rent Tribunal which, while granting leave to contest, shall direct the tenant to deposit the rent due from him?

iv) Whether court can refuse the leave to defend of tenant (where eviction petition filed for default of payment of rent) if the tenant approaches the court within 30 days after due date for payment of rent and mentions the fact of non-payment of rent of last month in the leave to contest?

Analysis: i) Section 7 of the Act merely states that a tenant shall pay or tender rent in accordance with mode and date recorded in the tenancy agreement and if no date and/or manner has been mentioned in the tenancy agreement, the tenant shall follow the date and mode prescribed under Section 7 i.e., pay or tender rent not later than 10th day of the following month and the rent shall be paid through money order or deposit in the bank account. In the instant case, the tenancy agreement dated 03.09.2019 relied upon by the respondent depicts that the rent was to be paid between 1st to 5th of every month in advance. There is no mention of the bank account of the respondent in the said agreement. So even if the said agreement is taken as a genuine document to have been executed between the parties governing their relationship as landlord and tenant, the obligation of the petitioner to pay the rent was by 5th of every month and in case the respondent had refused to receive the same and issue receipt accordingly, the petitioner as tenant was obligated to tender the same through money order or deposit in the bank account of the respondent. In the instant case, since the agreement does not provide the details of the bank of the respondent, tender could have been made through the money order only.

ii) Section 7 is to be read with Section 15 of the Act to determine as to the time limit available, under the law, to a tenant to tender the rent upon refusal of the landlord, through money order or by filing an application in the Rent Tribunal, failing which the tenant becomes a defaulter. The averments of the petitioner that he has not paid the rent for the month of September, 2020 and non-filing of the application with the Rent Tribunal for deposit of rent has been treated as an admission of default is not justified when conjunctive reading of Section 7 with Section 15(b) is made while keeping in view the agreement dated 03.09.2019 upon which the respondent himself has relied. A period of thirty days with effect

from 5th of every month was available to the petitioner to tender the rent. Rent for September, 2020 was due by 05th of the said month and when read with Section 15(b), the petitioner had a period of further thirty days that extends to 05.10.2020.
iii) It is the mandate of law in terms of Section 24 of the Act that if eviction petition is filed, it is the Rent Tribunal which, while granting leave to contest, shall direct the tenant to deposit the rent due from him, within the specified time, more particularly when the parties are at variance as to the rate of the monthly rent.
iv) Had the tenant not appeared before the Rent Tribunal prior to lapse of time triggering default in terms of conjunctive reading of Section 7 read with Section 15(b) of the Act, the situation would have been different and he could have been said to have defaulted as this would have meant that he either did not appear before the Rent Tribunal, consciously, to avoid payment of rent or would have not been in knowledge of the filing of the eviction petition; therefore, he was obligated to tender rent in accordance with Section 7 read with Sections15 and 20 of the Act. However, this is not the situation in the instant case as the petitioner had appeared before the Rent Tribunal prior to the lapse of time triggering default and the applicability of Section 20 subsided to give way to Section 24 of the Act. The default prior to filing of eviction petition and subsequent to the filing of eviction petition has to be viewed through the prisms of Section 20 and 24 respectively and both the Courts below have erred by not appreciating this distinction.

Conclusion: i) Section 7 of the Punjab Rented Premises Act, 2009 contemplates that in case a landlord refuses to receive the rent, it is obligatory on part of the tenant to either tender the same through money order or in the bank account.
ii) Conjunctive reading of section 7 with section 15(b) of the Punjab Rented Premises Act, 2009 provides a period of thirty days to tender the rent after the due date.
iii) In terms of Section 24 of the Punjab Rented Premises Act, 2009, if eviction petition is filed, it is the Rent Tribunal which, while granting leave to contest, shall direct the tenant to deposit the rent due from him.
iv) Court cannot refuse the leave to defend of tenant (where eviction petition filed for default of payment of rent) if the tenant approaches the court within 30 days after due date for payment of rent and mentions the fact of non-payment of rent of last month in the leave to contest.

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31. **Lahore High Court**
Muhammad Saleem v. Additional District Judge, etc.
Writ Petition No.43399/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3672.pdf

Facts: Four suits were instituted by the pre-emptor and asserted that the price recorded in the sale deeds is inflated. The pre-emptor filed an application under Section 24 of the Punjab Pre-emption Act, 1991 for the determination of probable value of the

properties pre-empted in each suit. The Trial Court directed the pre-emptor to deposit 1/3rd of the amount recorded in the sale deeds and kept the said applications in the suits pending. Then a separate application in all four suits was filed for decision of the applications under Section 24 that was contested and applications were dismissed, which was assailed in separate revision petitions by the pre-emptor and the revision petitions were accepted, with consent of the parties and the matter was remanded to the Trial Court for decision afresh on the pending applications, of the petitioner, under Section 24. In post remand proceedings, another application, in each suit, under Order XIV Rule 2 was filed, by the pre-emptor with the prayer that issues already framed and settled regarding the determination of the sale price be treated as preliminary issues and the petitioners be directed to lead the evidence. This application was accepted which was assailed by the petitioners by filing separate revision petitions that were also dismissed. Hence, present as well as connected constitutional petitions.

Issues: i) Whether once the jurisdiction is exercised by the Revisional Court below, recourse to the constitutional jurisdiction is not permissible?
ii) Whether the court can postpone the settlement of issues of fact until the issues of law have been determined?
iii) Whether ascertainment of price of the pre-empted property (ies) is to be taken up as a preliminary issue, in terms of proviso to Section 24(1) of the Act read with Order XIV Rule 2 of the CPC?

Analysis: i) Every case has its own peculiar facts and where the Revisional Court errs in appreciating the controversy in its proper perspective or otherwise decides the matter erroneously that can lead to defeating the object of the law on the subject, this Court has power in its supervisory and/or constitutional jurisdiction to rectify such an error.
ii) As per mandate of the applicable law, as envisaged under Rule 2 of Order XIV, CPC, where issues, both of law and fact, arise and the Court is of the opinion that it should dispose of the issues of law only, it is obligatory for it to try the same first and for that purpose, the Court may, if it deems appropriate, postpone the settlement of issues of fact until the issues of law have been determined, however, if the decision is required on issues of law and the Court is called upon to record evidence of the parties, even in such eventuality, such legal issues should be decided along with the remaining issues on facts.
iii) The determination of probable value under proviso to Section 24(1) of the Act is only tentative in nature that is to be made on the basis of available record or any preliminary probe without recording of evidence and before direction is passed to deposit zar-e-soem and cannot be equated with the determination, which is to be made after framing of issues and recording of evidence that falls under the purview of Section 24(4) of the Act.

Conclusion: i) If the jurisdiction is exercised by the Revisional Court below, recourse to the constitutional jurisdiction is permissible in certain circumstances.

ii) The Court may, if it deems appropriate, postpone the settlement of issues of fact until the issues of law have been determined.
iii) Ascertainment of price of the pre-empted property (ies) is to be taken up as a preliminary issue, in terms of proviso to Section 24(1) of the Act read with Order XIV Rule 2 of the CPC.

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32. **Lahore High Court**
Khurram Shahzad v. Zeeshan Nawaz, etc.
Writ Petition No.31543/2021
Mr. Justice Anwaar Hussain
https://sys.lhc.gov.pk/appjudgments/2023LHC3780.pdf

Facts: These petitions have been filed by different petitioners against the same private respondent, who filed separate eviction petitions against the petitioners. The eviction petitions were accepted and separate appeals preferred by the petitioners were also dismissed. Hence the present as well as the connected constitutional petitions have been filed.

Issues: i) Whether Rent Registrar is obligatory to carry out the functions mechanically or may require prima facie proof of ownership from the landlord and has power to conclusively determine the issue of the status of the parties?
ii) Whether duties and functions of Rent Registrar and Rent Tribunal are different from each other?
iii) Whether non registration of tenancy under section 5 of the Act, operates as an absolute bar on the Rent Tribunal from entertaining an application under the Act?
iv) Whether decision refusing a request to register a tenancy under Section 5 of the Act can be termed as a decision on merits?
v) Whether the Rent Tribunal is precluded from entertaining an application for ejectment of a tenant if an earlier application of the ejectment petitioner, for registration of tenancy agreement, under Section 5 of the Act has been dismissed by the Rent Registrar on the basis of denial of relationship of landlord and tenant?

Analysis: i) The power to register a tenancy agreement lies with the learned Special Judge (Rent) in his capacity as the Rent Registrar who is required to enter the particulars of the tenancy in a register, affix his seal on the tenancy agreement and retain a copy thereof. Consequently, the functions of the Rent Registrar are limited to the registration of the tenancy agreement. The Rent Registrar, however, is obligated not to carry out such functions mechanically and may require „prima facie proof of ownership" from the landlord. The Rent Registrar is also required to follow due process and issue notice to the tenant before registering the tenancy agreement. Reference in this regard is made to case reported as "Wajid Ali v. Rent Registrar/Special Judge Rent, Lahore and another" (PLD 2010 Lahore 463). However, despite the foregoing, the functions of the Rent Registrar, at the best, only involve a prima facie scrutiny of the title of the landlord. The Rent Registrar can only carry out a tentative probe viz., the status of the parties as held in case of

Sayyed Mohammad Areeb Abdul Khafid Shah Bukhari supra and does not have the authority and power to conclusively determine the issue of the status of the parties since the said power is judicial in nature and lies with the learned Rent Tribunal.

ii) The law creates a distinction between the functions and powers of the learned Special Judge (Rent) while functioning as Rent Registrar and in its capacity as the Rent Tribunal inasmuch as the learned Rent Tribunal has the power to entertain and adjudicate applications in respect of the rented premises in terms of Section 19 of the Act and has exclusive jurisdiction in respect of cases arising under the Act as contemplated under Section 16(4) thereof that includes applications for deposit of rent, eviction of tenant etc., whereas, the Rent Registrar only receives applications for registration of the tenancy agreements in terms of Section 5 of the Act and his sole responsibility is to maintain a register to enter particulars of tenancy agreements, agreement to sell or any other agreement in respect of rented premises as per Section 17(2) of the Act. Similarly, under Section 25 of the Act, the learned Rent Tribunal has the power to record evidence, however, no such power vests with the Rent Registrar. Moreover, the learned Rent Tribunal exercises powers of the Civil Court by virtue of Section 26 of the Act whereas no such powers are available to the Rent Registrar. In nutshell, it is well evident from the above discussion that the Rent Registrar does not perform an adjudicatory function rather performs functions that are primarily administrative/executive in nature, which may require cursory appreciation of the documents and tentative probe viz., status of the parties. The learned Rent Tribunal, on the other hand, has exclusive adjudicatory powers for all the matters related to rented premises and therefore, also the power to make a final determination in respect of the issues such as the status of the parties. So even if the functions of the Rent Registrar and the Rent Tribunal are entrusted to the same Officer (Judicial Officer), the above distinction will remain true as each role has its own scope and limitations. As is clear, under the Act, the Rent Registrar has very limited functions and powers that are not adjudicatory in nature, this Court is of the opinion that the distinction between the functions and powers of the Rent Tribunal and the Rent Registrar have been deliberately and consciously incorporated in the Act and one cannot lose sight of the same while deciding the fate of an eviction petition.

iii) The matter can be examined from another angle. Under Section 9 of the Act, it has been clearly envisaged that if a tenancy does not comply with the requirements of the Act, an application under the Act can be entertained by the learned Rent Tribunal provided that the requisite fine is deposited with the learned Rent Tribunal. The word „entertain‟ in legal parlance, as per Black's Law Dictionary, Tenth Edition, means „to give judicial consideration to‟ a matter. Similarly, in case reported as "Mst. Alhamdi Begum v. National Bank of Pakistan, Karachi and 2 others" (PLD 1976 Karachi 723), it has been defined as „to adjudicate upon‟ or „proceed‟ to consider on merits. It is amply clear that even if the tenancy agreement is not registered under Section 5 of the Act, the same does not operate as an absolute bar on the learned Rent Tribunal from

entertaining an application under the Act provided the requisite fine is paid. It is important to note that the words used in Section 9 are "if a tenancy does not conform to the provisions of this Act". Meaning thereby that if, for whatsoever reason, the tenancy agreement is not registered with the Rent Registrar under Section 5 (whether due to landlord's failure to get the same registered or the Rent Registrar's refusal to register the same on denial of relationship by the tenant), Section 9 will become applicable and the application before the Rent Tribunal can still be entertained, after payment of the requisite fine.

iv) The decision refusing a request to register a tenancy under Section 5 of the Act, whether oral or written, cannot be termed as a "decision" on merits since the same is not made after recording of any evidence or framing of issues but the rejection of the application is based on a prima facie view of the existence of a tenancy by the Rent Registrar.

v) At this juncture, it is also imperative to observe that the legal question can be analyzed from yet another angle. If an order to register the tenancy agreement was to preclude the powers of a Rent Tribunal under Section 9 and Section 19 of the Act, then there ought to have been clear language in the statute to this effect. However, neither Section 9 nor Section 19 of the Act, makes the exercise of powers by the learned Rent Tribunal subject to any prior determination, under Section 5 of the Act. In the absence of any such language, the order passed under Section 5 by the Rent Registrar cannot be deemed to have the effect of limiting the jurisdiction of the learned Rent Tribunal in any manner as such jurisdiction of the Rent Tribunal includes the power to decide the existence or otherwise of relationship of landlord and tenant… Thus, this Court cannot countenance the argument that order under Section 5 made in exercise of administrative functions of the learned Special Judge (Rent) precludes the exercise of his judicial functions under the Act. Having held that refusal of the Rent Registrar, under the Act, to register the tenancy agreement or reduce an oral tenancy into writing, does not preclude the learned Rent Tribunal from entertaining a landlord's application for ejectment of tenant.

Conclusion: i) Rent Registrar is not obligatory to carry out the functions mechanically and may require prima facie proof of ownership from the landlord but has no power to conclusively determine the issue of the status of the parties.

ii) Duties and functions of Rent Registrar and Rent Tribunal are different from each other as contemplated under the Punjab Rented Premises Act, 2009.

iii) Non registration of tenancy under section 5 of the Act, does not operate as an absolute bar on the Rent Tribunal from entertaining an application under the Act.

iv) The decision refusing a request to register a tenancy under Section 5 of the Act, cannot be termed as a decision on merits since the same is not made after recording of any evidence or framing of issues.

v) The Rent Tribunal is not precluded from entertaining an application for ejectment of a tenant if an earlier application of the ejectment petitioner, for registration of tenancy agreement, under Section 5 of the Act has been dismissed

by the Rent Registrar on the basis of denial of relationship of landlord and tenant.

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33. **Lahore High Court**
Sakina Bibi v. Additional Sessions Judge, etc
Writ Petition No.56691/2022
Mr. Justice Ali Zia Bajwa
https://sys.lhc.gov.pk/appjudgments/2023LHC3761.pdf

Facts: Through this writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the vires of the impugned order passed by the ex-officio Justice of Peace, whereby the application under Section 22-A(6) of the Code of Criminal Procedure, 1898 filed by her for registration of a criminal case was dismissed.

Issues: i) Whether Justice of Peace has any jurisdiction to render his finding qua the veracity of the allegations leveled against the proposed accused?
ii) Whether office of Justice of Peace is a quasi-judicial forum and functions performed by it cannot be termed judicial or of a court?
iii) In a case where the abduction took place in one District and the dead body found in other District, where the criminal case can be registered and investigated?
iv) Whether information received regarding a cognizable offence can be neglected on the pretext of lack of territorial jurisdiction?
v) What are the guidelines for a police officer in case of uncertainty regarding the territorial jurisdiction of a particular police station?

Analysis: i) It is a settled proposition of law as enunciated by the Supreme Court of Pakistan that the only jurisdiction which can be exercised by JOP under Section 22-A(6) of the Code is to examine whether the information disclosed by the applicant did or did not constitute a cognizable offence and if it did, then to direct the concerned Station House Officer to register an FIR, without going into the veracity of the information in question and no more.
ii) It has also been observed that the JOP while passing the impugned order used the word ‘Court’ for him, which is highly misconceived and misunderstood, as it is trite law that the office of JOP is a quasi-judicial forum and functions performed by it cannot be termed judicial or of a court.
iii) Section 156 (1) of the Code contemplates that any officer-in-charge of a police station can investigate a cognizable offence, which a court having jurisdiction over the local area within the limits of such police station would have the power to inquire into or try under the provisions of Chapter XV of the Code relating to the place of inquiry or trial. A bare perusal of Sections 156 (1) and 177 of the Code makes it abundantly clear that as a general rule, a criminal case should be registered and investigated by the police station, within the local limits of whose jurisdiction such offence was committed. Keeping in perspective the word "ordinarily" in Section 177 read with Section 156 (1) of the Code, it is apparent,

that generally the occurrence is to be investigated at a place where it ordinarily occurs, so the word ordinarily means that it is a general principle. The exceptions to that general rule are contained in the Code itself in the contents of the succeeding Sections from 178 to 185 of the Code… The cumulative effect of Sections 156 (1) and 179 of the Code is that an offence can be investigated by the police officer having territorial jurisdiction over the area where an act is committed or where the consequence of that act ensues. Sections 156 (1) and 177 of the Code provide for the simplest cases and perhaps the cases which most frequently occur, namely, of an offence committed entirely within a single jurisdiction. On the other hand, Section 156 (1) read with Section 179 of the Code enlarges as much as possible the ambit of the sites in which the criminal case can be registered and investigated to minimize, as much as possible, the inconvenience caused by a technical plea of want of territorial jurisdiction of a police station. The wisdom of lawmakers to extend the jurisdiction to various police stations, where an information qua the cognizable offence can be registered and investigated, is to provide against an accused escaping guilt. The general rule of lex fori has been relaxed by Section 156 (1) of the Code.

iv) It would not be out of place to observe here that in a number of cognizable offences, registration of crime reports is delayed on the pretext of lack of territorial jurisdiction of a particular Police Station. Such conduct of police officers not only results in the loss of valuable evidence due to delay but also provides an opportunity for accused persons to escape their criminal liability. Law on the subject is very clear that if information regarding a cognizable offence is received, the same cannot be neglected on the pretext of lack of territorial jurisdiction.

v) The abovementioned rules are self-explanatory and clearly lay down an effective mechanism and the duties of a police officer in case of uncertainty regarding the territorial jurisdiction of a particular police station. The scheme of law provided under the rules clearly reflects the intention of the legislature that a blind eye cannot be turned to the information of the commission of a cognizable offence on the pretext of lack of territorial jurisdiction. For convenience following guidelines can be articulated: -

I. When the information regarding the commission of the cognizable offence is furnished to the SHO of the Police Station, in whose territorial jurisdiction the offence has been committed, he is bound to register the criminal case immediately.

II. A criminal case can be registered and investigated in a police station where a cognizable offence is committed or where its consequences ensue.

III. In the case, where clearly a police station has no jurisdiction to investigate a cognizable offence and information of the same is received, such information shall be recorded in the daily diary and sent to the Officer Incharge of the relevant police station. Meanwhile, all possible lawful measures shall be taken to secure the arrest of the offender and the detection of the offence.

IV. After registration of a criminal case and the start of the investigation by a

police officer, if it transpires that the police station lacks territorial jurisdiction, information shall be sent to the Officer Incharge of the relevant police station in that regard promptly, who shall take over the investigation without delay.
V. When a case is transferred from one police station to another due to lack of territorial jurisdiction or convenience of investigating officer having lawful authority to investigate that case, the crime report registered in the original police station shall be canceled by the Superintendent of police concerned. The complete record of the case shall be sent to the police station where the case is transferred.
VI. When there is a dispute qua the territorial jurisdiction of two police stations, the criminal case shall be registered at the police station where the information of cognizable offence is received first. The investigation shall be carried out jointly by the police officers of both police stations until the question of jurisdiction has been settled and acknowledged.

Conclusion: i) Justice of Peace has no jurisdiction to render his finding qua the veracity of the allegations leveled against the proposed accused.
ii) Office of Justice of Peace is a quasi-judicial forum and functions performed by it cannot be termed judicial or of a court.
iii) In a case where the abduction took place in one District and the dead body found in other District, the criminal case can be registered and investigated in any District where information regarding a cognizable offence received.
iv) Information received regarding a cognizable offence cannot be neglected on the pretext of lack of territorial jurisdiction.
v) The guidelines for a police officer in case of uncertainty regarding the territorial jurisdiction of a particular police station are mentioned above in analysis No.V.

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34. **Lahore High Court**
Abdul Rehman v. Additional District Judge and 2 Others
Writ Petition No. 25062 of 2020
Mr. Justice Sultan Tanvir Ahmad
https://sys.lhc.gov.pk/appjudgments/2023LHC3663.pdf

Facts: The petitioner has assailed judgment passed by learned Additional District Judge whereby, appeal against order passed by Civil Judge 1st Class / Rent Tribunal has been dismissed.

Issues: i) Whether the ejectment petitioner can seek eviction of a person who is not his tenant?
ii) What are the pre-conditions for filing eviction petition?
iii) Whether the jurisdiction of rent tribunal is available as an alternate to other jurisdictions provided in law or claims of possession through partition or disputed title or for that matter other claims that are required to be resolved by the civil Courts?

Analysis: i) Combined reading of sections 13 and 15 of the Act as well as definitions of landlord and tenant reflects that remedy of eviction under the Act is available only when the landlord of the given premises can first establish that one sought to be evicted has a relationship of tenant with such landlord. If a person is not a tenant of the ejectment petitioner that means no ground is available to such person to seek eviction of tenant.

ii) The eviction petition can be maintained upon expiry of tenancy, failure of payment of rent, breach of terms and conditions of tenancy agreement, violation by tenant of obligation under section 13 of the Act and unauthorized use of premises or subletting without written consent. All the grounds given in section 15 of the Act require some violation by the tenant.

iii) The jurisdiction of rent tribunals is provided to regulate the relationships of landlords and tenants, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for the matters connected thereto. This jurisdiction is not available as an alternate to other jurisdictions provided in law or claims of possession through partition or disputed title or for that matter other claims that are required to be resolved by the civil Courts.

Conclusion: i) The ejectment petitioner cannot seek eviction of a person who is not his tenant.

ii) All the grounds given in section 15 of the Act require some violation by the tenant for filing eviction petition.

iii) The jurisdiction of rent tribunal is not available as an alternate to other jurisdictions provided in law or claims of possession through partition or disputed title or for that matter other claims that are required to be resolved by the civil Courts.

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35. **Lahore High Court**
Muhammad Nazeer v. ADJ, Sialkot, etc.
Writ Petition No.30090 of 2023
Mr. Justice Raheel Kamran
https://sys.lhc.gov.pk/appjudgments/2023LHC3363.pdf

Facts: The petitioner has assailed the orders passed by the Judge Family Court and Additional District Judge respectively whereby decision of complaint under section 6(5) of Muslim Family Laws Ordinance, 1961 on oath on Holy Qur'an was refused and appeal filed there-against was dismissed.

Issues: i) Whether the Family Court has the jurisdiction to try a complaint under section 6(5) of the Muslim Family Laws Ordinance, 1939?

ii) Whether the provisions of the Qanun-e-Shahadat, 1984 are applicable in criminal proceedings before the Family Court?

iii) Whether acceptance or denial of claim on oath is applicable in criminal cases?

iv) Whether oath can be administered by the Family Court regarding the complaint of polygamy?

Analysis: i) Section 20 of the Act deems the Family Court to be the Judicial Magistrate of the first class under the Code of Criminal Procedure, 1898 for taking cognizance and trial of any offence, inter alia, under the Ordinance. Cognizance of such an offence can be taken on the complaint of the Union Council, Arbitration Council or the aggrieved party and the Family Court is required to conduct the trial of an offence in accordance with the provisions of Chapter XXII of the Code relating to summary trials. In the case of Muzaffar Nawaz v. Ishrat Batool and another (2022 YLR 1920), while quashing trial proceedings conducted by the Magistrate, it was held by this Court that only the Family Court had the jurisdiction to try a complaint under section 6(5) of the Ordinance.

ii) It is manifest from perusal of section 17(1) West Pakistan Family Court Act, 1964 that application of the Qanun-e-Shahadat, 1984 is excluded in respect of proceedings on matters falling in Part I of the Schedule to the Act. However, such exclusion has no applicability vis-à-vis criminal proceedings for the offences specified in Part II of the Schedule or section 20 of the Act including the offence under section 6(5) of the Ordinance. Therefore, the provisions of the Qanun-e-Shahadat, 1984 are applicable in criminal proceedings before the Family Court.

iii) Article 163 of the Qanun-e-Shahadat, 1984 governs acceptance or denial of claim on oath, application whereof to laws relating to criminal cases has been expressly excluded under clause (3) of the said Article. This view is also supported by judgments of the Supreme Court of Pakistan in the case of Mst.Bashiran Bibi v. Nisar Ahmad Khan (PLD 1990 SC 83).

iv) As regards the plea of second marriage without permission is a matter arising out of Nikahnama between the parties in view of item No.10 of Part-I of the Schedule to the Act, but second marriage without permission constitutes an offence under section 6(5) of the Ordinance for which a punishment has been prescribed. Jurisdiction of the Family Court to try the aforementioned offence is clearly specified in section 20 of the Act and Part I of the Schedule to the Act is of no relevance for that purpose.

Conclusion: i) Family Court has the jurisdiction to try a complaint under section 6(5) of the Muslim Family Laws Ordinance, 1939.

ii) The provisions of the Qanun-e-Shahadat, 1984 are applicable in criminal proceedings before the Family Court.

iii) Acceptance or denial of claim on oath in criminal cases has been expressly excluded under clause (3) of the Article 164 of Qanun-e-Shahadat, 1984.

iv) Oath cannot be administered by the Family Court regarding the complaint of polygamy.

LATEST LEGISLATION/AMENDMENTS

1. Rule 6.1 in the Punjab Civil Services Pension Rules is substituted vide Notification No. No.FD.SR.III.4-144/ 2019 (Pt-1).

2. Vide notification no. S.R.O.185(I)/2023 the Ministry of Law and Justice in the exercise of powers conferred under section 19 of the Anti-Rape (Investigation and Trial) Act, 2021, made "The Anti-Rape (Investigation) Rules, 2022".
3. Vide notification no. S.R.O.186(I)/2023 the Ministry of Law and Justice in the exercise of powers conferred under section 19 of the Anti-Rape (Investigation and Trial) Act, 2021, made "The Anti-Rape (Trial Procedure) Rules, 2022".
4. Vide notification no. S.R.O.187 (I)/2023 the Ministry of Law and Justice in the exercise of powers conferred under section 19 of the Anti-Rape (Investigation and Trial) Act, 2021, made "The Anti-Rape (Crises Cell and Medico-Legal) Rules, 2022".
5. Creation of Special Courts under Anti-Rape (Investigation and Trial) Act, 2021 vide Notification No. S.R.O.615(I)/2022.
6. Creation of Special Courts under Anti-Rape (Investigation and Trial) Act, 2021 vide Notification No. S.R.O.45(I)/2023.
7. Appointment of Special Committee under Anti-Rape (Investigation and Trial) Act, 2021 vide Notification No. S.R.O.1190(I)/2022.
8. Creation of Anti-Rape Crises Cells under Anti-Rape (Investigation and Trial) Act, 2021 vide Notification No. S.R.O.1759(I)/2022.
9. Corrigendum Islamabad dated 20.12.202 related to the Notification for designation of Special Courts under Anti-Rape (Investigation and Trial) Act, 2021.
10. Vide Notification No. 84 of 2023 the Governor of the Punjab made "The Private Wildlife Reserve Rules 2023".
11. Vide Notification No. 85 of 2023 the Governor of the Punjab made "The Punjab Community Based Conservancy Rules 2023".
12. Vide Notification No. 86 of 2023 the Governor of the Punjab declared certain areas as "Lal Suhanra National Park, Bahawalpur".
13. Vide Notification No. 87 of 2023 the Governor of the Punjab declared certain areas as "Chinji National Park, Chakwal".
14. Vide Notification No. 88 of 2023 the Governor of the Punjab declared certain areas as "Kheri Murat National Park, Attock".
15. Vide Notification No. 89 of 2023 the Governor of the Punjab declared certain areas as "Pabbi Rasool National Park, Chakwal".
16. Vide Notification No. 90 of 2023 the Governor of the Punjab declared certain areas as "Salt Range National Park, Chakwal".
17. Vide Notification No. 91 of 2023 the Governor of the Punjab declared certain areas as "Kala Chitta National Park, Attock".
18. Vide Notification No. 92 of 2023 the Governor of the Punjab declared certain areas as "Murree, Kahuta and Kotli Sattian National Park, Rawalpindi".
19. Vide Notification No. 95 of 2023 the Governor of the Punjab made "The Punjab Environmental Protection (Production and Consumption of Single-Use Plastic Product) Regulations 2023".
20. Vide Notification No. 96 of 2023 the Governor of the Punjab made "The Punjab Environmental Protection (Smog Prevention and Control) Rules 2023".
21. Vide Notification No. 97 of 2023 the Governor of the Punjab made "The Punjab Skills Development Authority Rules 2022".

22. Vide Notification No. 99 of 2023 the Governor of the Punjab made Amendments at serial numbers 12 & 26-A in schedule of the Punjab Forensic Science Agency (Appointment and Conditions of Service) Rules 2014.
23. Vide Notification No. 100 of 2023 the Governor of the Punjab declared the Punjab Rangers as Management Authority of the protected area "Border Belt Public Wildlife Reserve".
24. Vide Notification No. 101 of 2023 the Governor of the Punjab made "The Punjab Workers Welfare Fund Rules 2021".
25. Vide Act No. XXV of 2023 the Parliament has passed "The Pir Roshaan Institute of Progressive Sciences and Technologies, Miranshah Act, 2023" to provide for the establishment of Pir Roshaan Institute of Progressive Sciences and Technologies, Miranshah and to provide for matters connected therewith and ancillary thereto.
26. *Vide Act No. XXVI of 2023* the Parliament has passed "The Private Power and Infrastructure Board (Amendment) Act 2023"and amended preamble, sections 2, 5, 6, 23 & 24 whereas sections 5A, 5B, 30 to 33 are inserted.
27. Vide Act No. XXVII of 2023 the Parliament has passed "The Kalam Bibi International Women Institute Bannu Act, 2023".
28. Vide P.O. No. I of 2023 the President has promulgated "The Advocate General and Law Officers (Terms and Conditions of Service) (Amendment) Order, 2023".

SELECTED ARTICLES

1. CAMBRIDGE LAW JOURNAL

https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/how-law-protects-dignity/7237C77EEE72EDEE2E987A3DCA2786FD

How Law Protects Dignity by Jeremy Waldron

One way in which law protects dignity is by enforcing human rights provisions that explicitly prohibit degradation. But, as Lon Fuller and others have observed, law's connection with dignity is also deeper and more pervasive than this. In the way that its requirements are presented, in its procedures, in its sponsorship of argumentation, in treating people as equals, even in the distinctive way in which it makes use of coercion, law treats humans as dignified agents, capable of self-control, with a good sense of their own interests, and an ability to respond intelligently to its demands.

2. HARVARD LAW REVIEW

https://harvardlawreview.org/print/vol-136/responding-to-domestic-terrorism-a-crisis-of-legitimacy/

Responding to Domestic Terrorism: A Crisis of Legitimacy

On January 6, 2021, thousands of rioters breached the U.S. Capitol. With the express purpose of preventing the lawful Electoral College vote count, they broke through barriers, windows, and law enforcement lines, threatening violence against various politicians. They assaulted over 140 police officers and caused an estimated $2.73 million in property damage. Since then, the President, the Director of the Federal Bureau of Investigation (FBI), Democratic and Republican congresspersons, high-ranking Department of Justice (DOJ) officials, and numerous commentators have characterized the breach as domestic terrorism. Yet, as many have pointed out, none of the insurrectionists have been charged with domestic terrorism.

3. INTERNATIONAL HUMAN RIGHTS LAW REVIEW
https://brill.com/view/journals/hrlr/10/2/article-p191_191.xml

Human Trafficking in the Context of Global Migration: Modern Manifestation of *De Facto* Slavery, Servitude and Forced or Compulsory Labour by Manisuli Ssenyonjo

In recent years there has been a significant increase in trafficking in human beings as a global phenomenon. COVID-19 pandemic created conditions that increased the number of persons who were vulnerable to human trafficking and disrupted current and planned anti-trafficking initiatives. Human trafficking treats human beings as commodities to be bought and sold and put to forced labour often for lower or no payment. This constitutes a modern form of de facto slavery, servitude and forced or compulsory labour. This article provides an overview of international law on human trafficking and considers response to human trafficking in Africa. It further considers whether diplomats can be held accountable for exploitation of migrant domestic workers in receiving States. It further examines whether diplomatic immunity can be used as a bar to the exercise of jurisdiction by domestic courts and tribunals of a state which hosts the diplomat (the 'receiving state') in cases of employment of a trafficked person by a former or serving diplomat. It ends by considering whether trafficked persons should be held to bear individual criminal responsibility for crimes they have committed (or were compelled to commit) in the course, or as a direct consequence, of having been trafficked. Such crimes may include unlawful entry into, presence or residence in another country of transit or destination, working without a work permit, sex work, and use of false identity/false passport.

4. STATUTE LAW REVIEW
https://academic.oup.com/slr/article-abstract/36/1/28/1614369?redirectedFrom=fulltext

Sunset Clauses and Experimental Regulations: Blessing or Curse for Legal Certainty? by Sofia Ranchordás

Legislation is often criticized for lagging behind the evolution of society and technology. The excessive regulatory burdens, slow legislative process, and law's aversion towards legal change and uncertainty are some of the underlying reasons. However, the principle

of legal certainty cannot be interpreted as a commandment imposing the immutability of legislation. Instead, a certain degree of gradual or temporary uncertainty may be necessary to ensure that laws continue to mirror society and hence grant, in the long-run, sufficient certainty. There are two candidates for this 'mission': sunset clauses and experimental legislation. These temporary legislative instruments determine the expiry of rules after a fixed period. Both instruments have been criticized and praised by the literature and case law in different countries. In this article, I examine whether and why sunset clauses and experimental legislation can be regarded as 'blessings' or 'curses' for the principle of legal certainty.

5. YALE JOURNAL OF LAW AND TECHNOLOGY
https://yjolt.org/infrastructuring-digital-public-sphere

Infrastructuring the Digital Public Sphere by Julie E. Cohen

The idea of a "public sphere"–a shared, ideologically neutral domain where ideas and arguments may be shared, encountered, and contested–serves as a powerful imaginary in legal and policy discourse, informing both assumptions about how public communication works and ideals to which inevitably imperfect realities are compared. In debates about feasible and legally permissible content governance mechanisms for digital platforms, the public sphere ideal has counseled attention to questions of ownership and control rather than to other, arguably more pressing questions about systemic configuration. This essay interrogates such debates through the lens of infrastructure, with particular reference to the ways that digital tracking and advertising infrastructures perform systemic content governance functions.